A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS, 1862-1900,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA 1836-1900,

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

JOSEPH VERE WOODMAN,
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IN SIX VOLUMES

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TABLE

OF

HEADINGS, SUB-HEADINGS, AND CROSS REFERENCES.

The headings and sub-headings under which the cases are arranged are printed in this table in capitals, the headings in black type and the sub-headings in small capitals. The cross references are printed in ordinary type.

A DIGEST

OF

THE HIGH COURT REPORTS,

1862—1900,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1836—1900.

N

NADI BHARATI.

See ACCRETION — NEW FORMATION OF ALLUVIAL LAND—RIVERS OR CHANGE IN COURSE OF RIVERS
[3 B. L. R., Ap., 116

NAIB.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS . 1 W. R., 56
[2 W. R., 155, 225
3 W. R., Act X, 1
7 W. R., 394

NAME, REGISTRATION OF—

See CASES UNDER DECLARATORY DECREE, SUIT FOR—REGISTRATION OF NAMES BY COLLECTOR.

See CASES UNDER JURISDICTION OF CIVIL COURT—REGISTRATION OF TENURES.

See CASES UNDER RIGHT OF SUIT—REGISTRATION OF NAME.

See SALE FOR ARREARS OF RENT—UNDER-TENURES, SALE OF
[12 B. L. R., F. B., 484
3 C. L. R., 231
I. L. R., 27 Calc., 789

NARVA TENURE.

——— *Its history and incidents—Grant of narva village in inam—Alienations by narvadars—Baharkhali—Gammajmun—Patimajmun—Revenue survey in a narva village—Suit by inamdar to recover rent as settled by the survey—Landlord and tenant.*—The narva tenure and its incidents discussed and explained. The inamdar of the narva village of Dakor desired that the revenue survey should be introduced into it. The usual measure-

ments and assessments were made, and the Superintendent of the Revenue Survey, following the analogy of the system prevalent in Government villages, held a conference with the narvadars and drew up a scheme, to which the narvadars assented, for the future management of the village and for settling the future relations between the narvadars and the inamdars as representing the fiscal interests of the Government. The narvadars agreed to retain their narva tenure along with an assessment made

NATIVE CHRISTIANS.

See CASES UNDER CONVERTS.

See DIVORCE ACT, s. 2.
[I. L. R., 14 Mad., 382
I. L. R., 18 Calc., 252

See SUCCESSION ACT, s. 331 7 Mad., 121
[I. L. R., 2 Mad., 209
I. L. R., 19 Bom., 783

NATIVE CONVERTS' MARRIAGE DISSOLUTION ACT (XXI OF 1866).

See DIVORCE ACT, s. 2.
[I. L. R., 18 Calc., 252

NATIVE INDIAN SUBJECTS.

See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS.
[I. L. R., 16 Bom., 178

NATIVE RULER.

———— Suit against—

See CASES UNDER JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

NATIVE STATE.

———— Decree of Court of—

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES.
[I. L. R., 15 Bom, 216

———— in alliance.

See CIVIL PROCEDURE CODE, 1882, ss. 387, 391 (1859, s. 177).
[2 B. L. R., A. C., 73
10 W. R., 385

———— Magistrate or Police officer in—

See EVIDENCE ACT, s. 26.
[I. L. R., 22 Bom., 235

———— Person domiciled in—

See LETTERS OF ADMINISTRATION.
[I. L. R., 21 Calc., 911

———— Record of Court attested by Judicial Officer of—

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R., 12 All., 595
[I. L. R., 22 Bom., 235

NAVIGABLE RIVER.

See CASES UNDER ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHURS OR ISLANDS IN NAVIGABLE RIVERS.

See FISHERY, RIGHT OF.
[I. L. R., 4 Calc., 53
W. R., 1864, 108, 243
15 W. R., 212
11 C. L. R., 11
I. L. R., 8 Mad., 467
I. L. R., 11 Calc., 434
I. L. R., 12 Mad., 43
I. L. R., 17 Calc., 963
I. L. R., 22 Calc., 252

NAWAB NAZIM OF BENGAL DEBTS ACT (XVII OF 1873).

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[24 W. R., 311

1. ———— **Right of appeal.**—Act XVII of 1873 was not intended to deprive the Nawab Nazim of Moorshedabad of any right of appeal to the High Court which he had before it was passed. NAWAB NAZIM OF BENGAL *v.* AMRAO BEGUM 21 W. R., 59

2. ———— **Submission of decree of Court as a claim to Commissioners**—*Power of High Court.*—Certain judgment-creditors were held to have committed an error of judgment in submitting their decree to Commissioners appointed under Act XVII of 1873, as if it were a new and unascertained claim. Where this was done, and the Commissioners expressed their opinion upon the matter involved (although it had already been determined), the High Court held that it had no authority to enquire into their award. OMRAO BEGUM *v.* COMMISSIONERS APPOINTED UNDER ACT XVII OF 1873 . . . 24 W. R., 394

———— s. 11—*Agreement for appropriation of payments—Contract Act (IX of 1872), s. 60—Suit for rent.*—So far as the Nawab Nazim's Debts Act is concerned, rent due by the Nawab is on the same footing as any other debt incurred by him, and before his property can be made liable to satisfy such rent debt, the consent of the Governor General in Council must first be obtained to the issue of execution. ROOKMINY BULLUB ROY *v.* MULK JAMANIA BEGUM . I. L. R., 9 Calc., 914 : 12 C. L. R., 534

1. ———— s. 12 —*Jurisdiction of Commissioners—Parties.*—The Commissioners appointed under the Nawab Nazim's Debts Act (XVII of 1873) (an Act to provide for the liquidation of the debts of the Nawab Nazim, and for his protection from legal process), having ascertained and certified that a certain zamindari was nizamut property (*i.e.*, held by the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being), the fact that this property had, before the passing of the Act, been conveyed by the Nawab Nazim to his son, did not deprive the Commissioners of jurisdiction to deal with the question. The plain language of s. 12 of the Act is not controlled by any words in the preamble. A suit brought by a claimant against the Government and the grantee to recover the property, without the Nawab Nazim having been joined as a party, could not proceed. OMRAO BEGUM *v.* GOVERNMENT OF INDIA
[I. L. R., 9 Calc., 704 : 12 C. L. R., 595
L. R., 10 I. A., 39

2. ———— *Award of Commissioners conclusive—Construction of documents not establishing a charge on immoveable property.*—Commissioners appointed under Act XVII of 1873, by their award, found that an estate was in the possession of the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being, a finding within their competence to make, of which the effect was that the Government held the property freed and discharged from

NAWAB NAZIM OF BENGAL DEBTS ACT (XVII OF 1873)—*concluded*

Government it was the hands of the ayment of an an- plaintiff's father he had set up to ive award under ent answer to the aim even if the charge had originally attached to the estate But in equity no charge could be created unless there was an intent to charge Were the documents showed that this payment had not been legally charged upon the property neither party having contemplated this result and there having been only a mandate by the Nawab for payment of the annuity out of his treasury OMRAO BEGUM *v* SECRETARY OF STATE FOR INDIA

[I L R, 19 Calc, 584
L R, 19 I A, 95

3 ———— *Commissioners Award of—Power of Commissioners notwithstanding aliena tion of State lands*—In a suit by the son of the Nawab Nazim of Moorshedabad to recover from a person wrongfully in possession land which had been found to be a portion of State lands—*Held* that the ... Nawab Nazim s ... lare the and clai ... rty not withstanc ... of such and had taken place before the date of the Commissioners' award *Omrao Begum v Government of India I L R 9 Calc 704* followed HASSAN ALI *v* CHUTTERPUT SINGH DUGARH

[I L R, 19 Calc, 742

NAWAB OF CARNATIC S ACT (XXX OF 1858)

———— Claims against Nawab—*Onus of proof*—Act XXX of 1858 of the Legislative Council of India for the administration of the estate and payment of the debts of the late Nawab of the Carnatic empowered the Supreme Court at Madras to investigate in a summary manner claims against the Nawab s estate *Held* that the provisions of the Act not only limited the extraordinary remedy which it gave to certain defined classes of debt but threw upon a claimant more than the ordinary burden of proof by compelling the holder of any written acknowledgment or security to prove the actual consideration given for it and upon those claiming the price of the goods delivered proof of the fair and actual value of such goods GHOOLUM MOORTAZAH KHAN *v* GOVERNMENT

[9 Moore's I. A., 456

NAWAB OF SURAT

————Administration of private estate of—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS 5 Moore's I A, 493

1 ———— Nawab of Surat's Act (XVIII of 1848)—*Sanction of Government to bring suit*—The permission of Government in 1858 to the Agent for the Governor of Bombay at Surat to pay certain moneys of the widow of the late Nawab of Surat to whomsoever a certificate of heirship to her might be granted by the Civil Court is not a sufficient authority under Act XVIII of 1848 for the institution against her grand daughters of a general civil suit under Regulation IV of 1827 or Act VIII of 1859 Nor does permission given in 1871 to institute a suit authorize the continuation of a suit instituted in 1869 AJMUDDIN KHAN *v* ZIAUNNISSA BEGAM 12 Bom, 156

2 ———— *Sue forth Meaning of—Sanction obtained after suit filed*—The expression sue forth' in s 1 of Act XVIII of 1848 does not mean to sue for and to obtain so as to make the consent of the Governor a condition precedent to the institution of a suit Accordingly where the grand daughter of the Nawab of Surat was sued along with her husband without previously obtaining the required consent and it was contended that the suit was irregularly instituted, and the proceedings thereunder void—*Held* that the suit was rightly instituted such a consent not being a condition precedent to the filing of the suit ZIAUNNISSA BEGAM *v* MOTIRAM

[I. L R, 12 Bom., 496

NAZIR

See GUARDIAN—APPOINTMENT
[I. L R, 12 Bom., 553

———— Misappropriation by—

See SURETY—LIABILITY OF SURETY
[9 B L R., Ap, 26

———— of mosque

See MAHOMEDAN LAW—ENDOWMENT
[I L R, 18 Bom, 401

———— Power of—

See PENAL CODE s 186
[I. L R, 22 Calc, 503, 759

1 ———— Guardian—*Minors Act XX of 1864—Bombay Civil Courts Acts (XIV of 1869 and X of 1876)—Officer of Government—Civil Procedure Code 1877 s 456*—The Nazir of a Civil Court who is appointed guardian of the estate of a minor under Act XX of 1864 is not an officer of Government within the meaning of s 32 of Act XIV of 1869 as amended by s 15 of Act X of 1876 An officer of Government in order to come within those enactments must be a party to a suit in his official capacity A Subordinate Judge who under s 456 of the Civil Procedure Code (Act X) of 1877 as amended by s 73 of Act XII of 1879 appoints the Nazir or any other officer of his Court to act as guardian of a minor plaintiff or defendant in a suit in his Court has no jurisdiction to hear it and ...

v HARU RUPA . . I. L R, 4 Bom, 638

NAZIR—*continued.*

2. ——— Liability of Nazir—*Avoidance of responsibility.*—A Nazir is the head of an important department, and must be solely responsible for the truth of what he reports or admits. He cannot be permitted to avoid responsibility by urging that his mohurrir deceived him. QUEEN *v.* TOFUZZAL ALI [7 W. R., Cr., 109

3. ——— *Attachment of property in execution of decree—Failure to return property attached in satisfaction of decree—Beng. Act V of 1863, ss. 4 and 8.*—In a suit brought against the plaintiff in the Collector's Court for arrears of rent, a decree was obtained, and a warrant was issued for the attachment of certain moveable property belonging to the plaintiff. The warrant was addressed to the Nazir of the Collector's Court, and was by him delivered to one of the registered peons of the Court for execution. The peon reported to the Nazir that he had attached the property in question, and had placed it in charge of certain persons, whose receipt for it he produced and filed. Subsequently, the plaintiff paid the amount of the decree into Court and an order was made releasing his property from the attachment. A peon was sent to restore the property to the plaintiff, but the persons in whose charge it was said to have been left alleged that they had never taken possession of the property, and the peon was unable to restore the property to the plaintiff. In a suit brought by the plaintiff against the Nazir to recover the property or its value,—*Held* that the Nazir was not liable, Bengal Act V of 1863 having altered the relation which formerly existed between the Nazir and the peons of the Revenue Courts, and put them in the position of paid servants of Government. KALEE COOMAR CHATTERJI *v.* SIDDHESSUR MUNDUL [11 B. L. R., 256 : 19 W. R., 335

4. ——— *Warrant of arrest of judgment-debtor—Escape of debtor—Negligence.*—The plaintiff sued out a warrant for the arrest of his judgment-debtor on the 4th December 1876. The warrant was lodged with the Nazir on the 16th December, and was to be in force till the 4th January 1877. On the 22nd December 1876 the Nazir was informed that the judgment-debtor was already in the civil jail under a writ of execution issued by another creditor. The Nazir then returned the warrant to the Subordinate Judge who had issued it. On the 29th December the Subordinate Judge again sent it to the Nazir's office, where it was duly received by the Nazir's karkun (defendant No. 2). This fact was not reported by the karkun to the Nazir (defendant No. 1) until the 4th January 1877. On the 1st January 1877 the judgment-debtor's debt was paid by Government, and he was released in honour of Her Majesty's assumption of the title of Empress of India. The judgment-debtor thereupon left the district, and could not be found, and the plaintiff's warrant remained unexecuted. The plaintiff sued the Nazir and his karkun for allowing his judgment-debtor to escape. *Held* that the Nazir ought not to have sent the warrant back to the Subordinate Judge, and that there was no necessity for a fresh order on it until the time which it had to run had expired. *Held* further that, if the Nazir forgot the existence of this unexecuted warrant

NAZIR—*concluded.*

on the 1st January 1877, and thus allowed the debtor to be released from the former process, when he ought to have been re-arrested under the plaintiff's warrant, there was actual negligence on his part, making him liable in damages to the plaintiff. *Quære*—Whether or not the Nazir could have been made responsible for the negligence of the karkun, who was not his servant, but the servant of, and paid by, the Government and appointed by the District Judge, if the warrant had been lodged with the karkun in the first instance, and that fact had never been communicated to the Nazir, and if he had never known of the existence of the warrant. KASTURCHAND *v.* RAVJI SADASHIV [I. L. R., 4 Bom., 65

5. ——— *Misrepresentation of solvency of surety by witness to surety-bond.*—The plaintiff held a money-decree against *M*, who was arrested in execution of it. On being brought to the Court, however, *M* applied for his discharge as an insolvent under s. 273 of the Civil Procedure Code (Act VIII of 1859). He was released on the security of *G*, who executed a bond for the appearance of *M* at the inquiry into his insolvency. The defendant attested the bond, and wrote in the attestation that *G* was a solvent person. In consequence of the non-appearance of *M*, the plaintiff sought to execute his decree against the surety *G*, who, on his arrest, also applied for his disharge on the ground of his insolvency, and was discharged after inquiry. The plaintiff thereupon sued the defendant for the amount of his decree and cost of execution, on the ground of his representation in the attestation that *G* was solvent. *Quære*—Whether the Nazir was liable to the plaintiff for negligence in not taking a proper surety. NAGO MAHADEV *v.* NARAYAN RAMCHANDRA . I. L. R., 4 Bom., 465

6. ——— Nazir of Small Cause Court—*Power to receive plaints.*—A Nazir of a Court of Small Causes is not authorized to receive plaints. RAJ CHUNDER GOPE *v.* JOOGAL GOPE [18 W. R., 172

NECESSARIES.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . . 3 W. R., 217
[I. L. R., 20 Bom., 61

——— Bond executed for—

See MINOR—LIABILITY OF MINOR ON AND RIGHT TO ENFORCE CONTRACTS.
[5 W. R., 2
I. L. R., 21 Calc., 872

——— Expenses of legal proceedings as—

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 7 Calc., 140
[I. L. R., 17 Mad., 257

See PLEADER—REMUNERATION.
[I. L. R., 17 Mad., 306

NECESSITY FOR ALIENATION

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW—WHAT CONSTITUTES NECESSITY

See CASES UNDER HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY

See CASES UNDER ONUS OF PROOF—HINDU LAW—ALIENATION

NEGLIGENCE

See ADMINISTRATOR [I. L. R., 17 Bom., 637

See CASES UNDER BILL OF LADING

See CALCUTTA MUNICIPAL ACT 1863 ss 151 226 8 B L R, 265, 433

See CASES UNDER CARRIERS

See CARRIERS ACT s 6 [I L R., 24 Calc., 786 I L R, 26 Calc, 398

See CAUSING DEATH BY NEGLIGENCE [I. L. R., 16 All., 472

See CIVIL PROCEDURE CODE s 102 [I. L. R., 22 Calc., 8

See CASES UNDER CULPABLE HOMICIDE

See HURT—GRIEVOUS HURT [2 Mad, Ap, 32 I L R, 18 Calc, 49

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET [3 B L R, A C, 277 5 B L R, 401

See MADRAS HARBOUR TRUST ACT s 70 [I L R, 22 Mad, 524

See MORTGAGE—MARSHALLING [I. L. R., 12 Mad., 424, 429 I L R, 13 Mad., 383 I L R, 15 Mad., 268

See ONUS OF PROOF—BAILMENTS [I. L R, 9 All., 398

See ONUS OF PROOF—PROFITS SUITS FOR [I L R., 12 All, 301

See PUBLIC HEALTH OFFENCE AFFECTING [I L R., 7 Mad, 276 I. L. R., 11 Bom, 59 I L R., 24 Calc., 494

See CASES UNDER RAILWAY COMPANY.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE 1882 s 622 [I. L R, 9 All., 398

See ZAMINDAR DUTY OF [14 B L R, 209

——— Contributory—

See ENCROACHMENT [I. L. R., 17 Mad, 368

NEGLIGENCE—*continued*

1 ——— Requisites for action for negligence—*Act contrary to law*—To sustain an action for negligence there must be an obligation on *the part of the defendant to use care* and a breach of that obligation to the plaintiff's injury is an act contrary to law SVAMI NAYUDU *v* SUBRAMANIA MUDALI . . . 2 Mad., 158

2 ——— Sending goods by railway company—*Carrier—Duty of persons sending* ...

... liable for the consequences of an explosion whether it occurs in a manner which he could not have foreseen as probable or not *Held* also (PEARSON J dissenting) that such a person is liable for the consequences of an explosion occurring in a manner which he could not have foreseen if he omits to take reasonable precautions to preclude the risk of explosion LYELL *v* GANGA DAI I L R, 1 All, 60

3 ——— Railway Company—*Injury to persons travelling*—The plaintiff was a passenger *travelling on the defendants railway and received* severe injuries from a fall which he experienced in stepping upon the platform when the train stopped *Held* that the Railway Company was guilty of negligence in not keeping the station properly lighted in allowing the train to overshoot the station and in not warning the plaintiff against alighting, also that the injuries sustained by the plaintiff were caused by the negligence in question and that the plaintiff did not by his own want of care contribute to the accident WOODHOUSE *v* CALCUTTA AND SOUTH EASTERN RAILWAY COMPANY 9 W. R., 73

4. ——— Hire of boats—*Damage—Liability of bailee*—*A* contracted with *B* for the hire of certain cargo boats While being towed by a steamer which *A* had chartered according to agreement the boats sustained great damage by reason of gross negligence on the part of *C*, whom *A* had placed in charge *Held* that *A* must be held responsible to *B* for the negligence of *C* GREESH CHUNDER BANNERJEE *v* COLLINS . 2 Hyde, 79

5 ——— Damages for personal injuries—*Unfenced hole—Licensee—Contractor*—The plaintiff claimed to recover R63 500 from the ...

NEGLIGENCE—*continued.*

with pegs, but the tents were taken down each monsoon. For two or three years previously to the accident, people had been accustomed to cross the land without any hindrance or prohibition. The plaintiff himself had used the path across the land, as a short cut, for a period of eighteen months. This path led across the tenting ground to a gate which was generally open, and which opened upon the high road. No express permission had ever been given to any of the persons who were in the habit of using this path. It was a mere beaten track, and, so far from being a public way, it was from time to time obstructed, in the tenting season, by the ropes and pegs of the tents. The plaintiff had for some time been in occupation of a bungalow belonging to the first defendants, which was situated in that part of the land which was furthest away from the high road. There was a regularly constructed roadway from the bungalow to the high road, which the plaintiff might have used, but, as a short cut, he and others were in the habit of using the beaten track. For this he had merely a tacit permission. On the morning of the 1st September 1885, he left his bungalow and went to his business, as usual, by the short cut across the land. When returning by the same way at about 11 o'clock at night he fell into the hole which had been dug in the afternoon of that day, and sustained the injuries complained of. The hole was several feet deep, and was dug right across the pathway. The plaintiff had no notice of the hole being dug, or of any intention to dig it. The night was very dark, and there was no negligence on the part of the plaintiff, nor any want of ordinary care and caution. There was no watchman and no fence, nor was there any light which might enable persons using the path to avoid the danger. The second defendant, as above stated, had agreed to take the said land from the first defendants on lease for building purposes. On the day of the accident, some months before the execution of the lease, the second defendant through his engineer and contractor *H* applied to the first defendants for permission to make "borings" in the land, which permission was given. *H* thereupon caused the hole in question to be dug. In their written statement the first defendants contended that in using the short cut across their land, the plaintiff was a trespasser, and that he had used it without their knowledge or consent; that the hole was dug without their knowledge, and that the "borings," for which they had given permission, were merely small holes of a diameter of six inches, or thereabouts, which could not have been a source of danger. The second defendant pleaded that at the time of the accident he was not in possession of the land, but had merely entered into an agreement for a lease of it; that he had employed a competent engineer and contractor, *H*, to make borings, in order to ascertain of what the sub-soil consisted, and that *H* contracted to do the work and obtain leave from the first defendants to enter on the land; that the said *H* subsequently entered on the land, and according to his own discretion and without any control or interference from him (the second defendant), took such steps as he thought necessary to ascertain the nature of the said sub-soil; and he (the second defendant) contended that, if there had been negligence in the performance of the work, he was not liable. *Held* (1) that there was negligence in digging the hole across a path used by several licensees, and in not placing any person or light to warn passengers of the danger arising from the hole and the excavated earth which was heaped up near it. *Held* (2) that the first defendants were not liable to the plaintiff. The permission which they had given to *H* was a permission to make "borings" only; and the hole, which was actually dug by *H*, was dug without their knowledge or permission. *H* was not shown to be in any sense their servant or agent. The plaintiff was a bare licensee, and the first defendants were under no obligation to him to keep the path in a safe state or in good order. *Held* (3) that the second defendant was liable to the plaintiff. *H* was not a contractor, in the legal sense, so as to exempt the second defendant from responsibility, but was the servant of the second defendant *pro hâc vice*, and that the digging of the hole was within the course of his employment, or within the scope of his authority. The Court of first instance awarded, as damages, a sum of R33,000, which, on appeal, was reduced to R17,000. EVANS *v.* TRUSTEES OF THE PORT OF BOMBAY

[I. L. R., 11 Bom., 329

6. ———— Suit for damages by parents of a child killed by negligence—*Act XIII of 1855—Death by negligence—Contributory negligence—Liability for negligence of servants—Damages, Assessment of—Deduction for maintenance of child—Funeral expenses.*—The plaintiff's unmarried daughter, a child of between five and six years old, fell into an open manhole of a sewer in a lane in Bombay on the 20th August 1880, between 4½ and 5 o'clock P.M., and, when her body was recovered, life was extinct. The sewer was vested in the Municipality of Bombay, and was under the control of the Municipal Commissioner by virtue of ss. 220 and 289 of the Bombay Municipal Act of 1888. When such manholes are opened, it is the duty of the Municipal Commissioner under s. 321 of that Act to have them properly fenced and guarded. On the 28th August 1890 the manhole in question was opened for the purpose of inserting a flushing-door in the sewer. From the time the manhole was opened until the occurrence of the accident the deceased child's mother was seated at the corner of the street selling cucumbers about four yards from the manhole in question. The hole was at first properly fenced with four timber hurdles about 4 feet high set upright round it at a distance of 2 feet from the hole, secured at the corners with ropes. Soon after 4-30 P.M., the superintendent in charge of the work gave orders to cease work and close the manhole for the night. The accident took place almost immediately afterwards. The Judge found on the evidence that the child fell into the open hole in the interval that elapsed between the taking down of the fence and putting the cover on the hole. What she was doing the instant before she fell, there was nothing to show. She was seen running and playing about the street during the afternoon. Her mother, who was sitting close by, did not see the accident, her attention being

NEGLIGENCE—*continued*

at the moment occupied by some customers She admitted that before the accident occurred she knew the fence was down and the hole open and she would not have left the child go to it had she been playing beside her *Held* (1) that the defendants were guilty of negligence, and that they were liable for

of this nature distinct evidence of the loss sustained or benefit expected is not necessary The jury may look at all the circumstances of the case and especially at the position of the parents and age of the child and call in aid their own experience in arriving at their conclusions Where damages are allowed, a reasonable sum should be deducted on account of the maintenance for such period as the child might reasonably have been expected to live with her parents In an action under Act XIII of 1855 no sum can be awarded in respect of funeral expenses whether for removal or disposal of the body or for outlay — for ceremonial or obsequial purposes NARAYEN JETHA *v* MUNICIPAL COMMISSIONERS OF BOMBAY . . I L R, 16 Bom, 254

7 — **Liability of principal for acts of contractor**—*Right of support of house by adjoining soil—Principal and agent or contractor*—The plaintiffs were owners of a house consisting of

COMMISSIONERS OF BOMBAY [I L. R., 17 Bom, 307

8. ——— **Loss by fire**—*Sale set aside—Decree in favour of vendor—Possession—Purchaser in possession after decree and pending appeal—Accident—Liability for damage—Maxim, Volenti non fit injuria*—The plaintiff and the second defendant *A* were brothers and worked a cotton press in partnership In August 1884 *A* sold the press for R35 000 to *V* (the first defendant) who paid *A* R5 000 earnest money, and was put into possession The plaintiff then brought a suit (No. 327 of 1884)

NEGLIGENCE—*continued.*

against *A* praying for a dissolution of the partnership *V* was also a party defendant to that suit The plaintiff alleged that R35 000 was much too low a price for the press, and he objected to the sale He prayed that *V* might be restrained from continuing in possession of the press and working it and that a receiver might be appointed to take possession of it until further order On the 21st April 1885, on a motion the Court refused to grant an injunction and receiver, but ordered *V* to pay R30 000 (*i e*, the balance of the purchase money) to the solicitors of the parties for investment until the hearing of the suit and directed that if that sum was not paid by the 21st May 1885 a receiver should be appointed to take possession of the press The suit (*i e*, No 327 of 1884) was heard on the 15th February 1887, when it was held by the Court that the sale by *A* to *V* was without authority that the defendant *V* took nothing under it, and that the plaintiff was entitled to have it set aside Certain matters still remained to be decided, but on the 28th February

The defendant *V* at once gave notice of his intention to appeal There was some delay in drawing up the decree *The minutes were spoken to on the 31st* March 1887, the decree was sealed on the 13th April 1887 Meantime on the 6th April 1887, and while the defendant *V* was still in possession a fire broke

value of the press or such further sum as might be necessary to rebuild and restore it He alleged that the fire was caused by the working of the press and contended that the working of the press by the defendant *V* after the decree of the 28th February was an act of trespass by him, and that therefore, independently of the question whether the fire was caused by the negligence of *V* and his servants, the said *V* was liable for the loss occasioned by the fire *Held* that, independently of negligence, the defendant *V* was not liable to the plaintiff for the ... d by the fire Down to the decree of the ... ing posses... no doubt, a ... decree he remained in possession and worked the press with the

NEGLIGENCE—*concluded.*

consent of the plaintiff. The maxim *volenti non fit injuria,* applied to the circumstances of the case. *Held* also that, no negligence having been proved against the defendant, the suit must be dismissed. JAMSETJI BURJORJI BAHADURJI *v.* EBRAHIM VYDINA . . . I. L. R., 13 Bom., 183

9. ———— Penal Code, s. 289—*Negligence with respect to animals.*—To sustain a charge under s. 289 of the Penal Code, there should be evidence not only of negligence, but also that such negligence would probably lead to danger to human life or of grievous hurt. ANONYMOUS
[3 Mad., Ap., 33

10. ———— *Pony negligently tied up in bazar.*—The High Court refused to interfere with an order passed under s. 289 of the Penal Code by a Magistrate fining the owner of a pony which had been tied negligently, which was running about loose in a crowded bazar, and thereby endangering the lives and limbs of persons, that section referring not only to savage animals, but to any animal. QUEEN *v.* CHAND MANAL
[19 W. R., Cr., 1

11. ———— Penal Code, s. 286—*Negligent dealing with explosive—Probable danger to human life—Loaded gun left in open place.*—*C*, having returned to his house after dawn from watching his crops at night with a loaded gun, and finding his house-door locked, placed the gun, loaded, with the hammer down on the cap, on a cot outside his house and went for a short time to a neighbouring house. *A*, the child of a neighbour, four years old, was killed by the gun exploding. *C* was convicted under s. 286 of the Penal Code for negligently omitting to take order with the gun sufficient to guard against probable danger to human life. *Held* that the conviction was bad in law. QUEEN-EMPRESS *v.* CHENCHUGADU
[I. L. R., 8 Mad., 421

NEGOTIABLE INSTRUMENTS.

————Suit on—

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—NEGOTIABLE INSTRUMENTS.

See LIMITATION ACT, 1877, ART. 159.
[I. L. R., 23 Calc., 573

NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—

Act V of 1866, the Act mentioned in the following cases, was repealed and its provisions re-enacted in the Civil Procedure Code. *See* CIVIL PROCEDURE CODE, 1882, ss. 532, 538.

1. ———— Return of summons—*Procedure.*—In a suit under Act V of 1866, the summons should be returned in the usual way; and after the expiration of the required time, an order of the Court or a decree should be obtained. SCHILLER *v.* MARKER . . . 1 Ind. Jur., N. S., 283

2. ———— Time to obtain leave to defend—*Act V of 1866, s. 3.*—Although Act V of

NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—*continued.*

1866, s. 3, only gives the defendant seven days to get leave to come in and defend on action on a bill, note, etc., the Court must be satisfied before granting a decree that the defendant has had a full opportunity to obtain leave to defend. GROB *v.* PALMER
[1 Ind. Jur., N. S., 395

3. ———— *Extension of time for appearance—Jurisdiction.*—Where, in a suit under Act V of 1866, the defendant is at such a distance as would make it impossible for him to put in an appearance within the seven days allowed by the Act, the Court will stay execution for a time long enough to allow him to appear. Suits cannot be brought under this Act against persons resident out of the jurisdiction. CHANDRAKANT ROY *v.* POGOSE
[3 B. L. R., O. C., 83

4. ———— Leave to appear and defend—*Practice—Costs.*—The Court will give leave to a defendant to appear and defend in suits under Act V of 1866, where he shows a defence apparently real; but where there is a doubt as to the *bonâ fides* of the defence, payment of money into Court will be ordered or security directed to be given. The Court has, in giving leave to defend, a discretion to order security for costs, not only where it doubts the *bonâ fides* of the defence, but also if it considers the matter of defence raised is unnecessary, though allowable. If the plaintiff has not been heard at first against the defendant's application, the Court will always allow him to come in afterwards and show that the leave ought not to have been granted, or, if granted at all, in more stringent terms. VONLINTZGY *v.* NARAYAN SING . . . . 6 B. L. R., Ap., 64

5. ———— Leave to defend.—In an action on a promissory note under this Act the defendant was allowed to come in and defend after the plaintiff had obtained a decree; the decree was set aside and written statements ordered. JOSEPH *v.* SOLANO
[9 B. L. R., 441 : 18 W. R., 424

6. ———— Notarial protest—*Evidence of dishonour—Hundi—Bill of exchange.*—A notarial protest of any bill of exchange noted at any time after the passing of Act V of 1866 is *primâ facie* evidence that the bill has been dishonoured under s. 13 of that Act, although the sections relating to summary procedure on bills of exchange did not come into operation till May 1st, 1866. A hundi, which contains a direction on sufficient consideration to the drawee, and accepted by him, is within the terms of the Act, and such a document is assignable without any regular form of endorsement, if sufficient cause appears in the handwriting of an endorser to indicate an intention to assign it. EAST INDIA BANK *v.* KHOJAH VULLIE GOOLWANY
[1 Ind. Jur., N. S., 247

7. ———— Decree—*Right of plaintiff suing under the Act.*—Under the summary procedure on Bills of Exchange Act (V of 1866), the plaintiff is entitled to claim by his summons and obtain by his decree whatever sum, principal and interest, is, on the legal construction of the instrument, demandable. DESOUZA *v.* RANGAIAN . . . 6 Mad., 257

NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON—*concluded.*

8 ——————— *Promissory note —Consideration—Evidence* —In a suit under the Bills of Exchange Act to recover R1,200 on a promissory note the Court gave a decree for R700 only, that being shown to have been the full consideration received for the note RAMLAL MOOKERJEE *v* HARAN CHANDRA DHAR

[3 B. L. R., O. C., 130: 12 W. R., O. C., 9

9 ——————— *Promissory note —Endorsement struck out—Evidence* —A plaint was presented under Act V of 1866 by the endorsees of a promissory note endorsed as follows "Received from the Chartered Mercantile Bank —J M Reid, Agent" The note had not been paid when presented, and the endorsement was struck out Admission of the plaint was refused, unless evidence was given that the note had been paid, and to explain why the endorsement was struck out As under Act V of 1866 evidence could not be received, the plaint was not admitted CHARTERED MERCANTILE BANK *v.* SECONDE . . 3 B. L. R., O C., 146

10. ——— Suit on promissory note payable by instalments —Where a promissory note is payable by instalments, and contains a stipulation that, on default in payment of the first instal

[illegible]

11 ——— Costs—*Suit under R500—Jurisdiction of Small Cause Court* —In an undefended suit brought under Act V of 1866 on a promissory note for R342, there was nothing in the petition to show that the suit could not have been brought in the Small Cause Court, the High Court gave a decree for amount of note and costs DUFF *v* FISHER

[8 B. L R., Ap., 10

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

See CASES UNDER HUNDI

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION

[I L. R., 20 Bom., 133

——— ss 4 and 13

See PROMISSORY NOTE—FORM

[I. L. R., 16 Bom., 689
I L. R., 21 Mad., 49

——— ss. 8 and 9

See PROMISSORY NOTE—ASSIGNMENT OF,

[illegible]

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881)—*concluded.*

the following terms, *viz.*, "On deposit of title-deeds named hereinbelow for value received by me, I promise to pay three months after date R160 to *A B* or order," then followed the details of the title-deeds *Held* that the instrument was a negotiable instrument. RAMA *v.* SESHA

[I. L. R., 17 Mad., 85

——— s 17

See BILL OF EXCHANGE

[I L. R., 15 Bom., 267

——— s 35

See DECREE—FORM OF DECREE—BILL OF EXCHANGE . I L. R., 18 Calc., 804

——— ss 35, 43

See MAJORITY, AGE OF

[I L. R., 7 All., 490

——— ss 37, 39

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R., 13 Mad., 172

——— s 46

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES

[I. L. R., 17 Mad., 197

——— ss 64, 66

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES

[I. L. R., 21 All., 450

——— s 66

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R., 13 Mad., 172

——— ss. 79, 80.

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED —CONTRACTS I. L. R., 23 Mad., 18

——— s 118.

See ONUS OF PROOF—DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR, ETC

[I. L. R., 20 Bom., 367

NEPHEW.

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—NEPHEW.

NEWSPAPER.

——— *Printing Presses and Newspaper Act (XXV of 1867), s 3—Name of printer and publisher* —A newspaper was printed and published

[illegible]

SHENOY . . . I L R., 16 Mad., 443

NEW TRIAL.

See CIVIL PROCEDURE CODE, s. 108.
[I. L. R., 21 Calc., 269

See EVIDENCE ACT, s. 167.
[I. L. R., 19 Bom., 749

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE —NEW TRIALS.

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.
[3 B. L. R., A. C., 135
17 W. R., 518

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIALS.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.
[7 Bom., O. C., 180
12 B. L. R., 34, 37
I. L. R., 4 Calc., 298
I. L. R., 15 Mad., 179
I. L. R., 20 Mad., 358

———— Application for—

See PLEADER—APPOINTMENT AND APPEARANCE . I. L. R., 20 Bom., 293

———— in criminal case.

See CRIMINAL PROCEDURE CODES, s. 376 (1872, s. 288) . I. L. R., 1 Bom., 639

See REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RE-TRIAL.
[24 W. R., 24
I. L. R., 1 Calc., 282
I. L. R., 2 Calc., 405
3 C. W. N., 332
4 C. W. N., 576

See REVISION—CRIMINAL CASES—SENTENCES . B. L. R., Sup. Vol., 488
[18 W. R., Cr., 8, 23, 38
4 Bom., Cr., 3

See REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION.
[B. L. R., Sup. Vol., 459

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.
[I. L. R., 19 Bom., 749
I. L. R., 25 Calc., 711

NEXT FRIEND.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 17 All., 531

See LUNATIC . I. L. R., 13 Bom., 656
[I. L. R., 19 Bom., 135
I. L. R., 23 Bom., 653
I. L. R., 20 All., 2

NEXT FRIEND—*concluded*.

See MINOR—REPRESENTATION OF MINOR IN SUITS . I. L. R., 17 Calc., 488
[I. L. R., 13 Mad., 197
I. L. R., 21 Calc., 866
I. L. R., 17 Mad., 257
I. L. R., 21 Bom., 88
I. L. R., 23 Calc., 374

———— Negligence of—

See CIVIL PROCEDURE CODE, s. 102.
[I. L. R., 22 Calc., 8

———— Suit by minor without—

See WAIVER . I. L. R., 19 Mad., 127

———— Suit instituted by—

See PRACTICE—CIVIL CASES—PARTIES.
[I. L. R., 22 Calc., 270

NEXT OF KIN.

———— Creditor of—

See CASES UNDER PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

———— Liability of share of, for barred debt.

See ADMINISTRATION.
[I. L. R., 2 Bom., 75

———— Purchaser from—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
[I. L. R., 4 Calc., 360

NON-ACCEPTANCE.

See CASES UNDER CONTRACT—CONSTRUCTION OF CONTRACTS.

NON-APPEARANCE.

———— Effect of—

See CASES UNDER APPEAL—DEFAULT IN APPEARANCE.

See CASES UNDER APPEAL—EX-PARTE CASES.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, ss. 98, 99 (1859, s. 110).

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 100 (1859, s. 111).

See CASES UNDER CIVIL PROCEDURE CODE 1882, ss. 102, 103.

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 108 (1859, s. 119).

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 158 (1859, s. 148).

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 177.

NON-APPEARANCE—*concluded*

See CIVIL PROCEDURE CODE 1882 s 249 (1859, s 217) 5 B L R, Ap, 65

See COMPLAINT—DISMISSAL OF COMPLAINT —EFFECT OF DISMISSAL
[4 Mad, Ap, 8
6 Mad, Ap, 8
I L R, 6 Calc, 523
4 C W N, 346

See CASES UNDER COMPLAINT—DISMISSAL OF COMPLAINT—GROUND FOR DISMISSAL

See INSOLVENT ACT, s 86
[8 B L R, Ap, 57
7 C L R, 378

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS 5 B L R, 64
[I L R, 9 Calc, 426
I L R, 5 Bom, 496
I L R, 6 Bom, 477
I L R, 16 Calc., 98
L R, 15 I A, 156
I L R, 21 Bom, 91
I L R, 12 All, 539
I L R, 24 Bom, 251

NON DELIVERY.

See BAILMENT . 1 B L R., O C, 68

See CASES UNDER CONTRACT

See CONTRACT ACT s 39
[I L R, 4 Calc, 252
1 Mad, 162

See CONTRACT ACT s 51
[I L R, 4 Calc, 252

NON SUIT

—— **Power to non-suit a plaintiff**—*Semble*—The Courts in India have powers to pass a judgment of non suit PARSOTAM GIR *v* NARBADA GIR . 3 C W N, 517
[I L R, 22 All, 505

NORTH-WEST PROVINCES LAND REVENUE ACT (XIX OF 1873)

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N W P

See CASES UNDER JURISDICTION OF REVENUE COURT—N W P RENT AND REVENUE CASES

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS I L R, 7 All, 224

———— s 3.

See COLLECTOR I L R., 15 All, 410

See DEED—CONSTRUCTION
[I L R., 18 All, 388

NORTH-WEST PROVINCES LAND REVENUE ACT (XIX OF 1873)—*continued*

See N W P RENT ACTS s 94
[I L R, 1 All, 512

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY
[I. L R., 1 All, 400

———— ss **43, 83, and 241**—*Vendor and purchaser—Agreement—Jurisdiction of Civil Court—Cause of action—Assessment of revenue*—The purchaser of a certain estate paying revenue to Government agreed with the vendors shortly after the sale that they should retain a certain portion of such estate free of rent and that he would pay the revenue payable in respect of such portion In 18o3

fresh settlement of the estate the representatives in title of the purchaser applied to the settlement officer to settle such portion of the estate with the representative in title of the vendors The settlement officer refused this application but it was subsequently allowed by the superior revenue authorities The representative in title of the vendors then sued the representatives in title of the purchaser in the Civil Court claiming "that he might in accordance with the agreement between the vendors and the purchaser be exempted from paying revenue in respect of such portion as against the defendants without any injury to the Government that the defendants might be ordered to pay as heretofore such revenue and that the defendants might be ordered never to claim or demand from him any revenue they might be compelled to pay in respect of such portion" *Held per* SPANKIE *J*, that assuming that the agreement between the vendors and the purchaser was

obtain a declaration that as between him and the defendants the latter were bound to pay revenue in respect of such portion the suit was not barred by cl (*b*) s 241 of Act XIX of 1873 Also that although the revenue authorities might regard the decision of the Sudder Court as binding on the

NORTH-WEST PROVINCES LAND REVENUE ACT (XIX OF 1873) —*continued.*

——— s. 62.

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-ARZ . I. L. R., 17 All., 447

——— s. 65.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY I. L. R., 18 All., 129

——— ss. 72, 77.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY, ETC.
[I. L. R., 9 All., 185

——— s. 77.

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY.
[I. L. R., 16 All., 209

——— s. 79.

See GRANT—POWER TO GRANT.
[I. L. R., 2 All., 545, 732

——— s. 91.

See CUSTOM . I. L. R., 8 All., 484

——— ss. 94, 97.

See DURESS . I. L. R., 11 All., 399

——— s. 107.

See COLLECTOR . I. L. R., 15 All., 410

See PARTITION—MODE OF EFFECTING PARTITION I. L. R., 20 All., 92
[I. L. R., 22 All., 329

See PRE-EMPTION—RIGHT OF PRE-EMPTION . . I. L. R., 20 All., 92

——— s. 108.

See PARTITION—RIGHT TO PARTITION—GENERALLY. . I. L. R., 3 All., 400

——— ss. 111, 112.

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.
[I. L. R., 9 All., 429

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION . . I. L. R., 9 All., 429
[I. L. R., 20 All., 75

——— s. 113.

See APPEAL—N.-W. P. ACTS.
[I. L. R., 9 All., 445
I. L. R., 11 All., 328
I. L. R., 14 All., 500

——— *Objection filed after time limited by Court but before action taken under s. 113.*—*Held* that the provisions of ss. 214 and 219 of Act XIX of 1873 do not apply to an *ex-parte* decision of a question of title by a Court of Revenue acting under s. 113 of the said Act. *Held* also that a Court of Revenue acting in partition-proceedings under s. 113 of Act XIX of 1873 was not precluded from dealing with an objection brought before it merely by reason of such objection not having been filed within the time limited by the Court for filing objections, the Court not having up to that time taken any action under s. 113 of the said Act. *Muhammad Abdul Karim* v. *Muhammad Shadi Khan, I. L. R., 9 All., 429*, distinguished. TULSI PRASAD *v.* MAHBUB MAL . I. L. R., 18 All., 210

——— ss. 113, 114.

See APPEAL—N.-W. P. ACTS.
[I. L. R., 2 All., 619
I. L. R., 14 All., 500
I. L. R., 18 All., 210

See DECREE—FORM OF DECREE—GENERAL CASES . I. L. R., 5 All., 520
[I. L. R., 14 All., 500

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.
[I. L. R., 9 All., 429
I. L. R., 20 All., 75

See PARTITION—MISCELLANEOUS CASES.
[I. L. R., 9 All., 429, 445

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS I. L. R., 2 All., 839
[I. L. R., 5 All., 280
I. L. R., 9 All., 388
I. L. R., 18 All., 59

——— *Procedure—Inquiry into objections raising questions of title.*—When a Collector or Assistant Collector has determined to enquire into objections raising questions of title preferred under s. 113 of the N.-W. P. Land Revenue Act, 1873, his proceeding thereupon must be conducted as an original suit in a Civil Court. RANJIT SINGH *v.* ILAHI BAKSH . . . . I. L. R., 5 All., 520

——— s. 115.

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.
[I. L. R., 9 All., 429

——— s. 124.

See PARTITION—MODE OF EFFECTING PARTITION . . I. L. R., 22 All., 329

——— s. 125.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—CULTIVATION.
[I. L. R., 3 All., 818
I. L. R., 4 All., 515

——— *Private Partition.*—S. 125 of Act XIX of 1873 does not apply to a partition by private agreement. *Gaya Singh* v. *Udit Singh, I. L. R., 13 All., 395*, referred to. *Ram Prasad* v. *Dina Kuar, I. L. R., 4 All., 515*, dissented from by KNOX and BANERJI, JJ. KASHI PRASAD *v.* KEDAR NATH SAHU . . . I. L. R., 20 All., 219

NORTH WEST PROVINCES LAND REVENUE ACT (XIX OF 1873)—*continued*

——— ss 131 132

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION [I L R, 9 All, 429

——— s 135

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION [7 N W, 346
I L R, 10 All, 5

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION . I L R, 10 All, 5

——— s 146

See SALE FOR ARREARS OF REVENUE—SALE PROCEEDS I L R, 6 All, 112

——— ss 146, 148

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY [I L R, 14 All, 273

——— s 154

See MAHOMEDAN LAW—GIFT—VALIDITY [I L R, 21 All, 165

——— ss 166 167, 168

See PRE EMPTION—RIGHT OF PRE EMPTION I L R, 13 All, 224

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—N W P LAND REVENUE ACT I L R, 22 All, 321

——— s 184

See BENAMI TRANSACTION—CERTIFIED PURCHASES—N W P LAND REVENUE ACT I L R, 21 All, 29

——— ss 185, 186

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE I L R, 21 All, 137

——— s 188

See PRE EMPTION—RIGHT OF PRE EMPTION I L R, 1 All, 277
[I L R, 13 All, 224

——— s 190

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT [I L R, 6 All, 52

——— s 191

See PRE EMPTION—CONSTRUCTION OF WAJIB UL ARZ I L R, 22 All, 1

——— ss 194, 195 (Act VIII of 1879, s 20)

See COURT OF WARDS [I L R, 7 All, 687

NORTH WEST PROVINCES LAND REVENUE ACT (XIX OF 1873)—*concluded*

——— s 195

See LUNATIC I L R, 1 All, 476

——— ss 205, 205B

See GUARDIAN—DISQUALIFIED PROPRIETORS I L R, 5 All, 264, 487
[I L R, 22 All, 364

——— ss 214, 219

See APPEAL—N W P ACTS—N W P LAND REVENUE ACT [I L R, 18 All, 210

——— ss 220, 231

See N W P RENT ACTS s 1 [I L R, 6 All, 170

——— s 221

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N W P LAND REVENUE ACT I L R 14 All, 347

——— ss 222 231

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N W P LAND REVENUE ACT I L R, 18 All, 172

——— s 241

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P

See PARTITION JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION [I L R 9 All, 429
I L R, 10 All, 5
I L R, 20 All, 75

——— s 243

See RULES MADE UNDER ACTS—CIVIL PROCEDURE CODE s 320 [I L R, 12 All, 564

——— s 257

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY [I L R, 22 All, 220

See PRE EMPTION—RIGHT OF PRE EMPTION I L R, 17 All, 226

NORTH WESTERN PROVINCES LAND REVENUE ACT (VIII OF 1879)

——— s 20

See COURT OF WARDS [I L R, 7 All, 687

NORTH-WEST PROVINCES MUNICIPAL IMPROVEMENTS ACT (VI OF 1868) s 12

See N W P AND OUDH MUNICIPALITIES ACT, 1883, ss 69 71 [I L R, 8 All, 677

NORTH-WEST PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*continued*

meaning of the words proprietary rights" in s 7 of the Rent Act is equivalent to that of the term full ownership" corresponding to *dominium* in the Roman law and fee simple estate in English law The right of a usufructuary mortgagee cannot be called proprietorship and having regard to s 58 of the Transfer of Property Act the execution of a usufructuary mortgage does not amount to a transfer of the proprietary right The word 'lose' as used in s 7 of the Rent Act means the transfer of proprietary rights otherwise than by the will of the owner in consequence of some incident of law The term 'part with" is a general expression including both absolute and temporary alienation and a usufructuary mortgage is a parting with' some of the incidents of ownership and falls within the purview

ship *Bhagwan Singh* v *Murli Singh I L R 1 All*, 549 dissented from *Gopal Pandey* v *Parsotam Das I L R 5 All 121 Ganga Din* v *Dhurandhar Singh I L R 5 All 495* and *Gulab Rai* v *Indar Singh I L R 6 All 54* referred to *Per* OLDFIELD J—The words lose or part with his proprietary rights in any mehal' in s 7 of the Rent Act mean a loss or parting which divests absolutely of all proprietary rights leaving no interest of a proprietary kind in the mehal this does not happen in a usufructuary mortgage and therefore

Rent Act means involuntarily lose as for instance by auction sale and part with' means voluntarily and entirely divested of by means e g of gift or private sale Proprietary rights' means the whole of the proprietary rights and a usufructuary mortgagor of zamindari property cannot be said to have lost or parted with his proprietary right therein, and therefore does not under the provisions of s 7 of the Rent Act become an ex proprietary or occupancy tenant of the sir land INDAR SEN *v* NAUBAT SINGH . I L. R., 7 All, 553

3 ——————— *Usufructuary mortgage of zamindari including sir—Losing or parting with proprietary right in mehal—Ex proprietary tenant*—A zamindar who makes a usufructuary mortgage of his zamindari including his sir land does not so 'lose or part with his proprietary rights" within the meaning of s. 7 of Act XII of 1881 as to become an ex proprietary tenant of his sir land *Bhagwan Singh* v *Murli Singh, I L R, 1 All*, 459, and *Indar Sen* v *Naubat Singh I L R 7 All*, 553 referred to and the judgments of the minority of the Court in the latter case approved *Khiali Ram* v *Nathu Lal, I L R 15 All 219* and *Jarao Bibi* v *Kifayat Ali Khan Weekly Notes All (1893), 177*, referred to MADHO BHARTHI *v* BARTI SINGH [I. L. R, 16 All, 337

NORTH WEST PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*continued*

4. ——————— *Ex proprietary tenant—Ex proprietary tenancy arising on sale of part of the zamindar's share*—In order that the provisions of s 7 of Act XII of 1881 may come into operation it is not necessary that the zamindar should lose or part with his proprietary rights in respect of the whole of his interest in the mehal BHAWANI PRASAD *v* GHULAM MUHAMMED I L R, 18 All, 121

MURLIDHAR *v* PEMRAJ I L R, 22 All, 205

5 ——————— *Ex proprietary tenancy*—The words held by him as sir' in s 7 of Act XII of 1881 (N W P Rent Act) must be construed to mean land belonging to him or to which he was entitled as sir and as literal an interpretation should be placed upon these words as is consistent with the canons of construction In 1879 one of the defendants sold a one third share of certain sir land in a village to the plaintiff who at that time was in cultivatory possession thereof under a deed of mortgage executed *in his favour by the same defendant in 1877* The plaintiff alleged that after the sale he continued in possession of the sir land till 1884 when he was dispossessed thereof by the defendants He sued for recovery of possession of the land *Held* that the defendants being ex proprietary tenants of the land in dispute were entitled to hold possession thereof by operation of law with reference to the terms of s 7 of the N W P Rent Act and the plaintiff s contention that because for four or five years the defendants failed to assert their ex proprietary tenant rights they were debarred from doing so could only be well founded if there had been any provision either in the Limitation Act or the Rent Act creating such a disability *Held* also that, notwithstanding the fact that the plaintiff was in possession of the land in dispute as mortgagee at the time of the sale and continued in possession afterwards his vendor must be taken to have 'held" the land as his sir at the time of the sale of his proprietary interest within the meaning of s 7 of the Rent Act HARJAS *v* RADHA KISHAN [I. L. R., 8 All, 258

6 ——————— *Transfer of Property Act (IV of 1882) ss 41, 48—Transfer by ostensible owner—Meaning of "held"—Statute, Construction of—Retrospective effect—Mortgage of sir land before passing of Act XVIII of 1873—Sale of mortgagor's rights while that Act was in force—Right of mortgagee*—In 1869 *A* and *J*, two co sharers of a moiety of a 10 biswas share in a village (*K* and *W* being also co-sharers in the same moiety) joined with *H* the holder of the other moiety, in giving to *K* a usufructuary mortgage of 87 bighas of land being the whole of the sir land appertaining to the 10 biswas share The deed of mortgage authorized the mortgagee to retain possession of the land until

together with a moiety of the 87 bighas of sir land,

NORTH-WEST PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*continued.*

and it was stated in the deed that half the mortgage-money due to *K* on the mortgage of 1869 was due by the executants, and that they accordingly left the same with the mortgagees in order that the latter might redeem. In November 1876 *H's* 5 biswas share, together with its sír land, was sold in execution of a decree. Subsequently, *K*, alleging that the mortgagees under the deed of 1872 and the purchasers under the execution-sale of 1876 had dispossessed him, and that his mortgage-debt had not been paid, sued to recover possession of the 87 bighas of sír land, by virtue of his mortgage-deed of 1869. The Court of first instance held that the plaintiff was not entitled to enforce his mortgage in respect of *F's* and *W's* share in the 87 bighas, because they were not parties to the deed of 1869. The lower Appellate Court further held that from the date of the execution-sale of November 1876 *H* became an ex-proprietary tenant of his sír land, and that to give the plaintiff possession thereof would be contrary to the provisions of s. 7 of Act XVIII of 1873 (N.-W. P. Rent Act). *Held* that, inasmuch as it was clear that at the time when the mortgage-deed of 1869 was executed *F* and *W* were aware of the transaction which made *K*, the mortgagee, under the deed, of the whole property, and that, knowing this, they allowed the possession of *A*, *J*, and *H* to appear as if covering the entire zamindari rights in the 10 biswas share of the sír land, and inasmuch as the statements contained in the mortgage-deed of 1872 were an admission on the part of *F* and *W* that the mortgage of 1869 was executed with their consent, the equitable doctrine contained in s. 41 of the Transfer of Property Act applied to the case and *F* and *W* had no defence, either in law or in equity, to the plaintiff's suit, with reference to their shares, and for the purpose of obviating the lien of 1869. *Ramcoomar Koondoo v. Mcqueen, 11 B. L. R., 46,* referred to. *Per* MAHMOOD, *J.*, with reference to the effect of the execution-sale of November 1876, in regard to the provisions of s. 7 of Act XVIII of 1873, that the general rule that statutory provisions have no retrospective operation did not apply to the case; that, by reason of the sale, *H*, who had proprietary rights in the mehal, and held the 5 biswas share of the sír as such (the word "*held*" as used in s. 7 of the Rent Act not being confined to manual or physical holding), lost his proprietary rights, and so became an ex-proprietary tenant of the land belonging to him at that time; that although the mortgage of 1869 must not be so affected as to deprive the mortgagee of all his rights, yet by the terms of s. 7 of Act XVIII of 1873 and by virtue of the sale his means of benefiting by the mortgage were necessarily changed; that neither the preamble nor s. 1 of the Act contained any saving clause which would justify the interpretation that all the conditions included in a usufructuary mortgage are to be exempted from the operation of the Act, or of s. 7 in particular, merely because the mortgage was a subsisting one: that under these circumstances possession must be given to the plaintiff of such rights as *H* had at the time of the mortgage, subject only to *H's* rights as an ex-proprietary tenant; that the rights of the purchaser of *H's* share under the sale were subject to the mortgage of 1869; and that by virtue of the rule enunciated in s 48 of the Transfer of Property Act, the rights of the mortgagees under the deed of 1872, must give way to the incidents of the prior deed of 1869, both mortgages being usufructuary. *Tulshi v. Radha Kishan, Weekly Notes, All., 1886, p. 74,* referred to. *Per* TYRRELL, *J.*, that in 1876, by reason of the execution sale, the sír rights and interests of *H* mortgaged by him in 1869, as such, went out of existence, and assumed a different character; that over that tenure in its altered character the plaintiff, though he still had his mortgage charge, had not, in the existing state of the law, a right to physical possession of the actual land; and that, subject to this new right of *H's*, the plaintiff retained his mortgage charge of 1869 over the zamindari interest in the portion of the land acquired by *H's* vendees. KARAMAT KHAN *v.* SAMI-UD-DIN . . . . **I. L. R., 8 All., 409**

7. ——— and s. 14—*Suit for profits—Ex-proprietary tenant—Sír land held equally.*—A certain mehal, of which the plaintiff in this suit claimed a one-third share of the profits for a certain year, belonged in equal shares to the defendant (lambardar), and *S* and *R*, his two brothers, who had certain sír land in partnership. The plaintiff had acquired the share of *S* by auction-purchase, *S* thus becoming an ex-proprietary tenant. The sír land was not included in the rent-roll of the mehal, but was admitted by the defendant to be assessable with rent at a certain rate per bigha. *Held* that, whatever might be the course proper to be taken for the purpose of assessing such sír land or *S's* share of it with rent, and notwithstanding that such course had not been taken, the plaintiff was entitled in this suit to claim and obtain his share in the profits of the sír land. MUHAMMAD ALI *v.* KALIAN SINGH **[I. L. R., 1 All., 659**

——— s. 8.

See RIGHT OF OCCUPANCY — ACQUISITION OF RIGHT—MODE OF ACQUISITION. **[7 N. W., 318** **I. L. R., 4 All., 157**

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—SUBJECT OF ACQUISITION. **[I. L. R., 7 All., 586**

——— ss. 8 and 9.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . . **I. L. R., 7 All., 866**

——— s. 9.

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT. **[I. L. R., 10 All., 130, 132 note**

See LANDLORD AND TENANT — ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE . **I. L. R., 7 All., 847** **[I. L. R., 13 All., 396**

NORTH WEST PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*continued*

See LANDLORD AND TENANT — EJECTMENT—GENERALLY
[I. L R 10 All, 615

See LANDLORD AND TENANT — PROPERTY IN TREES AND WOOD ON LAND
[I L R, 6 All, 19
I L R, 9 All, 88
I L R, 10 All, 159
I L R. 21 All, 297

See LANDLORD AND TENANT — TRANSFER BY TENANT I L R 12 All 419
[I. L R, 15 All 219, 231
I L R, 16 All, 398

See RIGHT OF OCCUPANCY — ACQUISITION OF RIGHT—MODE OF ACQUISITION
[I L R. 17 All, 33

See CASES UNDER RIGHT OF OCCUPANCY—TRANSFER OF RIGHT

———— s 10

See RIGHT OF SUIT—ACCRUAL OF RIGHT
[I. L R., 15 All 399

———— s 14—*Determination of rent —Landlord and tenant— May apply* —The words may apply in s 14 of Act XII of 1881 mean shall apply if the landholder wants to procure such a determ nati n of h s tenant s rent as would

[illegible]

[I. L R. 4 All, 616

———— ss 18, 31, 34

See LANDLORD AND TENANT — ACCRETION TO TENURE I. L R. 5 All, 260

———— s 21

See ENHANCEMENT OF RENT — LIABILITY TO ENHANCEMENT — CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT I. L R., 3 All. 365

———— s 29

See PLAINT—RETURN OF PLAINT
[I. L R., 3 All, 766

———— s 30

See GRANT—POWER TO GRANT
[I. L R., 2 All, 545 732

———— s 31

See LANDLORD AND TENANT — ABANDONMENT RELINQUISHMENT OR SURRENDER OF TENURE I. L R., 7 All, 647
[I L R, 13 All, 396

See LANDLORD AND TENANT — TRANSFER BY TENANT I. L R, 18 All, 354

NORTH WEST PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*continued*

———— s 34

See INTEREST — MISCELLANEOUS CASES — ARREARS OF RENT
[I L R. 18 All, 240

———— s 36

See ESTOPPEL—ESTOPPEL BY CONDUCT
[I L R., 15 All., 189
I. L R., 22 All., 83, 93

———— ss 36 39

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS
[I L R., 3 All., 63, 81
I. L R., 4 All 11
I L R, 6 All, 295
I L R, 18 All, 270

———— ss 36, 39, and 40

See LANDLORD AND TENANT—EJECTMENT —NOTICE TO QUIT I L. R., 10 All, 13

———— s 39

[illegible]

———— s 42—*Assessment of pr ce of crops*

[illegible]

Affirmed on appeal under the Letters Patent SHAM LAL *v* CHOKHE I L R, 19 All, 464

———— s 44

See LANDLORD AND TENANT—ALTERATION OF CONDITION OF TENANCY —DIGGING WELLS OR TANKS
[I L R, 21 All, 386

———— s 56

See VENDOR AND PURCHASER—LIEN
[I. L R 3 All., 433

———— *Landholder and tenant—Landholder's lien for rent— Rent payable — Arrear of rent due* —The first paragraph of s 56 of Act No XII of 1881 applies not only where there is rent in *arrear due from the cultivator to his landlord* but also where rent is accruing due in respect of the period during which the produce was be ng grown Hence where anyone except the landlord wishes to bring to sale the produce of a cultivator, he must, in order to avoid the prohibition conta ned in s. 56 of Act XII of 1881 tender to the immediate landlord of the cultivator the amount if any for which the landlord might on the next ensuing sale day, d strai

NORTH-WEST PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*continued.*

the produce for arrears of rent. JAGAN NATH PRASAD *v.* BHIKA RAM . I. L. R., 15 All., 375

——— s. 84.

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. [I. L. R., 10 All., 347

——— s. 93.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY. [I. L. R., 14 All., 273

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—MISCELLANEOUS SUITS.
[I. L. R., 16 All., 28, 333
I. L. R., 20 All., 73
I. L. R., 17 All., 423
I. L. R., 22 All., 334

See INTEREST—MISCELLANEOUS CASES—MESNE PROFITS. [I. L. R., 1 All., 281

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N.-W. P.

See CASES UNDER JURISDICTION OF REVENUE COURT—N.-W. P. RENT AND REVENUE CASES.

See LANDLORD AND TENANT—TRANSFER BY TENANT . I. L. R., 12 All., 419

See ONUS OF PROOF—PROFITS, SUITS FOR. [I. L. R., 12 All., 301

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . . I. L. R., 7 All., 691
[I. L. R., 9 All., 244

See SUBORDINATE JUDGE, JURISDICTION OF . . . I. L. R., 16 All., 363

See VALUATION OF SUIT—APPEALS. [I. L. R., 15 All., 363

1.——— s. 93 (h)—*"Recorded co-sharer."*—*Held* that a co-sharer of a mehal whose share was recorded in "shamilat" with all the other pattidars, but was not specifically defined in the khewat in a fractional or separate form, was a "recorded co-sharer," within the meaning of s. 93 (*h*) of the N.-W. P. Rent Act (XII of 1881). SHIB SHANKAR LAL *v.* BANARSI DAS . . . I. L. R., 7 All. 891

2.——— *Village expenses—Expenses of cultivating sir land held in partnership by plaintiff and defendant.*—A recorded co-sharer of a mehal sued the lambardar for his share of the profits of the mehal for the year 1286 Fasli. At the time of the institution of the suit, the profits for 1287 and 1288 also were due, but no claim was then made in respect of them. The suit was struck off on account of the non-appearance of the parties under s. 140 of Act XII of 1881 (N.-W. P. Rent Act), with leave to the plaintiff to bring a fresh suit. Subsequently the plaintiff brought a suit against the same defendant for his share of the profits of the mehal for 1287 and 1288 Fasli. *Held* that the Courts below had properly refused to deduct from the plaintiff's claim as "village expenses" within the meaning of s. 93 (*h*) of the Rent Act certain charges on account of the expenses of cultivation of sir land held in partnership by the plaintiff and the defendant. MULCHAND *v.* BEHARI DAS . . I. L. R., 7 All., 624

——— s. 94.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO JOINT PROPERTY—MISCELLANEOUS SUITS.
[I. L. R., 16 All., 28, 333
I. L. R., 22 All., 334

——— *Act XIX of 1873, s. 3, cl. 8—Limitation—Expiration of agricultural year—Suit by co-sharer for profits—Date of taking account and dividing profits.*—*Held* by the majority of the Full Bench that the share of a co-sharer in an undivided mehal of the profits of the mehal for any agricultural year are due to him from the lambardar as soon as, after the payment of Government revenue and village expenses, there is a divisible surplus in the hands of the lambardar, unless by agreement or custom a date is fixed for taking the accounts and dividing the profits, in which case any divisible surplus which may have accrued prior to that date is due on that date, and the divisible profits in respect of any arrears which may be collected after that date are due when they reach the hands of the lambardar or his agent. *Held per* STUART, C.J., and SPANKIE, J.—That where by agreement or custom there is no date fixed for dividing such profits, the share of a co-sharer becomes due on the last day of the agricultural year as fixed by Acts XVIII and XIX of 1873. BHIKHAN KHAN *v.* RATAN KUAR [I. L. R., 1 All., 512

——— s. 95.

See GRANT—POWER TO GRANT. [I. L. R., 2 All., 545, 732

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS . I. L. R., 19 All., 101

See LANDLORD AND TENANT—EJECTMENT—GENERALLY. [I. L. R., 10 All., 615

See LANDLORD AND TENANT—TRANSFER BY LANDLORD . I. L. R., 8 All., 189

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
[I. L. R., 2 All., 200
I. L. R., 3 All. 51
I. L. R., 6 All., 295, 403
I. L. R., 18 All., 270

——— s. 108.

See CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—RENT . . I. L. R., 2 All., 264
[I. L. R., 6 All., 576

NORTH-WEST PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*continued.*

——— s 118.

See PARTIES—PARTIES TO SUITS—RENT, SUITS FOR, AND INTERVENORS IN SUCH SUITS . . I L R, 9 All, 394

——— ss 128 (a), 140—*Judgment by default—Appeal*—S 128 (a), Act XII of 1881 (N.-W. P. Rent Act), refers to the procedure described in ss 124, 125, 126, when no appearance has been put in on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial and not to subsequent non appearance of parties on a day fixed for trial of issues to which s. 140 relates MUHAMMAD ABDUL RAHMAN KHAN *v* MUHAMMAD QUTAB-UD-DIN [I. L. R, 6 All, 448

——— s 148

See APPEAL—N-W P ACT [I L R., 3 All. 63
I L R, 4 All, 237
I L R., 13 All, 364

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS [I L R, 10 All, 347

——— s 149.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . I L R, 7 All, 691

——— ss 171, 177, and s 93 (i)—*Government revenue Assignee of—Mehal not charged when the revenue is assigned Act XIX of 1873, s. 167.*—Muafidars or assignees of Government revenue are not in precisely the same position as Government itself would have been, and possessed of identical rights and powers in respect of the recovery of arrears of revenue due to them. An arrear of assigned revenue is not a prior charge on the property in respect of which it is payable, against all the world The effect of the provisions of ss 93 (i), 171 and 177 of the N-W P Rent Act (XII of 1881) is to show that what the Legislature contemplated was to place the revenue assigned to a muafidar upon the same footing as rent, that therefore, in order to recover an arrear of revenue, a muafidar must bring a suit in the Revenue Court, that, upon obtaining a decree, he may apply for execution against the immoveable property of the judgment-debtor, that when such property is a mehal the Collector may make certain arrangements for discharge of the debt; and that failing such arrangements such immoveable property may be sold, subject to any incumbrances there may be upon it BITHAL DASS *v.* HARPHUL . I. L. R, 6 All, 503

——— s 177

See PRE-EMPTION—RIGHT OF PRE-EMPTION . I L R., 1 All, 277
[I. L. R., 13 All, 224

——— ss 177, 178, 181.

See CO SHARERS—GENERAL RIGHTS IN JOINT PROPERTY [I. L R, 14 All, 273

——— s. 181 and s 179—*Objection dismissed for want of prosecution—Suit to set aside sale—Limitation*—The limitation provided by s 181, cl (b), of Act XII of 1881 is none the less operative because the order under s 179 of the Act in consequence of which a suit has been brought in a Civil Court may be an order made not on the merits but in default of prosecution of his objection by the objector. *Sardhari Lal v. Ambika Pershad, I. L R, 15 Calc, 521 L R, 15 I A, 132, Khub Lal v Ram Lochun Koer, I L. R, 17 Calc, 260, Kaminee Debia v Issur Chunder Roy Chowdhry, 22 W R, 39,* and *Sadut Ali v Ram Dhone Misser, 12 C. L. R, 43* referred to. *Kallu Mal v Brown, I L. R., 3 All, 504,* discussed. LUCHMI NARAIN *v* MARTINDELL . . . . I. L R, 19 All, 253

——— s 183.

See APPEAL—N. W P ACTS—N-W. P. RENT ACT . I. L R., 4 All, 237

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622 [I. L. R, 12 All, 198

——— s 185

See REVIEW—GROUND FOR REVIEW [I L R, 19 All, 522

——— s 189.

See CASES UNDER APPEAL—N-W. P. ACTS—N-W P RENT ACT.

——— s 190.

See APPEAL—ORDERS [I L R, 16 All, 375

——— s 191.

See APPEAL—N.-W P ACTS—N-W. P RENT ACT . I. L. R, 5 All, 309

——— s 199

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622. [I L. R., 12 All., 198

——— s 203—*Suit for profits—Limitation Act (XV of 1877), s 5—General Clauses Act (I of 1887), s 7.*—*Held* that a suit for profits under s 93 (h) of Act XII of 1881, the period of limitation for the filing of which expired in respect of a portion of the claim on a day when the Court was closed, could not be brought on the day when the Court re-opened, but, so far as that portion was concerned, was barred by limitation. MUHAMMAD HUSEN *v.* MUZAFFER HUSEN . . . . I. L. R, 21 All., 22

NORTH-WEST PROVINCES RENT ACTS (XVIII OF 1873 AND XII OF 1881)—*continued.*

———— s. 206.

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—JURISDICTION.
[7 N. W., 49
I. L. R., 12 All., 419

———— ss. 206, 207, 208.

See SUBORDINATE JUDGE, JURISDICTION OF . . I. L. R., 8 All., 36, 295
[I. L. R., 16 All., 363

———— s. 207.

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.
[I. L. R., 6 All., 440

———— s. 208.

See REMAND—GROUND FOR REMAND.
[I. L. R., 5 All., 438
I. L. R., 6 All., 378, 440
I. L. R., 10 All., 31

———— *Remand—Suit not tried on the merits in the Court of first instance—Jurisdiction of Civil or Revenue Court.*—*Held* that the application by an Appellate Court of the provisions of s. 208 of Act XII of 1881 is not precluded by the fact that the Court of first instance has dismissed the suit on a preliminary point without any trial of it on its merits. BHOLAI KHAN *v.* ABU JAFAR
[I. L. R., 21 All., 267

———— s. 209.

See ONUS OF PROOF—PROFITS, SUIT FOR.
[I. L. R., 12 All., 301

1. ———— *Land in mehal held by the lambardar as "khud-kasht" at a nominal rental—Liability of lambardar to co-sharer for profits.*—The land in a certain mehal was recorded as held by *M*, the lambardar as "khud-kasht" at a certain nominal rental. For two years in succession *M* sublet such land in part or in whole for a less amount than such nominal rental; the third year such land lay fallow. Certain persons sued as co-sharers in the mehal to recover from *M* their share of the profits on account of such years. *M* set up as a defence to the suit that there were no profits—on the contrary, a small loss. The lower Courts held *M* answerable for the rental recorded. *Held* that it was doubtful whether the provisions of s. 209 of Act XVIII of 1873 were applicable in the present case, and that, even if such provisions were applicable, the lower Courts having neither found that more was realized from the land than had been accounted for by *M*, nor that the failure to realize more was owing to gross negligence or misconduct on his part, the decree of the lower Courts could not be sustained. MANGAL KHAN *v.* MUMTAZ ALI
[I. L. R., 2 All., 239

2. ———— *Suit by co-sharer for profits—Burden of proof.*—When a co-sharer claims a dividend on the full rental of the mehal, and the lambardar pleads in reply that the actual collection fell short of that rental, the burden of proof lies on the co-sharer to show that the deficient collection was attributable to the conduct of the lambardar, in the sense of s. 209 of the N.-W. Provinces Rent Act (XII of 1881), before he can succeed in getting a decree for a sum in excess of the actual collections. DHANAK SINGH *v.* CHAIN SUKH
[I. L. R., 8 All., 61

NORTH-WESTERN PROVINCES RENT ACT AMENDMENT ACT (XIV OF 1886).

———— s. 5.

See APPEAL—N.-W. P. ACTS—N.-W. P. RENT ACT . I. L. R., 13 All., 193
[I. L. R., 14 All., 50

NORTH-WESTERN PROVINCES AND OUDH ACT (XX OF 1890).

———— s. 42.

See HIGH COURT, JURISDICTION OF—N.-W. P.—CIVIL.
[I. L. R., 18 All., 375

NORTH-WESTERN PROVINCES AND OUDH LODGING-HOUSE ACT (N.-W. P. AND OUDH ACT I OF 1892).

———— s. 5, sub-s. 2—*Lodging-house—House of "pragwal" used for accommodation of pilgrims—Liability to take out license.*—*Held* that a "pragwal" who according to custom affords accommodation to his clients when they come to Allahabad for religious purposes, is bound, under the N.-W. P. and Oudh Lodging-house Act, 1892, to take out a license in respect of such houses as he may use for the accommodation of his clients. QUEEN-EMPRESS *v.* BEHARI LAL . . . I. L. R., 20 All., 534

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1873).

———— ss. 27, 32, 38.

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY.
[I. L. R., 1 All., 557

———— ss. 28, 43.

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SUIT.
. [I. L. R., 1 All., 269

———— *Suit against Local Government—Notice of suit.*—Where in a suit against a Municipal Committee, the Magistrate of the District was impleaded as representing the Local Government, the Court refused to allow the plea that the

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1873)—*continued*

Local Government had not been made a party to the suit in accordance with the provisions of s 28 of Act XV of 1873 The notice previous to suing a Municipal Committee for a thing done by them under that Act required by s 43 of the Act is only necessary where compensation is claimed for the thing done MUNICIPAL COMMITTEE OF MORADABAD *v.* CHATRI SINGH . . I L R, 1 All, 269

——— ss 29, 42—*N-W. P and Oudh Municipalities Act (XV of 1873) s 15—Municipal Board—Powers of taxation—Procedure—Consideration of objections to proposed tax—Final imposition of tax—Special meeting*—The N W P and Oudh Municipalities Act 1883 not conferring the powers given by Act XV of 1873 to 'cancel or vary" a tax imposed the procedure to be adopted for the enhancement of an existing tax must be the same as that prescribed for the imposition of a new tax In [illegible] in s. 42 Where Board at [illegible] tax were considered nor the special meeting at which the tax was finally imposed were properly constituted within the meaning of s 29 of Act XV of 1883 it was *held* that the imposition of the tax was invalid *Municipality of the City of Poona* v *Mohan Lal, I L R 9 Bom 51* approved STRACHEY *v.* MUNICIPAL BOARD OF CAWNPORE

[I L R., 21 All, 343

——— s 38

See PUBLIC ROAD . I L R, 7 All, 362

——— s 43

See LIMITATION ACT 1877, s 2[illegible]

[I L R., 2 All, 296

1\. ——— *Suit against Committee for declaration of right—Right of suit—Semble*—S 43 of Act XV of 1873 contemplates suits in which relief of a pecuniary character is claimed for some act done under that Act by a Committee, or any of their officers or any other person acting under their direction and for which damages can be recovered f[illegible] for such demolishment MANNI KASAUNDHAN *v* CROOKE . . I L R, 2 All, 296

2 ——— *Suit against Municipal Committee—Claim for a declaration of right—Limitation Act (XV of 1877) art 120—Cause of action*—The lessee of certain land belonging to the plaintiffs situate within the limits of a municipality, applied to the Municipal Committee for permission to establish a market on such land and such permission was refused by the Committee on the 26th November 1878 Meanwhile, the plaintiffs, on behalf of the lessee and on their own behalf as proprietors of such land, applied to the Committee for such permission, sending such application by post. No orders were passed by the Committee on such application because it had come by post On the 18th April 1879 the plaintiffs sued the Committee for a declaration of their right to establish a market on such land and for a perpetual injunction restraining the Collector as President of the Committee from interfering with their so doing The cause of action alleged was the refusal of the Committee of the 26th November 1878 *Held* by STUART, *C J*, on the question whether such suit was barred by the provisions of s 43 of Act XV of 1873 not having been brought within three months next after the date of the alleged cause of action, that it was not so barred, inasmuch as the provisions of that section were only applicable to suits brought against a Committee for something done under that Act in which compensation was claimed and not to those in which compensation was not claimed and that therefore the present suit was not governed by the provisions of that section but by art 120 sch II of Act XV of 1877 Also that the rejection of the lessee's application gave the plaintiffs a cause of action, as there was privity between them and the lessee, and that, as there was nothing in the Municipal rules prohibiting the presentation of an application by post, the application of the plaintiffs should not have been rejected. *Held* by DUTHOIT *J* that the suit of the plaintiffs was governed by the provisions of s. 43 of Act XV of 1873 and was therefore beyond time *Municipal Committee of Moradabad* v *Chatri Singh I L R 1 All 269 Manni Kasaundhan* v *Crooke I L R 2 All 296* and *Chunder Sikhur Bundopadhya* v *Obhoy Churn Bagchi, I L R, 6 Calc 8* referred to BRIJ MOHAN SINGH *v* COLLECTOR OF ALLAHABAD

[I. L R., 4 All, 102

[illegible] to those in which compensation was not claimed *Held* also by the Full Bench (confirming the decision of STUART, *C J*) that the refusal of the Municipal Committee to allow the plaintiffs' lessee to establish the market gave them a cause of action BRIJ MOHON SINGH *v* COLLECTOR OF ALLAHABAD

[I L. R, 4 All., 339

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883).

——— s. 46.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT, 1883 . . I. L. R., 22 All., 111

NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883)—*continued.*

1. ———— s. 55—*Municipal Board—Power of Municipal Boards to frame bye-laws—N.-W. P. and Oudh Municipalities Act (XV of 1873), s. 22—Nuisance.*—Cl. (c) of s. 55 of Act XV of 1883 was not intended to empower a Municipal Board to make rules which would enable it to confiscate private rights without making any compensation, or to treat as nuisances acts which are not in law or with regard to public health or convenience capable of being considered nuisances. The clause was meant to give to Municipal Boards power to make rules for prohibiting the establishment of markets, that is, to prevent new markets being established, and to give them power to control the maintenance of existing markets or of markets which might be established with their sanction. By "maintenance" is meant the keeping up of a market in such a manner as would make it a fit place for the carrying on of a market having regard to public health and public convenience. GANGA NARAIN *v.* MUNICIPAL BOARD OF CAWNPORE . . I. L. R., 19 All., 313

2. ———— *Municipal bye-law, Presumption as to validity of.*—Where a person was tried for and convicted of a breach of certain bye-laws purporting to have been duly passed by a Municipal Board, it was *held* that the presumption was that such bye-laws had been passed with due regard to the necessary procedure and were not illegal, and that it lay upon the accused to object to their validity, and was no part of the duty of a Court exercising appellate or revisional jurisdiction to enter of its own motion into the question whether such rules had been properly framed in accordance with the provisions of the law on that subject. *Municipality of Sholapur* v. *Sholapur Spinning and Weaving Co., I. L. R., 20 Bom., 732,* referred to. QUEEN-EMPRESS *v.* RAM CHANDAR . . . I. L. R., 19 All., 493

1. ———— s. 69—*Complaint of offence against Municipal bye-law—Power of Municipal Board to give a general authority to institute complaints on its behalf.—Held* that s. 69 of the N.-W. P. and Oudh Municipalities Act, 1883, confers upon Municipal Boards in the N.-W. P. and Oudh the power to delegate generally their authority to make complaints in respect of municipal offences, and this general delegation includes not merely the giving of authority to do the formal act of presenting a complaint to a Court, but the exercise of discretion as to whether in any given case a complaint shall or shall not be made. POWELL *v.* MUNICIPAL BOARD OF MUSSOORIE
[I. L. R., 22 All., 123

2. ———— and s. 71—*Municipal rules—Infringement of rules—Prosecutions—N.-W. P. Government Notification No. 865, dated the 3rd November 1869—Rule VI, Legality of.*—Municipal Boards and Magistrates should see that, before prosecutions are instituted under the municipal rules, care is taken that the requirements of s. 69 of Act XV of 1883 (N.-W. P. and Oudh Municipalities Act) are satisfied. A District Magistrate, who was also Chairman of a Municipal Board, having information that a certain person had evaded the payment of octroi duty, directed his prosecution for breach of municipal rules. The Magistrate in thus causing proceedings to be taken, acted wholly of his own motion and authority. The accused was tried and convicted under Rule 6, Government, N.-W. P., Notification No. 865, dated the 3rd November 1869, read with s. 45 of Act XV of 1873 (N.-W. P. and Oudh Municipalities Act). This rule provided that any person evading or abetting the evasion of the octroi duties specified in a schedule should be deemed to have committed an infringement of a bye-law. It purported to have been made under s. 12 of Act VI of 1868 (Municipal Improvements Act, N.-W. P.), which authorized the making of "rules as to the persons by whom, and the manner in which, any assessment of taxes under this Act shall be confirmed, and for the collection of such taxes." *Held* that, assuming the rule to have been legally made under s. 12 of Act VI of 1868, which was not clear, and that it was saved by s. 2 of Act XV of 1873, it would, as declared in s. 71 of Act XV of 1883 (N.-W. P. and Oudh Municipalities Act), continue in force until repealed by new rules made under such last-mentioned Act, and be deemed to have been made under that Act, and its operation was therefore subject to the provisions of that Act, and among them to s. 69, which made it a condition precedent to the institution of a prosecution against the petitioner, that there should be a complaint of the Municipal Board or of some person authorized by the Board in that behalf. *Held* that the position of the Magistrate of the district in connection with s. 69 was neither better nor worse than that of any other member of the Board, and unless he had been duly authorized by the Board as a Board, he had no more *locus standi* to cause a prosecution to be instituted personally than any other individual member; and the words of s. 69 being mandatory, and the petitioner having from the outset urged this objection to the legality of the proceedings, he was entitled to the benefit of it now, and the conviction was illegal and must be set aside. QUEEN-EMPRESS *v.* YUSUF KHAN . . . . I. L. R., 8 All., 677

NORTHERN INDIA CANAL AND DRAINAGE ACT (VIII OF 1873).

———— s. 45.

See JURISDICTION OF CIVIL COURT—*N.-W. P.* RENT AND REVENUE SUITS.
[I. L. R., 22 All., 139

NOTES OF EVIDENCE.

See TRANSFER OF CRIMINAL CASE—GENERAL CASES 15 B. L. R., Ap., 14
[I. L. R., 1 Calc., 354

NOTICE.

———— by municipality.

See BENGAL MUNICIPAL ACT, 1884, s. 85.
[2 C. W. N., 689

NOTICE—*continued.*

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s 11 . I. L. R., 20 Bom., 732

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s 21 . I. L. R., 21 Bom., 630

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s 42 . I. L. R., 19 Bom., 212

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 74 . I. L. R., 2 Bom., 527

See BOMBAY MUNICIPAL ACT, 1872 s 220 [I. L. R., 8 Bom., 151

See BOMBAY MUNICIPAL ACT, 1888, s. 249, [I. L. R., 24 Bom., 75

See BOMBAY MUNICIPAL ACT, 1888, s. 353 [I. L. R., 19 Bom., 372

See BOMBAY MUNICIPAL ACT, 1888, s 381 [I. L. R., 24 Bom., 125

——— Constructive—

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING [I. L. R., 21 Calc., 113

See PARTNERSHIP — RIGHTS AND LIABILITIES OF PARTNERS. [I. L. R., 19 Mad., 471

See PRE-EMPTION—RIGHT OF PRE-EMPTION . I. L. R., 16 Mad., 301

See RES JUDICATA—MATTERS IN ISSUE [I. L. R., 19 Mad., 145

——— of abandonment.

See INSURANCE—MARINE INSURANCE.
[1 Ind. Jur., N. S., 406
6 B. L. R., 218
7 B. L. R., 347
Bourke, O. C., 391

——— of allotment.

See COMPANY—WINDING UP—GENERAL CASES . . I. L. R., 9 All., 366

——— of appeal.

See APPEAL—ACTS—COMPANIES ACT. [I. L. R., 18 All., 215

See COMPANY—WINDING UP—GENERAL CASES . I. L. R., 4 Calc., 704

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10 [I. L. R., 17 All., 438

See PRACTICE — CIVIL CASES — NOTICE, RE-ISSUE OF . 2 W. R., Mis., 37

See PROCESS, SERVICE OF . 15 W. R., 31
[I. L. R., 16 Bom., 117

——— of application.

See CIVIL PROCEDURE CODE, s 100 [I. L. R., 18 Bom., 59

See CLAIM TO ATTACHED PROPERTY. [I. L. R., 16 Bom., 700

See CUSTODY OF CHILDREN [I. L. R., 18 Calc., 473

NOTICE—*continued.*

See DIVORCE ACT, s 16.
[4 B. L. R., O. C., 52
I. L. R., 18 Calc., 443, 539

See EXECUTION OF DECREE—STAY OF EXECUTION . I. L. R., 15 Bom., 536

See MORTGAGE—POWER OF SALE
22 W. R., 47

——— of assignment.

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION [I. L. R., 12 Mad., 505

See CASES UNDER REGISTRATION ACT, 1877, s 50.

See RIGHT OF OCCUPANCY—TRANSFER OF RIGHT . . I. L. R., 24 Calc., 642

See TRANSFER OF PROPERTY ACT, s 131.
[I. L. R., 12 Calc., 505
I. L. R., 10 All., 20
I. L. R., 10 Mad., 289
I. L. R., 14 Bom., 502

See TRANSFER OF PROPERTY ACT, s. 132. [I. L. R., 21 Bom., 60

See VENDOR AND PURCHASER—NOTICE.

See VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY
[I. L. R., 12 Mad., 505
I. L. R., 12 Bom., 33

——— of attornment.

See REGISTRATION ACT, s 49 [I. L. R., 19 Bom., 36

——— of charge or lien.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW
[I. L. R., 2 Bom., 494
8 B. L. R., 225
20 W. R., 126
9 B. L. R., 11
I. L. R., 1 Calc., 335
I. L. R., 4 All., 296
I. L. R., 12 Mad., 334
I. L. R., 23 Bom., 342

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING
[I. L. R., 9 All., 125
I. L. R., 13 All., 432
I. L. R., 21 Calc., 116

See CASES UNDER REGISTRATION ACT, s. 50

See TRANSFER OF PROPERTY ACT, s. 2. [I. L. R., 9 All., 591

See CASES UNDER VENDOR AND PURCHASER —NOTICE.

NOTICE—*continued.*

——— of decree.

See DIVORCE ACT, s. 16.
[9 B. L. R., Ap., 39
I. L. R., 8 Calc., 756

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 19 Mad., 257

——— of deposit or payment into Court.

See BENGAL RENT ACT, 1869, s. 31.
[I. L. R., 4 Calc., 714

——— of dishonour.

See BILL OF EXCHANGE . 1 W. R., 75
[2 W. R., 214
13 W. R., 420
3 N. W., 99
3 B. L. R., A. C., 198
7 B. L. R., 431, 434 note

See CASES UNDER HINDU LAW, CONTRACT—BILLS OF EXCHANGE.

See CASES UNDER HUNDI—NOTICE OF DISHONOUR.

See MAHOMEDAN LAW—BILL OF EXCHANGE . . 7 B. L. R., 434 note

——— of dissent to winding up.

See COMPANY—WINDING UP—GENERAL CASES . . I. L. R., 7 Bom., 494
[I. L. R., 12 Bom., 526

——— of enhancement.

See CASES UNDER ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT.

See KABULIAT—REQUISITE PRELIMINARIES TO SUIT.
[B. L. R., Sup. Vol., 25, 202
W. R., 1864, Act X, 2, 37, 60
4 W. R., Act X, 5
5 W. R., Act X, 88

——— of exceptions to report.

See PRACTICE—CIVIL CASES—COMMISSIONER FOR TAKING ACCOUNTS.
[I. L. R., 9 Bom., 250
I. L. R., 13 Bom., 368

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR I. L. R., 24 Calc., 437

——— of execution.

See CASES UNDER EXECUTION OF DECREE—NOTICE OF EXECUTION.

See LIMITATION ACT, 1877, ART. 164 (1871, ART. 157).
[I. L. R., 2 Calc., 123

See CASES UNDER LIMITATION ACT, 1877, ART. 179 (1871, ART. 167; 1859, s. 20)—NOTICE OF EXECUTION.

——— of foreclosure.

See CASES UNDER MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

——— of intentions to build.

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 33 . I. L. R., 19 Bom., 27

——— of meeting.

See BOMBAY DISTRICT MUNICIPALITIES ACT, s. 11 . I. L. R., 7 Bom., 399

——— of proceedings.

See COMPANY—WINDING UP—GENERAL CASES . . I. L. R., 5 Bom., 223
[I. L. R., 11 Bom., 241

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 11 Bom., 241

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 11 Mad., 136

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO—NOTICE TO PARTIES.

See REVIEW—PROCEDURE ON RE-HEARING OF CASE . I. L. R., 11 Bom., 591

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 11 Mad., 144
I. L. R., 20 All., 474

See SURVEY AWARD . . 3 W. R., 7

——— of relinquishment.

See RELINQUISHMENT OF TENURE.
[7 B. L. R., Ap., 11
W. R., 1864, Act X, 9
8 W. R., 220
11 W. R., 456

——— of sale.

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SALE.
[I. L. R., 20 All., 86
L. R., 17 I. A., 191

See MORTGAGE—POWER OF SALE.
[I. L. R., 11 Mad., 201

See PUBLIC DEMANDS RECOVERY ACT, s. 2.
[I. L. R., 21 Calc., 350, 350 note
I. L. R., 26 Calc., 414
3 C. W. N., 233

See PUBLIC DEMANDS RECOVERY ACT, ss. 6, 7, AND 10.
[I. L. R., 12 Calc., 603
I. L. R., 23 Calc., 775
L. R., 23 I. A., 45
I. L. R., 26 Calc., 172
2 C. W. N., 363
I. L. R., 13 Calc., 208

NOTICE—*continued*

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY

——— of suit

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SUIT
[8 W R, 425
I L R, 1 All, 269

See BENGAL ACT IX OF 18 1 s 27
[I L R, 15 Calc, 259

See BENGAL MUNICIPAL ACT 1864 ss 77 81 87
7 W R, 92
[9 W R, 279, 562

See BOMBAY DISTRICT MUNICIPAL ACT 1873 s 86
I L R, 7 Bom, 399
[I L R., 8 Bom 142

See BOMBAY MUNICIPAL ACT 1888 s 298
[I L R, 19 Bom, 407

See BOMBAY MUNICIPAL ACT 1888 s 527
[I L R., 17 Bom, 307

See CALCUTTA MUNICIPAL ACT 1863 s 226
8 B L R, 265

See CALCUTTA MUNICIPAL ACT 1876 s 357
[I L R 18 Calc 91

See CIVIL PROCEDURE CODE s 424
[13 C L R 195
I L R., 20 Bom, 697
I L R, 24 Calc, 584
I L R, 25 Calc, 239

See COLLECTOR I L R, 11 Mad, 317
[I L R., 13 Bom, 343

See COMPANY—WINDING UP—GENERAL CASES
I L R, 5 Bom, 223
[I L R, 11 Bom, 241

See FOREIGN COURT JUDGMENT OF
[I L R 13 Mad, 496

See MADRAS LOCAL BOARDS ACT s 27
[I L R, 16 Mad, 317

See MADRAS MUNICIPAL ACT 1884 s 433
[I L R, 14 Mad, 386
I L R, 18 Mad, 503

See MADRAS TOWNS IMPROVEMENT ACT 1871, s 168
I L R., 2 Mad, 124

See NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT ss 43
[I L R., 1 All, 269

See OFFICIAL TRUSTEE
[I L R, 7 Calc, 499

See PUBLIC OFFICER
[I L R. 14 Bom 395

See RAILWAYS ACT s 77
[I L R., 24 Calc, 306
I L R., 22 Mad., 137

NOTICE—*continued*

——— of title

See CASES UNDER VENDOR AND PURCHASER—NOTICE

——— of transfer of cases

See TRANSFER OF CRIMINAL CASE—GENERAL CASES
[I L R., 1 Calc, 356

——— of trust

See LIMITATION ACT 1877 ART 134 (1871 ART 134)
[I L R. 1 Bom, 269

——— of valuation

See BENGAL CESS ACT (BENGAL ACT IX OF 1880) s 50
[I L R, 15 Calc, 237

——— of withdrawal from association

See COMPANY—WINDING UP—COSTS AND CLAIMS ON ASSETS
[I L R., 19 Mad., 85

——— Parties entitled to—

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPUTE AS TO RIGHT OF WAY WATER ETC
[I L R., 21 Calc, 727

See CASES UNDER POSSESSION ORDER OF CRIMINAL COURT AS TO—NOTICE TO PARTIES

See POSSESSION ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS
[I L R, 21 Calc, 915, 916 note

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE MONEY
I L R, 18 Bom, 594

——— Service of—

See CASES UNDER ENHANCEMENT OF RENT—NOTICE OF ENHANCEMENT—SERVICE OF NOTICE

See MADRAS RENT RECOVERY ACT s 39
[I L R, 3 Mad., 114
I L R, 18 Mad, 30

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE I L R, 12 Mad 475

See CASES UNDER PROCESS SERVICE OF

——— Sufficiency of—

See BENGAL TENANCY ACT s 155
[I L R., 22 Calc., 77

——— to Accused.

See CASES UNDER CRIMINAL PROCEDURE CODES s 437

See CASES UNDER SANCTION TO PROSECUTION—NOTICE OF SANCTION

NOTICE—*concluded.*

——— to complete sale.

See SPECIFIC PERFORMANCE—SPECIAL CASES . I. L. R., 12 Bom., 658

——— to quit.

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE TO SUIT.
[I. L. R., 9 Mad., 346
1 C. L. R., 421
I. L. R., 18 Bom., 110

See CASES UNDER LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.
[I. L. R., 13 Calc., 3, 248
I. L. R., 10 Bom., 669
I. L. R., 17 Mad., 218
I. L. R., 20 Bom., 354

See SERVICE TENURE.
[I. L. R., 8 Mad., 72
I. L. R., 22 Calc., 938

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY, RECOVERY OF.
[I. L. R., 17 Mad., 216

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.
[I. L. R., 18 Bom., 110
3 C. W. N., 215

——— to remove nuisance or obstruction.

See CASES UNDER NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

See PENAL CODE, s. 188.
[I. L. R., 16 Calc., 9
I. L. R., 12 Mad., 475
I. L. R., 20 Mad., 1

——— to show cause.

See CRIMINAL PROCEDURE CODES, s. 437.
[I. L. R., 6 All., 367
I. L. R., 9 All., 52
I. L. R., 10 Calc., 207
I. L. R., 20 All., 339

See SANCTION FOR PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION . I. L. R., 18 All., 358

"NOTIFICATION."

——— Force of—

See STAMP ACT, 1879, s. 12.
[I. L. R., 5 Bom., 188

——— Meaning of—

See BENGAL MUNICIPAL ACT, 1884, s. 2.
[I. L. R., 20 Calc., 699

NOTIFICATION—*concluded.*

——— Publication of—

See EMBANKMENTS.
[I. L. R., 11 Calc., 570

See GAMBLING . 21 W. R., Cr., 23

NOTIFICATIONS OF GOVERNMENT OF INDIA.

——— No. 1203, dated 23rd September 1874.

See HIGH COURT, JURISDICTION OF—N.-W. P.—CIVIL.
[I. L. R., 18 All., 375

No. 1288 of 3rd March 1882.

See STAMP ACT, 1879, s. 3, CL. 10.
[I. L. R., 18 Calc., 39
I. L. R., 13 All., 66

See STAMP ACT, 1879, s. 61.
[I. L. R., 18 Calc., 39

——— No. 2955 of 1st December 1882.

See STAMP ACT, 1879, s. 3, CL. 10.
[I. L. R., 13 All., 66

——— No. 381, dated 18th April 1883.

See COURT FEES ACT, s. 26.
[I. L. R., 19 Bom., 145

——— No. 173 of 14th March 1889.

See REFORMATORY SCHOOLS ACT, s. 22.
[I. L. R., 15 All., 208

——— No. 458 of 18th March 1898.

See ARMS ACT, s. 19.
[I. L. R., 22 All., 118

NOVATION.

See BOND . . . 9 B. L. R., 364
[14 Moore's I. A., 86
13 B. L. R., 509
L. R., 1 I. A., 241
2 N. W., 37
2 C. L. R., 565
I. L. R., 9 All., 219

See LIMITATION ACT, 1877, ART. 73 (1871, ART. 72) . . I. L. R., 1 Bom., 503

"NOW ON HER PASSAGE," MEANING OF—

See CHARTER PARTY . 8 B. L. R., 544

NUISANCE.

	Col.
1. MISCELLANEOUS CASES . . .	6269
2. UNDER CRIMINAL PROCEDURE CODES	6270
3. PUBLIC NUISANCE UNDER PENAL CODE	6296

See BENCH OF MAGISTRATES.
[I. L. R., 13 Mad., 142

NUISANCE—*continued*

See BOMBAY DISTRICT POLICE ACT, s 48 [I. L. R, 19 Bom, 737

See FERRY I L. R, 18 Calc, 652

See GAMBLING . . 7 Bom, Cr, 74

See INJUNCTION—SPECIAL CASES—NUISANCE . I L. R, 8 Bom, 35

See JURISDICTION OF CIVIL COURT—MAGISTRATE'S ORDERS, INTERFERENCE WITH 4 B L R, F B, 24 [I. L R., 14 Calc, 60

See LIMITATION ACT, 1877, s 23 [I L R, 18 Calc, 652

See MADRAS DISTRICT MUNICIPALITIES ACT, s 232 I L R, 15 Mad, 91

See PENAL CODE s 188 [I L R, 12 Mad, 475

See PRESCRIPTION—EASEMENTS—RIGHT OF WAY . I L R, 7 Calc 665 [I L R, 8 Calc., 677

See PRESCRIPTION—EASEMENTS—TREES [I L R., 19 Bom, 420

——— Abatement of—

See JURISDICTION OF CIVIL COURT—PUBLIC WAYS, OBSTRUCTION OF [I L R., 3 Calc, 20

See UNLAWFUL ASSEMBLY 5 Mad, Ap, 6 [I. L R, 3 Calc., 573

——— *Liability for*—

See RAILWAY COMPANY 10 B L R, 241

——— Suit for injunction to restrain—

See RAILWAY COMPANY 10 B L R, 241

———under Criminal Procedure Code

See CASES UNDER JURY—JURY UNDER NUISANCE SECTIONS OF CRIMINAL PROCEDURE CODE.

1 MISCELLANEOUS CASES

1. ——— Order forbidding nuisance—*Power of Magistrate—Towns Improvement Act (XXVI of 1850)*—*Held* that a Magistrate, as President of a Municipal Committee had no power to issue an order forbidding as a nuisance an act not included in the rules passed under Act XXVI of 1850 GOVERNMENT v SHAMSOONDER . 1 Agra, Cr, 34

2 ——— Order prohibiting traffic—*Bom Reg XII of 1827, s 19*—A notice prohibiting general traffic over certain level crossings on a railway, provided for particular villages, forbidden as not falling within the scope of Regulation XII of 1827, *s. 19 cls 1 and 6* IN THE MATTER OF A PROHIBITORY NOTICE UNDER BOMBAY REGULATION XII OF 1827 . . . . 8 Bom, Cr, 23

NUISANCE—*continued.*

2 UNDER CRIMINAL PROCEDURE CODES

3 ——— Order to close drain—*Criminal Procedure Code, 1861, ss 62 308—Power of Magistrate—Order not in writing*—The accused was

v CHOONEELALL . . 2 Agra, Cr, 1

4 ——— *Assistant Magistrate* Power of—*Criminal Procedure Code 1861 ss 62 308—Penal Code, s 188*—An Assistant Magistrate as he came within the definition of the term of 'any Magistrate' was competent to pass an order under s 62

from s 308 of that enactment and that it should be read alone with s 188 of the Penal Code GOVERNMENT v MAHOMED BUKSH . 1 Agra, Cr, 23

5 ——— Order to prevent breach of the peace—*Criminal Procedure Code 1861 ss 62 318*—It was not necessary that an order issued by a Magistrate under s 62 of the Code of Criminal Procedure, whereby a breach of the peace was prevented should be supplemented by a proceeding under s 318 of the same Code QUEEN v LUTEEF HOSSEIN [10 W R, Cr, 1

6 ——— Order made on dismissal of complaint—*Criminal Procedure Code 1861 ss 62,* 308 Wh was Ma strated am essed a compl nt under

on the defendant to show cause why s 62 should not be applied KALIDAS BHUTTACHARJEE v MOHENDRO NATH CHATTERJEE 12 W. R, Cr, 40

S C IN THE MATTER OF THE PETITION OF KALIDAS BHUTTACHARJEE 5 B. L R, Ap, 82 note

7. ——— Requisites of order—*Criminal Procedure Code, 1861 s 62—General and continuous order*—Under Act XXV of 1861 s 62, it was necessary that the direction should be addressed to a particular person or particular persons, and not to the public generally and with reference to a particular occasion only and not for a continuance ANONYMOUS 8 Mad, Ap, 9

8 ——— *Notice and inquiry*—*Criminal Procedure Code, 1861 s 62—Order without notice or inquiry*—An order issued by a Magistrate under s 62 of the Code of Criminal Procedure in consequence of a mahirzanama signed by *certain persons but without any notice to the defendant* or inquiry by the Magistrate is illegal ANONYMOUS . . . . . 4 Mad., Ap, 67

NUISANCE—*continued.*

2. UNDER CRIMINAL PROCEDURE CODES —*continued.*

9. ——— Prohibitory order—*Procedure —Rule to show cause.*—Under s. 62 of the Code of Criminal Procedure, a Magistrate cannot pass a prohibitory order without having previously issued a rule to show cause why the order should not be passed. QUEEN *v.* LACHMIPAT SINGH [5 B. L. R., Ap., 81

S. C. IN THE MATTER OF THE PETITION OF LUCHMEEPUT SINGH . . 14 W. R., Cr., 17

IN RE KALIDAS BHATTACHARJEE [5 B. L. R., Ap., 82 note

S. C. KALIDAS BHUTTACHARJEE *v.* MOHENDRO NATH CHATTERJEE . . 12 W. R., Cr., 40

COLLECTOR OF HOOGHLY *v.* TARAKNATH MUKHOPADHYA . 7 B. L. R., 449 : 16 W. R., 63

10. ——— *Ground necessary for order—Power of Magistrate to make prohibitory orders as to nuisance.*—When a Magistrate makes an order under s. 518, Criminal Procedure Code, 1872, on the ground that he has received information, and is satisfied with it, no interference is possible; but when he states the nature of the information, the High Court can see whether such information justifies the order made. Before a prohibitory order under s. 518 can be made, there ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act would prevent such riot or affray. GOSHAIN LUCHMUN PERSHAD POOREE *v.* POHOOP NARAIN POOREE . 24 W. R., Cr., 30

11. ——— Condition precedent to making of order—*Criminal Procedure Code, 1872, s. 518, expl. I.*—The existence of the circumstances mentioned in explanation I is a condition precedent to the action of a Magistrate, under s. 518, Code of Criminal Procedure. IN THE MATTER OF KRISHNA MOHUN BYSACK . . . . . 1 C. L. R., 58

12. ——— Ground for making order—*Criminal Procedure Code (XXV of 1861), s. 62—Act X of 1872, s. 518—Power of Magistrate—Procedure—Report of police.*—There is nothing in s. 62, Criminal Procedure Code, 1861, to justify a Magistrate in making an order under that section on the mere report of a police officer. QUEEN *v.* BHYRO DAYAL SINGH [3 B. L. R., A. Cr., 4 : 11 W. R., Cr., 46

13. ——— Limit of order—*Criminal Procedure Code, 1872, s. 518—Inquiry into act necessitating order—Order made without jurisdiction.*—*Per* AINSLIE, J.—In dealing with the civil rights of a subject under s. 518 of the Criminal Procedure Code, it is incumbent on the Magistrate to limit the operation of his order to such reasonable time as may be necessary to enable him to hold a full and sufficient inquiry as to whether the act prohibited as likely to cause a breach of the peace is within, or is in excess of, the legal right of, the person forbidden to do it; and, if necessary, to deal with the case under the other provisions of the Criminal Procedure Code, which enable him to meet cases of probable breach of the peace. *Per* BROUGHTON, J.—Where an order on the face of it appears to have been made without jurisdiction, no subsequent explanation can make it good. IN THE MATTER OF ABDOOL *v.* LUCKY NARAIN MUNDUL . . I. L. R., 5 Calc., 132

14. ——— Nature of order—*Perpetual injunction—Criminal Procedure Code, 1872, s. 518—Powers of Magistrate—Rival hâts.*—A Magistrate is not empowered to pass an order under s. 518 of Act X of 1872 which has more than a temporary operation: the grant of what is in effect an order for a perpetual injunction is entirely beyond his powers. GOPI MOHUN MULLICK *v.* TARAMONI CHOWDHRANI [I. L. R., 5 Calc., 7 : 4 C. L. R., 309

15. ——— *Perpetual injunction—Magistrate, Power of.*—A Magistrate has no power to pass a perpetual injunction under s. 518 of the Code of Criminal Procedure, 1872. *Gopi Mohun Mullick* v. *Taramoni Chowdhrani, I. L. R., 5 Calc., 7,* followed. BRADLEY *v.* JAMESON [I. L. R., 8 Calc., 580 : 11 C. L. R., 414

16. ——— Duration of Magistrate's order—*Criminal Procedure Code (1872), s. 518 (1882, s. 144)—Penal Code, s. 188.*—In 1876 a Magistrate passed an order under s. 518 of Act X of 1872 (Criminal Procedure Code), directing the Saraogis of Etah to take one of their annual religious processions along a particular route and at a particular hour. In 1886, in which year there was no fresh promulgation of the order, the Saraogis took their procession along another route and at a different hour, and for so doing some of them were convicted and sentenced under s. 188 of the Penal Code. *Held* that the conviction was wrong, the order of 1876 having a temporary operation only. *Gopi Mohun Mullick* v. *Taramoni Chowdhrani, I. L. R., 5 Calc., 7,* referred to. QUEEN-EMPRESS SHEODIN . I. L. R., 10 All., 115

17. ——— Order for protection of property—*Criminal Procedure Code (Act X of 1872), s. 518.*—A Magistrate has no jurisdiction to make an order under s. 518 of the Code of Criminal Procedure merely for the protection of property. IN THE MATTER OF THE PETITION OF PRAYAG SINGH. EMPRESS *v.* PRAYAG SINGH [I. L. R., 9 Calc., 103

18. ——— Recall of order—*Order made without jurisdiction.*—Where a Deputy Magistrate, without taking evidence, made an order under s. 62 of the Code of Criminal Procedure, 1861, changing a day on which a hât used to be held, and subsequently, on taking evidence, found that his first order was wrong and passed without jurisdiction, he was held to have acted properly in recalling his first order. MOHUN SIRDAR *v.* OBHOY CHURN MOOKOPADHYA [13 W. R., Cr., 72

19. ——— Order in disputes as to land—*Criminal Procedure Code, 1861, s. 62.*—S. 62 of the Code of Criminal Procedure does not apply to disputes connected with lands, but refers specially to

NUISANCE—*continued*

2 UNDER CRIMINAL PROCEDURE CODES—*continued*

nuisances and other similar matters in which imme diate action is necessary, in order to avoid a risk of illegal consequences RAJ BULLUB ADDHYA *v* GOBINDO CHUNDER MOITRO 12 W R., Cr, 66

20 ——— **Order as to moveable property**—*Criminal Procedure Code 1861, s 62—Likelihood of breach of the peace*—The power of issuing orders to prevent breaches of the peace etc conferred on a Magistrate by s 62 of the Code of Criminal Procedure extends only to immoveable property of the description set forth in Ch XXII of that Code QUEEN *v* GOLUCK CHUNDER GOOHO [12 W R, Cr, 38

21. ——— **Private dispute as to path way**—*Criminal Procedure Code 1861 s 62*—S 62 of the Code of Criminal Procedure does not apply to a private dispute between two parties relative to a path NILKOMUL MOOKHOPADHYA *v* ANUND CHUNDER LUSHKUR 19 W. R, Cr, 6

22. ——— **Dispute as to interest in land**—*Question for Civil Court—Criminal Procedure Code 1861 s 62*—The purchaser of an interest in land at a sale in execution of decree obtained an order for possession under s 263 or 264, Act VIII of 1859, and a dispute arose between him and another person who had some interest in the land as to what passed under the sale certificate Without ascertaining the rights of the parties the Magistrate made certain orders the effect of which was to exclude the auction purchaser for some time from exercising the right alleged to have passed to him under the purchase [illegible] have made no [illegible] perty, leaving [illegible] rights in the [illegible] power under the section to do what was necessary to prevent a breach of the peace LALOO *v* ADAM SIRCAR GOVERNMENT *v* SURJAKANT ACHARJIA DENGOO SHAIKH *v* ADAM SIRCAR 17 W R., Cr, 37

23 ——— **Order for removal of wall**—*Criminal Procedure Code 1861, s 62*—S 62 of the Code of Criminal Procedure does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person in the absence of evidence showing that a riot or affray was likely to occur RADHAKISHORE *v* GIRIDHAREE SAHEE 13 W R., Cr., 19

24 [illegible]

[illegible] Mad., Ap, 51

25 ——— **Order for removal of obstruction**—*Criminal Procedure Code, 1872, ss 518, 521*—A Magistrate of the second class having passed an order under the Criminal Procedure Code 1872, s 518, for the removal of an obstruction the Magistrate on appeal held that though the proceedings of the Subordinate Magistrate were without jurisdiction, he (the Magistrate) was competent under s 518 to direct the removal of the obstruction and he passed an order accordingly *Held* that the order of the Magistrate under s 518 was illegal and that he should have proceeded under s 521 and the following sections of the Code IN THE MATTER OF THE PETITION OF BRINDABUN DUTT 21 W R, Cr, 24

26 ——— **Dispute as to right of possession**—*Criminal Procedure Code 1872, s 518—Breach of peace imminent—Order not to interfere with a temple*—Where a dispute arises as to the right of the possession of lands and buildings a Magistrate if he considers a collision between the parties and a serious breach of the peace imminent, may properly proceed under Ch 39 instead of Ch. 40, of the Criminal Procedure Code If the Magistrate had jurisdiction the proceedings not being judicial, cannot be revised by the High Court An order to abstain from interference with a temple and its property is an order to abstain from a "certain act" within the meaning of s 518 of the Criminal Procedure Code ELAVARISU VANAMAMALOI RAMANUJA JEEYARSVAMI *v* VANAMAMALAI RAMANUJA JEEYAR [I. L. R, 3 Mad., 354

27 ——— **Order to alter doorway of temple**—*Criminal Procedure Code 1861 s 62*—The temple of Pandharpur, a public temple is visited at certain periods of the year by a large concourse of pilgrims With a view to prevent the dangers arising from overcrowding, and to improve the ventila [illegible] same had the temple been private property, and also that the power of Magistrates to issue orders under the section in question is entirely discretionary REG *v* RAM CHANDRA EKNATH 6 Bom, Cr, 36

28 ——— **Power of Magistrate to order repair of a house not adjoining the public road**—*Criminal Procedure Code (1882), ss 133 135 and 136—Penal Code (Act XLV of 1860), s 188*—S 133 of the Code of Criminal Procedure does not empower a Magistrate to order the owner of a house standing apart from any public road in its own compound to repair such house By "persons living or carrying on business in the neighbourhood," injury to whom the power to pass orders under s 133 is intended to prevent are meant, not the persons who in the exercise of their private rights may use a building supposed to be in a dangerous condition, but unascertained members of the public whose ordinary avocations may take them to the neighbourhood of such building *Queen Empress*

NUISANCE—*continued.*

2. UNDER CRIMINAL PROCEDURE CODES —*continued.*

v. *Narayana, I. L. R., 12 Mad., 475,* and *Queen-Empress* v. *Bishamber Lal, I. L. R., 13 All., 577,* distinguished. QUEEN-EMPRESS *v.* JASODA NAND [I. L. R., 20 All., 501

29. ———— **Disputed possession of temple**—*Criminal Procedure Code (1882), s. 144 —Magistrate, Jurisdiction of.*—The District Temple Committee dismissed the trustees of a certain temple and appointed others. The dismissed trustees retained possession. A breach of the peace having become imminent in the opinion of a Deputy Magistrate, he made an order, under the Criminal Procedure Code, s. 144, directing the newly-appointed trustees not to interfere with the temple or its management. *Held* that the Magistrate had jurisdiction to make the order, and the High Court declined to interfere on revision. PALANIAPPA CHETTI *v.* DORASAMI AYYAR [I. L. R., 18 Mad., 402

30. ———— **Order as to procession in public streets**—*Criminal Procedure Code, 1872, s. 518—Public worship—Conflict of rights—Duty of Magistrate when public peace threatened.*—In affording special protection to persons assembled for religious worship or religious ceremonies, the law points to congregational rather than private worship, and it may fairly be required of congregations that they hould inform the Magistrate or police at what hours they customarily assemble for worship, in order that the rights of other persons may not be unduly curtailed. No sect is entitled to deprive others for ever of the right to use the public streets for processions, on the plea of the sanctity of their place of worship, or on the plea that worship is carried on therein day and night. The duties of a Magistrate in cases where the public peace is likely to be disturbed by one sect attempting to prevent another from using the public streets for processions, discussed. The principles laid down in *Muthealu Chetti* v. *Bapun Saib, I. L. R., 2 Mad., 140,* examined, explained, and approved. SUNDRAM *v.* QUEEN. PONNUSAMI *v.* QUEEN [I. L. R., 6 Mad., 203

31. ———— **Order to remove embankment**—*Criminal Procedure Code, 1861, s. 62.*—The Subordinate Magistrate issued an order to two persons directing them to remove a certain embankment, whereby the adjacent lands of the complainant were in danger of being flooded. *Held* that the act of the defendant was not an act which could be prohibited by the Subordinate Magistrate under s. 62 of the Code of Criminal Procedure. ANONYMOUS [5 Mad., Ap., 19

32. ———— **Order to destroy tank**—*Obstruction to enjoyment of public rights.*—The defendant had made a tank in the bed of a khal by throwing two bunds across it, and on complaint to the Magistrate, he, finding that the tank had been in existence only for about six years, passed an order under s. 62, Act XXV of 1861, directing the defendant to destroy the bunds, on the ground that they were an obstruction to the enjoyment of the river by the public in the rainy season; and that the bunds interfered with the drainage of the country and tended to the injury of the crops and of the inhabitants. The High Court held that s. 62 did not authorize the passing of such an order. QUEEN *v.* GOLAM DARBESH [1 B. L. R., S. N., 27: 10 W. R., Cr., 36

33. ———— **Trespass by cattle**—*Penal Code, s. 188.*—A Magistrate issued an order warning owners of cattle to take proper care of them; and that in case of disobedience or neglect they would be punished according to law, and did punish them for disobedience under s. 188 of the Penal Code *Held* that the Magistrate was not competent, under s. 62 of the Code of Criminal Procedure, 1861, to pass such an order. The order contemplated under that section is in the nature of an injunction, and such an order passed by a Magistrate would not be legal. The conviction under s. 188 of the Penal Code was therefore illegal. IN THE MATTER OF AMIRADDI . . . 2 B. L. R., A. Cr., 45

S. C. QUEEN *v.* AMEERUDDEEN 12 W. R., Cr., 36

34. ———— *Penal Code s. 289.*—An order by a Magistrate prohibiting the straying of cattle within certain local limits is not an order within the meaning of s. 62 of the Code of Criminal Procedure. There can be no conviction for disobedience of such order under s. 289 of the Penal Code. QUEEN *v.* MOZAFAR KHALIFA [9 B. L. R., Ap., 36

S. C. GOVERNMENT *v.* MOZUFFER KHALIFA [18 W. R., Cr., 21

35. ———— **Order to cut down trees as being a nuisance**—*Removal of nuisance—Power of Magistrate.*—Under s. 62 of the Code of Criminal Procedure, 1861, a Magistrate has no power to issue an order *ex-parte* to cut down trees on the representation of a party supported by the report of the police that the existence of the trees was a nuisance. QUEEN *v.* RAM CHANDRA MOOKERJEE [5 B. L. R., 131

S. C. UTTAM CHUNDER CHATTERJEE *v.* RAM CHUNDER CHATTERJEE . . 13 W. R., Cr., 72

36. ———— **Order to remove stacked timber**—*Criminal Procedure Code, 1861, s. 62—Illegal order.*—Where a complaint was made by *A* that timber belonging to his master, which had been cut and stacked in a certain place, had been removed by *B*, who said that the timber was cut not by *A*'s master, but by himself, and that he had stacked it in a place where he always put his timber, it was held that the Magistrate could not proceed under s. 62 of the Code of Criminal Procedure, but was bound to try the charge brought against *B*, and either restore the timber to *A* or leave it where it was, according to the result of the investigation. KARTICK CHUNDER BAL *v.* CHUNDER NATH CHUCKERBUTTY . . . . . 15 W. R., Cr., 56

37. ———— **Order as to holding of hat or market**—*Rival hâts—Act XXV of 1861, s. 404—Judicial order—Power of revision by High Court*

NUISANCE—*continued*

2 UNDER CRIMINAL PROCEDURE CODES —*continued*

—An order of a Magistrate under s 62, Criminal Procedure Code, 1861,— *e g*, prohibiting one of two rival proprietors of two different hâts from holding his hât on certain days of the week in order to prevent obstruction, annoyance and injury,—was not a judicial order, and was therefore not open to revision by the High Court under s 404, Criminal Procedure Code PHEAR, J (dissenting) QUEEN *v* ABBAS ALI CHOWDHRY . 6 B L R, F. B, 74

S C ABBAS ALI CHOWDHRY *v* ILLIM MEAH [14 W R., Cr, 46

LALLA MITTERJEET SINGH *v* RAJCOOMAR SIRCAR [18 W R., Cr, 22

See as to s 518 the corresponding section of Act X of 1872 IN THE MATTER OF THE PETITION OF MOKUT SINGH . 6 N W, 16

38 ———— *Rival hats—Criminal Procedure Code, 1861, s 62* —When two hâts or markets were held on the same day on adjacent pieces of land, and it was shown to lead to riots and affray, and annoyance to persons lawfully employed in their usual avocations that they should be so held an order by the Magistrate under s 62 prohibiting the parties from holding the hats on the same day, was held to be a proper order under s 62, Act XXV of 1861 QUEEN *v* KALIKAPRASAD

[5 B. L R, Ap, 82 note 11 W R, Cr., 5

39 ———— *Criminal Procedure Code (Act XXV of 1861), s 62—Act X of 1872 s 518—Rival hâts—Power of Magistrate* —A Magistrate has power, under s 62 of Act XXV of [illegible]

to prevent, a riot or an affray IN THE MATTER OF THE PETITION OF BYKUNTRAM SHAHA ROY [10 B L R, F B, 434

S C BYKUNTRAM SHAHA ROY *v* MEAJAN [18 W R, Cr, 47

Overruling SHEEB CHUNDER BHUTTACHARJEE *v* SAADUT ALLY KHAN . . 4 W. R., Cr, 12

40 ———— *Order under s 518, Criminal Procedure Code, 1872—Order to close a hât* —In a case in which the Magistrate passed an order under s 518, Criminal Procedure Code, for closing a hât on the ground that it was only a mile apart from another hat and a breach of the peace was not unlikely, the Sessions Judge recommended that the order should be set aside, s 518 applying only when a breach of the peace was imminent *Held* that under expl 2 s 518 the order could be made in all cases upon such information as satisfied the Magistrate, and the order was one which he had power to make BHOLANATH BOSE *v* KOMURUDDIN [20 W R., Cr, 53

41. ———— *Criminal Procedure Code, 1872, s 518.*—The operation of s 518, Criminal Procedure Code, was confined to cases where, in the opinion of the Magistrate the delay which would be caused by adopting a different procedure [illegible]

Magistrate without hearing the petitioner or giving him an opportunity of being heard, and simply on the foundation of a police officer's report directed the petitioner to abstain from holding a hât upon his land on a certain day because another party had long been accustomed to hold a hât on his land adjacent [illegible]

making an order under s 518 or any other order under the Criminal Procedure Code BANEE MADHUB GHOSE *v* WOOMA NATH ROY CHOWDHRY [21 W R, Cr, 26

See KALI NARAIN ROY CHOWDHRY *v* ABDOOL GUFFOOR KHAN . 22 W R, Cr, 24

42 ———— *Criminal Procedure Code 1872 s 518—Hât Removal of Order of Magistrate as to* —Where a Magistrate made an order under s 518 of the Code of Criminal Procedure (Act X of 1872) directing one of two rival hat proprietors to remove his hat to such a distance as to render it useless for the purposes for which it was established it was held that the order came within the purview of the Full Bench decision of *Gopi Mohun Mullick v Taramoni Chowdhrani I L R, 5 Calc 7 4 C. L R 309* and might be set aside as in excess of jurisdiction SHURUT CHUNDER BANERJEE *v* BAMA CHURN MOOKERJEE . 4 C L R, 410

43 ———— *Criminal Procedure Code, ss 134, 144—Penal Code s 188—Disobeying order of public servant—Trader at hat—Order prohibiting holding of hât* —A District Magistrate by an order made under s. 144 of the Criminal Procedure Code, after stating that it appeared that one *G G S* has recently established a hat at S in the vicinity of K, an old established hât, and held it on the same days and that in consequence of the establishment of the new hat and the en- [illegible]

hat on those days The order was duly made and promulgated but not strictly in accordance with s 134 of the Code, and the orders of Government made thereunder Notwithstanding the order one *P C A* was found exposing goods for sale as a trader at the hât on one of the prohibited days and he was thereupon charged with disobeying the order of the Magistrate and convicted of an offence under s. 188 of the Penal Code *Held* that the conviction was bad as *P C A* did not come within the description of the persons intended by the order to be prohibited from

NUISANCE—*continued.*

2. UNDER CRIMINAL PROCEDURE CODES —*continued.*

"holding" the hat, which referred to "holding" as owner or manager, not as a trader. *Held* also that the terms of s. 134 of the Code and the notification made by Government thereunder as to promulgation and issue of an order are directory, but an omission to follow strictly such direction, though it is an irregularity, does invalidate the order: where therefore it is shown that the order has been brought to the actual knowledge of the persons sought to be affected by it, such omission does not prevent the case coming within s. 188 of the Penal Code. IN THE MATTER OF THE PETITION OF PARBUTTY CHARAN AICH. PARBUTTY CHARAN AICH *v.* QUEEN-EMPRESS

[I. L. R., 16 Calc., 9

44. ———— **Order prohibiting use of musical instrument**—*Criminal Procedure Code, 1861, s. 62.*—A Magistrate cannot, under s. 62, Code of Criminal Procedure, in general terms forbid two parties to use any musical instrument in the neighbourhood of each other's house, though he may forbid their doing so for the purpose of mutual annoyance. IN RE RAM CHUNDER GEER GOSSAIN

[6 W. R., Cr., 40

45. ———— **Order stopping music while passing place of worship**—*Illegal order.*—An order of the Magistrate directing that all music should cease when any procession is passing a certain place of worship,—*Held ultra vires.* MUTHIALU CHETTI *v.* BAUPUN SAIB . . I. L. R., 2 Mad., 140

46. ————**Order prohibiting collection of rents**—*Dispute as to right to rent by rival proprietors—Criminal Procedure Code, 1872, s. 518.*—In case of a dispute between rival parties as to the payment of rents by tenants, a Magistrate has no power, under s. 518 of Act X of 1872, to make an order that no rents should be collected until such time as the right and title of one party should have been established by a competent Court. PROSUNNO COOMAR CHATTERJEE *v.* EMPRESS 8 C. L. R., 231

47. ———— **Order not to collect cesses**—*Criminal Procedure Code, 1861, s. 62.*—A Magistrate cannot pass an order, under s. 62 of the Code of Criminal Procedure, directing a certain person to abstain from a certain act, or to take order with certain property, unless he is satisfied that such direction on his part is likely to prevent, or tends to prevent, a riot or affray; nor can he pass an order under that section, calling upon a person to enter into recognizances not to collect certain cesses. IN THE MATTER OF LUCHMIPUT SINGH . 14 W. R., Cr., 3

48. ———— **Order to prevent obstruction**—*Criminal Procedure Code (Act XXV of 1861), ss. 62 and 308—Act X of 1872, ss. 518 and 521.*—When a case falls both under s. 62 and under s. 308 of the Criminal Procedure Code, the order of the Magistrate ought not to be absolute in the first instance. He should give the defendant an opportunity to show cause against the order. *Semble*—Whether a case comes under either of these two sections or under both, the order of the Magistrate ought to contain a clear statement of the facts upon the basis of which the Magistrate has made the order. IN THE MATTER OF HARIMOHAN MALO. IN THE MATTER OF JOYKRISTO MOOKERJEE

[1 B. L. R., A. Cr., 20 : 10 W. R., Cr., 5

49. ———— **Procedure**—*Case falling within scope both of s. 62 and s. 308, Criminal Procedure Code, 1861.*—In a case within s. 62 of the Code of Criminal Procedure, which also falls within the scope of s. 308 of the same Code, a Magistrate must conform to the more particular directions of the latter section, not to those of the former. KHAN CHAND *v.* COLLECTOR OF BOOLUNDSHAHUR

[1 N. W., Pt. 7, p. 110 : Ed. 1873, 197

50. ———— **Removal of obstruction**—*Criminal Procedure Code, 1861, s. 308—Joint Magistrate in charge of division.*—Proceedings under s. 308 of the Code of Criminal Procedure for the removal of obstructions may be originated by a Joint Magistrate in charge of a division of a district. IN THE MATTER OF THE PETITION OF PUNCHANUN BOSE

[15 W. R., Cr., 41

51. ———— *Jurisdiction of Joint Magistrate—Criminal Procedure Code, s. 308.*—The Magistrate of a district can alone hold proceedings in a case (such as the removal of a thatched house) under s. 308 of the Code of Criminal Procedure. The Joint Magistrate, while in charge of the Magistrate's office, has no such jurisdiction. IN THE MATTER OF GREESH CHUNDER CHUCKERBUTTY

[15 W. R., Cr., 36

52. ———— **Order as to future obstruction**—*Criminal Procedure Code, 1872, ss. 521, 526.*—S. 526, Criminal Procedure Code, 1872, does not enable a Magistrate to make any orders except such as are mentioned in s. 521, under which he can only deal with existing obstructions; the Magistrate has no power to direct what is to be done in the case of any future obstruction. KASHI CHUNDER CHUCKERBUTTY *v.* YAR MAHOMED . 21 W. R., Cr., 10

53. ———— **Removal of public nuisance**—*Criminal Procedure Code, 1861, s. 308—Summary order to police.*—In order to remove a public nuisance, a Magistrate is bound to proceed under s. 308 and following sections of Ch. XX of the Criminal Procedure Code, and is not competent to pass a summary order to the police to do so. QUEEN *v.* DAMODUR DASS . . . 3 N. W., 453

54. ———— **Nuisance in public place, Necessity for proof of**—*Criminal Procedure Code, 1872, s. 521.*—In a prosecution under s. 521, Criminal Procedure Code, it is necessary to show that the act complained of is a nuisance, and that it was committed in a thoroughfare or public place. MUZHUR ALI *v.* GUNDOWREE SAHOO

[25 W. R., Cr., 73

55. ———— **Order for removal of prostitute**—*Criminal Procedure Code, 1872, s. 521.*—The Code of Criminal Procedure (Act X of 1872),

NUISANCE—*continued*

2 UNDER CRIMINAL PROCEDURE CODES —*continued*

s 521 does not warrant a Mag strate s interference with a prostitute for the purp se of removing her from her dwelling house simply on the ground of her profession so long as she behaves herself orderly and quietly and creates no open scandal by riotous living NUNDO KUMAREE PESHAGUR v ANUND MOHUN GOOHO 24 W R., Cr, 68

56. ———— Order prohibiting cremation in certain place—*Criminal Procedure Code 1872, s 521*—An application to have it declared that a certain place could not be used for cremation purposes would not come under Act X of 1872 s 521 GUDADHUR KAMILA v BAIDANATH JANA 24 W. R, Cr, 6

57 ———— Private road with right of way over it—*Criminal Procedure Code, 1861 s 311 et seq*—S 311 of the Code of Criminal Procedure and the other sections of Ch XX of that Code referred to public thoroughfares and not to private roads over which a right of way has been established GOOROO CHURN GOOY v GUNGA GOBIND CHATTERJEE . . 8 W. R., 269

58 ———— Dispute as to right to water—In a case of a dispute as to the right to the use of water the Magistrate should not proceed as for a nuisance under Ch XX Criminal Procedure Code, 1861 QUEEN v MADHOO CHURN [13 W R., Cr, 51

59 ———— Obstruction of drain—*Criminal Procedure Code 1861 s 308*—The obstruction of a drain into which the se age of complainant's premises fell does not fall either under s 308 or 320 of the Code of Criminal Procedure but is matter for a civil suit and injunction IN RE TROYLAKNATH BOSE 5 W. R, Cr, 58

60 ———— Prevention of nuisance by public—*Criminal Procedure Code, 1861 s 308*—S 308 of the Criminal Procedure Code 1861 does not apply where a private individual charges the public with committing a nuisance in the exercise of an admitted right BECHARAM GHOROOEE v BOISTUBNATH BHOOYAN 14 W. R, 177

61 ———— Order for protection of public health—*Power of Magistrate—Criminal Procedure Code, 1872 s 521*—A Magistrate's powers under s 521, Code of Criminal Procedure, are confined to the instances specifically mentioned in that [illegible]

nuisance to be removed. IN THE MATTER OF THE PETITION OF SOOJAUT HOSSEIN 22 W. R., Cr, 19

PETAMBUR JUGI v NASARUDDY [25 W. R, Cr., 4

62. ———— Obstruction of thoroughfare—*Criminal Procedure Code, 1861, s 308*—In the case of a complaint under s 308 of the Code of Criminal Procedure, for the removal of an obstruction from a thoroughfare a Magistrate should first inquire if the road is a public one or not If he finds in the affirmative he has jurisdiction to proceed if in the negative he should withhold his hand and abstain from carrying out the order for the removal of the obstruction IN THE MATTER OF THE PETITION OF BECHARAM BHUTTACHARJEE [15 W. R., Cr., 67

63 — — *Private road*—*Criminal Procedure Code 1861, s 308*—Although a road may be a private one, a Deputy Magistrate has jurisdiction to make an order under s 308 Code of Criminal Procedure 1861, if it appears that s 320 applies to it—that is if it is open to the use of a certain class of persons who use it a few days before the occurrence of the dispute TARINEE CHURN SHAH v BONOMALI NAG 19 W. R., Cr, 33

64 ———— Order not to frequent public places—*Criminal Procedure Code (Act X of 1882), s 133*—A general order of the Magistrate directing the public not to frequent the roads and [illegible]

65 ———— Order of removal of burning ghat [illegible]

mation ground Duties of owner of—"Public place"—"Trade or occupation"—Form of Notice—A District Magistrate has strictly speaking no power under s 437 of the Criminal Procedure Code (Act X of 1882) to order a further inquiry into a proceeding under s 133 of the Code, which has been [illegible]

meaning of cl 2, s 133 of the Criminal Procedure Code (Act X of 1882) still a Magistrate will have jurisdiction to take action under that section if it is shewn that such a ghat or ground is in such an offensive state or that cremation is carried upon it in such an offensive manner, as to be a source of injury, danger, or annoyance to persons living in the vicinity *Queen Empress v Saminadha Pillai, I L R, 19 Mad 464*, and *Bamford v Turnley, 31 L. J, Q B (Ex Ch), 286*, referred to and discussed *Brindabun Chunder Roy v Chairman of Municipal Commissioners of Serampore, 19 W R Cr 309*, distinguished A private proprietor may be guilty of acts done on his private property, which may give rise to a public nuisance, the owner of a cremation ground may be held to create a "nuisance" if he allows the cremation of bodies upon that ground to be so performed as to annoy or endanger the lives and properties of persons living in

NUISANCE—*continued.*

2. UNDER CRIMINAL PROCEDURE CODES —*continued.*

the neighbourhood. The proprietor of a cremation-ground cannot be said to be carrying on any "trade or occupation" within the meaning of cl. 3, s. 133 of the Criminal Procedure Code. A Magistrate has no power under s. 133 of the Criminal Procedure Code to order the removal of a burning-ghat from its position, but he can direct a proprietor to "remove the nuisance," *i.e.*, to take such steps as would result in the cremation of corpses ceasing to be a nuisance to the public. INDRA NATH BANERJEE *v.* QUEEN-EMPRESS

[I. L. R., 25 Calc., 425
2 C. W. N., 113

66. ———— **Obstruction to public thoroughfare**—*Criminal Procedure Code (1882), ss. 133, 137, and 437—Further inquiry—Jurisdiction of Sessions Judge.*—In a complaint for alleged obstruction of a public thoroughfare, the Magistrate, after making preliminary inquiries, was of opinion that the alleged way was not a public thoroughfare, and refused to take action under s. 133 of the Code of Criminal Procedure. The Sessions Judge, being of opinion that the Magistrate should have gone on with the case, directed a further inquiry under s. 133. Such inquiry was held, and the Magistrate, without taking evidence in support of the complaint, made his conditional order under s. 133 absolute under s. 137. *Held* that the order of the Sessions Judge, directing a further inquiry, was *ultra vires*, there being no section of the Code under which an order for further inquiry could be made in the case, s. 437 having no application. *Held* also that the Magistrate, before whom the petitioner showed cause, should not have made his conditional order under s. 133 absolute without taking evidence upon the matter of the complaint: the words "evidence in the matter" meaning "in the matter of the complaint," and not simply evidence which the opposite party might offer. SRINATH ROY *v.* AINADDI HALDER

[I. L. R., 24 Calc., 395
1 C. W. N., 217

67. ——— **Excavations near a public place**—*Criminal Procedure Code (Act X of 1882), s. 133—Magistrate's power to order the excavations to be fenced, and not to be filled up.*—Under s. 133 of the Criminal Procedure Code (Act X of 1882), a Magistrate has no power to order excavations adjacent to a public way or any public place to be filled up; he can only order them to be fenced. IN RE SULEMANJI GULAM HUSEN . I. L. R., 22 Bom., 714

68. ——— **Obstruction in a public river**—*Criminal Procedure Code (Act X of 1882), s. 133—Meaning of "obstruction" as used in the section.*—S. 133 of the Code of Criminal Procedure (Act X of 1882) contemplates not only that the way, river, or channel where an unlawful obstruction is made, must be one of public use, but also that the obstruction must be of that public use. Where a dispute arose between the proprietors of two talukhdari villages situate on the banks of a river about the diversion of the course of the river by means of a dam and a trench made by one of them in the current of the river, and each talukhdar claimed the river as his own private property,—*Held* that the Magistrate had no jurisdiction to interfere under s. 133 of the Criminal Procedure Code (Act X of 1882). IN RE JASWATSANGJI FATESANGJI . I. L. R., 22 Bom., 988

69. ———— **Service of notice of orders under s. 133**—*Procedure—Criminal Procedure Code, 1882, s. 133.*—The mode of service of notice of an order under s. 133, considered. QUEEN-EMPRESS *v.* NARAYANA . . I. L. R., 12 Mad., 475

70. ———— **Order regulating boat traffic at a landing place**—*Criminal Procedure Code (Act X of 1882), s. 144—High Court's power of revision when order cannot be made under that section.*—An order regulating the boat traffic at a certain landing place of a river in the manner directed by the order passed in this case held to be not an order that is authorized by s. 144 of the Criminal Procedure Code. If the order be one that cannot be made under s. 144 of the Criminal Procedure Code, the mere fact of the order purporting to have been made under that section does not prevent the High Court from interfering with it in revision. *Abhayeswari Debi* v. *Sidheswari Debi, I. L. R., 16 Calc., 80,* and *Ananda Chundra Bhuttacharjee* v. *Stephen I. L. R., 19 Calc., 127,* followed. QUEEN-EMPRESS *v.* PRATAP CHUNDER GHOSE . . . I. L. R., 25 Calc., 852

[2 C. W. N., 593

71. ———— **Order against minor**—*Criminal Procedure Code (Act X of 1882), s. 144.*—An order purporting to have been made under s. 144, Criminal Procedure Code, to the effect that the petitioner should not go to a certain village or allow any of his servants, relations or friends to go there, is of the most indefinite character. A Magistrate cannot make such an order against a minor and hold him responsible for the acts of other persons. GOLAM MOHAMAD *v.* BHUBAN MOHAN MOITRA

[2 C. W. N., 422

72. ———— **Order purporting to be made under s. 144**—*Criminal Procedure Code (Act X of 1882), s. 144—Criminal Procedure Code, ss. 435, 439—Jurisdiction of the High Court to interfere with such an order—Ex-parte order—Property beyond the jurisdiction of the Court passing the order.*—*R* purchased some properties in execution of a mortgage-decree, and was put in possession of the same. The Joint Magistrate of Dacca, purporting to act under s. 144 of the Code of Criminal Procedure, ordered *R* or any of his subordinates to refrain from entering upon the lands and properties and directed him to show cause why the order should not be made absolute or rescinded. No cause being shown when the case was called on, the order was made absolute *ex-parte*. *Held* that, looking at the nature of the case and to the language of s. 144, Criminal Procedure Code, it was clear that the section does not apply to a case like the present and the order purporting to be made under that

NUISANCE—*continued.*

2 UNDER CRIMINAL PROCEDURE CODES —*continued*

section is therefore bad *Held,* further, that when an order though purporting to be made under s 144, does not properly come within the scope of that section the High Court's power of revision is not ousted by the provision in the last part of s 435 of the Code of Criminal Procedure *Ananda Chandra Bhattacharjee* v *Carr-Stephen I L R 19 Calc 127,* and *In the matter of Krishna Mohun Bysack, 1 C L R 58* followed. Where the party called upon to show cause appeared in Court ten minutes after an order absolute had been made *ex-parte* and applied to be heard but the Magistrate declined to do so it was held that the Magistrate ought under the circumstances to have heard the appli [illegible]

DASS v MANOOK [illegible]

73 ———— Jurisdiction of a Magistrate —*Criminal Procedure Code 1882 s 144 —Penal Code s 188* —Where a Sub Divisional Magistrate by an order purporting to have been made under s 144 Criminal Procedure Code, directed certain prostitutes and their zamindars under whom they held the land to remove the houses of the former from a particular site within 24 hours and to take up their quarters on the opposite side of a railway line on the ground that the visitors to the prostitutes have to cross the railway lines and thereby their lives would be endangered and for the disobedience of the said order directed prosecution under s 188 Penal Code —*Held* that s 144 Criminal Procedure Code, was not intended to apply to such cases and the orders referred to were *ultra vires* IN THE MATTER OF THE PETITION OF BIRESHWAR

[2 C W N, 70

74 ———— Order to abstain from certain act— *Criminal Procedure Code 1882 s 144* —A Deputy Commissioner passed an order under s 144 of the Criminal Procedure Code prohibiting a person from collecting or attempting to collect any rent either herself or through any of her officers or servants from the raiyats of two specified parganas and also from effecting any sale or putting in hand any transaction with regard to standing trees or collected timbers in an estate, or erecting any adda or kachari in such parganas for a period of two months Upon an application to set aside such order —*Held* that the acts which the petitioner was directed to abstain from were not acts which come within the meaning of the words *"a certain act" as used in s 144 of the Code of* Criminal Procedure, and that the order should be set aside ABAYESWARI DEBI v SIDHESWARI DEBI

[I L R 16 Calc, 80

75 ———— Order forbidding person from collecting rent—*Criminal Procedure Code (Act X of 1882), ss 144 439—Superintendence of High Court— Charter Act (24 & 25 Vict, c 104), s 15—Revision* —An order forbidding a person who claimed an interest in certain properties from collecting any rent from the raiyats on the properties does not fall within s 144 of the Code of Criminal Procedure Such an order is therefore made without jurisdiction and may be set aside under the High Court's powers of revision and superintendence conferred by s 439 of the Criminal Procedure Code and s 15 of the Charter Act Chapter XI of the Code of Criminal Procedure refers to interference or dealing of some kind with the land itself or with something erected or standing upon it and is directed to the prevention or direction by prompt order of some definite act on the part of an individual so that injury or nuisance may not be caused ANANDA CHANDRA BHUTTACHARJEE v STEPHEN I L R, 19 Calc, 127

76 ———— Magistrate's authority to prohibit the public generally from giving [illegible]

caste-dinners in the city The order was posted in different quarters of the city including the street in which the accused had his dwelling house A few days after the promulgation of this order the accused gave a feast in a private house to about 500 people of his caste He was thereupon convicted of disobedience to an order duly promulgated by a public servant under s 188 cl (*b*) of the Penal Code and sentenced to a fine of R35 *Held* reversing the conviction and sentence that the District Magistrate's order was both in its substance and its manner of publication illegal as being beyond the powers conferred by s 144 of the Code of Criminal Procedure The power of the Magistrate under that section is confined to the direction to a particular person to abstain from acts of a certain character or to the public generally to abstain from similar acts when frequenting a particular place QUEEN EMPRESS v LAKHMIDAS MAKANDAS

[I L R, 14 Bom, 165

77 ———— Order under Criminal Procedure Code (Acts X of 1882 and V of [illegible]

with, and the order may be made *ex parte* under sub s (2) Where therefore an order was passed [illegible]

admit of the service in due time of the notice upon the

NUISANCE—*continued.*

2. UNDER CRIMINAL PROCEDURE CODES —*continued.*

petitioners, the High Court set aside the order. MAHAMADDI MOLLAH *v.* EMPRESS 2 C. W. N., 747

78. ———— Power of Magistrate to determine rights and shares of parties—*Dispute regarding right to property—Civil Court—Code of Criminal Procedure (Act V of 1898), ss. 144 and 145.*—It is not because private parties or members of the same family dispute regarding their respective rights to land or crops, that a Magistrate is called upon to interfere. A Magistrate cannot take upon himself to decide questions of fact and Mahomedan law, so as to satisfy himself as to what are the actual rights of the parties to the lands in dispute. If he has good reasons to believe that such a dispute is likely to cause a breach of the peace, the law enables him to ascertain and maintain actual possession, or, if it is shewn that the members of the family are inclined to break the peace, he can bind them all over to keep the peace. Where there was a dispute between the parties, who were related to one another as to the amount of their shares to certain property which was claimed on the one hand to be joint in certain shares, and on the other hand to exclusively belong to the other party, and no proceedings had been taken under s. 145 of the Code of Criminal Procedure, nor was there anything to show that there was any probability of a breach of the peace, the Magistrate passed the following order: "The applicants must not plough more than 12 annas of the land." *Held* that such an order could not properly fall within s 144 of the Code of Criminal Procedure, as an order under that section could only be passed on some emergency and would have effect for only two months. The present order in its operation would have effect, and was intended to have effect, until the parties went to a Civil Court to settle their disputes, and no emergency was even suggested. That the order therefore was entirely without any authority of law and must be set aside. DAIMULLA TALUKHDAR *v.* MAHARULLA TALUKDAR [I. L. R., 27 Calc., 918

79. ———— Judicial proceeding—*Criminal Procedure Code, 1861, ss. 308, 404.*—An order made by a Magistrate under s. 308 of Act XXV of 1861 was not a judicial proceeding within the meaning of s. 404 of that Act. ASHBURNER *v.* KESHAV VALAD TAKU PATIL 4 Bom., A. C., 150

Contra, COLLECTOR OF HOOGHLY *v.* TARAKNATH MUKHOPADHYA 7 B. L. R., 449 : 16 W. R., 63

Such an order is now by special enactment made a judicial order.

80. ———— Procedure—*Rules in Criminal Code—Criminal Procedure Code, 1861, s. 308.*—Where a Magistrate has commenced proceedings under s. 308 of the Code of Criminal Procedure, he is not at liberty to proceed otherwise than in conformity with the rules laid down in Ch. XX of the Code. QUEEN *v.* PITTI SINGH . . 8 W. R., Cr., 37

81. ———— *Opportunity to show cause—Criminal Procedure Code (Act XXV of 1861), Ch. XX, ss. 308-315—Order of Magistrate.*—A Magistrate does not act legally under that chapter, if he does not first call on the person with whose property he proposes to interfere to appear and show cause. COLLECTOR OF HOOGHLY *v.* TARAK NATH MUKHOPADHYA 7 B. L. R., 449 : 16 W. R., 63

See QUEEN *v.* RAI LACHMIPAT SINGH [5 B. L. R., Ap., 81 : 14 W. R., Cr., 17

and IN RE KALIDAS BHATTACHARJEE [5 B. L. R., Ap., 82 note

82. ———— *Opportunity to show cause—Criminal Procedure Code (Act X of 1882), s. 133—Erection of buildings—Unconditional order.*—Every order made under s. 133 of the Code of Criminal Procedure, Act X of 1882, must appoint a time within which and a place where, the person to whom it is directed may appear before the Magistrate, and move to have the order set aside or modified. No unconditional order can be made under that section. EMPRESS *v.* BROJOKANT ROY CHOWDHRY . . . . I. L. R., 9 Calc., 637

83. ———— *Opportunity to show cause—Criminal Procedure Code, 1872, ss. 521, 525, 528.*—An order by a Magistrate under s. 521, Act X of 1872, for the removal of a nuisance does not become absolute until an opportunity is given to the person affected by it to show cause why the order should not be carried into effect. No order can be made under s. 528 of the Code unless there is imminent danger or fear of injury of a serious kind to the public involved in the case: and where a Magistrate who had made an order under s. 521 subsequently directed further inquiry to be made, it was held that he must be considered to have abandoned his proceedings under s. 528, and that he should have proceeded under s. 528 instead of fining the party charged under s. 188 of the Penal Code. QUEEN *v.* BROJENDRO LAL [21 W. R., Cr., 83

84. ———— *Obstruction in public way—Inquiry under s. 133, Criminal Procedure Code (Act X of 1882)—Previous orders when no bar to such inquiry.*—An application was made under s. 133 of the Criminal Procedure Code (Act X of 1882) for the removal of an obstruction in a public thoroughfare, but after a personal local inspection by the Magistrate and without any evidence being taken, the parties were referred to a civil suit, and the order was refused, the Magistrate holding that the way was not a public way. A civil suit was then filed, and during its pendency a second application was made under s. 133 of Act X of 1882, with a like object, which was refused on the ground that the civil suit was pending, and that there was no likelihood of a breach of the peace. The civil suit resulted in the way being held to be a public thoroughfare. A third application was then made under s. 133 to have the obstruction removed, but the Magistrate held that in face of the two previous orders he could not interfere. *Held* that the order of the Magistrate was wrong, upon the ground that he was bound to make such inquiry, and as there never had been any inquiry

NUISANCE—*continued*

2 UNDER CRIMINAL PROCEDURE CODES —*continued*

into the matter the first decision being no decision at all, but a mere dictum of the Magistrate upon a personal local investigation without hearing evidence, and thus not on judicial inquiry, and the second decision being based merely upon the pendency of the civil suit and the previous improper order, and that neither of these orders operated therefore as a bar to the Magistrate inquiring into the matter of the present complaint MAKHAN LALL SAHA v MAKHAN CHORA SAHA I. L. R., 11 Calc., 271

85 ———— *Order calling on party to appear and show cause Criminal Procedure Code 1861, s 308—Removal of nuisance—Filling up tank —Held* that a Magistrate cannot proceed to pass an order for the removal of a nuisance under s 308 of the Code of Criminal Procedure without calling on the party to show cause why the order should not be passed against him and without hearing the objections even if they are filed after the time fixed for their presentation but before he takes up the case A Magistrate's power to fill up a tank is by s 308 limited to having it fenced in, but where the tank is proved to be injurious to the community, he may under that section treat it as a public nuisance, and cause it to be filled up QUEEN v BISTOO CHURN CHUCKERBUTTY [10 W. R., Cr., 27

86 ———— *Appearance of party to show cause* —Where a person to whom an order has been issued under s 521 of the Code of Criminal Procedure appears to show cause against such order the Magistrate is bound to take evidence under s 525 of the Code IN THE MATTER OF MOHUR MANDAR 8 C. L. R., 431

87. ———— *Criminal Procedure Code 1882 ss 133 and 137—Magistrate's duty to take evidence under s 137* —Under s 137 of

that he acted illegally and *ultra vires* IN THE MATTER OF THE PETITION OF MAHADAJI SADASHIV TILAK I. L. R., 11 Bom., 375

88 ———— *Appearance of party to show cause—Criminal Procedure Code, 1861, ss 308, 404—Thoroughfare—Obstruction Removal of—Powers of Magistrate* —Where in a proceeding before a Magistrate under s 308 of the Code of Criminal Procedure, for the removal of an obstruc-

If the Magistrate makes the inquiry upon evidence before him he does not act without jurisdiction, or in excess of jurisdiction The High Court cannot set aside his order except for an error in law, or an excess of jurisdiction It is not a ground for interference that the Magistrate has come to an erroneous decision upon the evidence ANGELO v CARGILL [9 B. L. R., 417 18 W. R., Cr., 41

89 ———— *Appearance of party to show cause—Criminal Procedure Code (Act XXV of 1861) s 308—Order made without recording evidence* Where the Magistrate on the report of the Civil Surgeon of the district, passed an order under s 308 Act XXV of 1861 that the defendants should appear and show cause why certain tanneries should not be removed as being a nuisance and injurious to health and after the defendants had shown cause, the Magistrate went himself to the place and thereupon made his former order absolute, the High Court on an objection that the order was not legal it having been made without recording legal evidence refused to interfere QUEEN v ALA BUKSH [7 B. L. R., 482 note 12 W. R., Cr., 24

90 ———— **Slaughter house, Order prohibiting**—*Criminal Procedure Code 1861, s 308 —Power of High Court to interfere with order* —When a Magistrate under s 308 Criminal Procedure Code has ordered the suppression of a trade or occupation as a nuisance and injurious to the health of the community the High Court will not interfere, unless they find either that there was no reasonable evidence before the Magistrate of the trade being injurious to the health and comfort of the community, or that the cause shown was such as ought to have satisfied the Magistrate that his order for suppressing the trade was not reasonable and proper The Court take the findings of fact by the Magistrate to be correct unless they see that there is not on the record any evidence to warrant such findings. MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA v AMANAT ALI 7 B. L. R., 516

91 ———— *Criminal Procedure Code 1861 s 308* —The condition and the were e and it the dition than at any time since its establishment, the occupiers when summoned, refused to ask for a jury under s 31, Criminal Procedure Code *Held* the Magistrate was justified in suppressing the "trade or occupation" under s 308 MUNICIPAL COMMISSIONERS OF THE SUBURBS OF CALCUTTA v MAHOMED ALI [7 B. L. R., 499 16 W. R., Cr., 6

92. ———— *Private slaughter-house—Criminal Procedure Code, 1872 s 521* —Where a Deputy Magistrate had treated the slaughtering of cattle as a "nuisance" under s 521 of the Criminal Procedure Code and ordered its discontinuance within a private enclosure belonging to some Mahomedans —*Held* that, though the act complained of might be shocking to the prejudices of Hindus, it could not properly be regarded as a nuisance, and

NUISANCE—*continued.*

2. UNDER CRIMINAL PROCEDURE CODES —*continued.*

that, at any rate, the act being done in a private place and not on a thoroughfare, it could not be dealt with under s. 521. MUZHUR ALI *v.* GUNDOWREE SAHOO [25 W. R., Cr., 72

93. ———— Order to pull down house— *Criminal Procedure Code, 1861, s. 308—Report of jurors—Illegal order—Obstruction to public way.* —The Magistrate of a district issued an order, under s. 308 of the Code of Criminal Procedure, calling upon the petitioner to remove a building, on the ground that it was unlawful obstruction upon a high road. A jury of five persons was appointed by the Magistrate's successor, under s. 310, to report within fifteen days whether the order was reasonable and proper. The jurors, being without instruction, took different views as to the performance of their duties; but four of them visited the premises, and were unanimous in finding that the building complained of was not on the high road at all. Five days after receiving reports to this effect, the Magistrate issued another order to the petitioner, requiring him to pull down his house within fifteen days, as the jurors had made no report within the time prescribed. The petitioner showed cause under s. 313, but without effect, and the order was repeated. The proceedings were ultimately forwarded to the Sessions Judge, whose successor in office returned them with the remark that nothing appeared to have been done contrary to the law for the removal of nuisances. *Held* that the petitioner had shown sufficient cause to satisfy the Magistrate, under s. 313, that the order to pull down the house was not reasonable and proper. REG. *v.* DALSUKRAM HARIBHAI [2 Bom., 407: 2nd Ed., 384

94. ———— Nuisance caused by tank— *Criminal Procedure Code, 1861, s. 308—Removal of tank.*—The order of a Magistrate under s. 308, Code of Criminal Procedure, should be confined to a direction to remove the nuisance complained of. In the case of a tank, the Magistrate cannot order the proprietor to excavate it. The proprietor ought to have the discretion allowed him as to the mode in which he will remove the nuisance caused by the tank. If a Magistrate is compelled to direct the excavation of the tank, the actual cost of excavation can alone be charged against the proprietor, at whose disposition the soil taken out in the course of excavation must be placed. IN THE MATTER OF PAUL DOSS [10 W. R., Cr., 51

95. ———— Presumption as to place being public thoroughfare—*Finding of jury —Interference of High Court.*—The fact of a Magistrate taking action under s. 521 of the Code of Criminal Procedure is *primâ facie* sufficient to show that he considers the *locus in quo* to be a thoroughfare or public place, and if no objection is taken that it is not such, and the jury find that the order made under that section is reasonable and proper, the High Court will not interfere. IN THE MATTER OF IMANDI KHAN . . . . . 8 C. L. R., 399

96. ———— Functions of jury—*Obstruction—Public thoroughfare—Procedure.*—Before a Magistrate can make an order under s. 521 of the Code of Criminal Procedure to remove an obstruction from a path alleged to be a public thoroughfare, he must first, in a proceeding held under s. 532, have come to the conclusion that the path is open to the use of the public. The only functions which a jury appointed under s. 523 can exercise are to consider whether the order made by the Magistrate under s. 521 is reasonable and proper, it being no part of their duty to determine the rights of parties in property. *Held* therefore that where a Magistrate, through a mistaken view of the law, ordered the removal of an obstruction on a pathway under s. 521, and had further submitted this order to the consideration of a jury appointed under s. 523, before he had himself come to a conclusion whether such pathway was a public thoroughfare, the only course left open to him under such circumstances was to stay all proceedings initiated under s. 521, and take action under s. 532. IN THE MATTER OF THE PETITION OF CHUNDER NATH SEN [I. L. R., 5 Calc., 875: 6 C. L. R., 379

97. ———— Nuisance, Order for the removal of—*Criminal Procedure Code (Act V of 1898), s. 133—Bonâ fide claim—Jurisdiction of Magistrate and of jury.*—Where in a proceeding under s. 133, Criminal Procedure Code, the petitioner appeared and objected, on the following amongst other grounds, that there was no pathway and no right of way open to the public over the land which belonged to him,—*Held* that the Magistrate ought to have determined where the objection was *bonâ fide* before he took further action, and this was not a matter which could be properly considered by a jury. BUDHAI NATH *v.* NIL MAHANTO [4 C. W. N., 596

98. ———— Obstruction of public ways —*Dispute as to public right.*—The powers embodied in ss. 133, 134, 135, 136, 137 of the Criminal Procedure Code, 1882, with regard to the obstruction of public ways are not intended to be exercised where there is a *bonâ fide* dispute as to the existence of the public right. Where there is such a dispute, the Court should pass no order under those sections until the public right has been established by proper legal proceedings, civil or criminal. BASARUDDIN BHUIAH *v.* BAHAR ALI . . . I. L. R., 11 Calc., 8

99. ———— *Criminal Procedure Code, ss. 133, 135—Application for order to remove obstruction—Disputed title—Jurisdiction of Criminal Court.*—Where an application is made under s. 133 of the Criminal Procedure Code, 1882, calling on a person to remove an obstruction, and such person *bonâ fide* raises a question of title,—*Held* that the case then becomes one for a Civil Court. The section contemplates only an enquiry as to the existence or non-existence of the obstruction complained of, not an enquiry into disputed questions of title. ASKAR MEA *v.* SABDAR MEA . I. L. R., 12 Calc., 137

NUISANCE—*continued.*

2 UNDER CRIMINAL PROCEDURE CODES —*continued.*

LALL MIAH *v* NAZIR KHALASHI [I. L R, 12 Calc, 696

100 ——————— *Criminal Procedure Code (Act X of 1882), ss 133-137, Course to be followed in the administration of—Claim of title—Bonâ fides of claim of title, Right of Magistrate to enquire into—Jurisdiction* —The mere assertion of a claim of title made without reasonable ground, or honest belief in it or honest intention to support it, will not oust a Criminal Court of its jurisdiction under ss 133-137 of the Criminal Procedure Code In proceedings under s 133 of the Criminal Procedure Code with reference to obstructions to public ways it is open to the Magistrate to enquire into the *bonâ fides* of the claim, and where he decides against its *bonâ fides*, he must state reasons for his decision which will be subject to revision by the High Court Such a claim must be set up at or before the hearing, and not afterwards *In re Chunder Nath Sen, I L R, 5 Calc, 875 6 C L R 379, Chuni Lall v Ram Kishen Sahoo I. L R, 15 Calc, 460, Mutty Ram Sahoo v Mohi Lall Roy, 7 C L R, 433 I L R, 6 Calc 291,* and *R v Sandford 30 L T, 601,* referred to LUCKHEE NARAIN BANERJEE *v* RAM KUMAR MUKERJEE [I L R, 15 Calc, 564

101 ——————— *Criminal Procedure Code (1882), ss 133 138—Procedure* —Where a claim is raised to the land in respect of which proceedings are taken, the Magistrate, before proceeding further, should satisfy himself as to the *bonâ fides* of the claim *Luckhee Narain Banerjee v Ram Kumar Mukerjee, I L. R, 15 Calc, 564,* and *Queen Empress v Bissessur Sahu, I L R., 17 Calc, 562,* approved of UPENDRA NATH BHUTTACHARJEE *v* KHITISH CHANDRA BHUTTACHARJEE [I L R, 23 Calc., 499

102 ——————— *Criminal Procedure Code (Act X of 1882), ss 133, 137—Conditional order Jurisdiction—Bonâ fide question of title* —Where a party against whom a conditional order was made under s 133, Criminal Procedure Code, for an alleged obstruction of a public pathway, showed cause stat[illegible]
way and clai[illegible]
after taking
bonâ fide one
civil suit within 15 days in order to establish his claim and stayed proceedings in the meantime,—*Held* that the Magistrate was wrong in making the order directing the party to institute a suit in the Civil Court to establish his title without having first decided whether the public had a right over the alleged pathway. Ss 133 and 137 explained *Luckhee Narain Banerjee v. Ram Kumar Mukherjee, I L R., 15 Calc, 564,* and *Queen-Empress v. Bissessur Sahu, I L R, 17 Calc, 562,* referred to MUKUNDA LALL DEY *v.* HARIBOLE SHAHA [2 C.W.N, 554

103 ——————— *Criminal Procedure Code (V of 1898), ss 133-139—Bonâ fide question of title—Jurisdiction of Magistrate and* [illegible]

proper order, he directed the removal of the obstruction *Held* that the Magistrate should have found whether the objection taken was a *bonâ fide* one, and if he found it to be so he should have abstained from further action until the public right of way had been determined by a competent Court *Luckhee Narain Banerjee v Ram Kumar Mukherjee, I L R, 15 Calc, 564,* followed The jury was not competent to decide whether the way alleged to be obstructed was public or not, for the decision of this matter affected the right of the Magistrate to interfere under s 133, and it is only when the Magistrate is competent to pass an order under the section that a jury can be appointed to consider whether it is a reasonable and proper order Where the Magistrate had not expressly found that the objection was made *bonâ fide*, but the police report made by his order contained ample reason for such finding, the High Court set aside the order under s. 139 as *ultra vires* NASARUDDI *v* AKILUDDI [3 C W N 345

104 ——————— *Criminal Procedure Code (Act X of 1882), s 133—Question of title—Bonâ fides of claim of title, Right of Magistrate to enquire into—Jurisdiction of Civil Court* —In a proceeding under s 133 of the Criminal Procedure Code for the purpose of compelling the removal of an obstruction from a public way where a *bonâ fide* question as to the way being public is raised, there is no jurisdiction to make an order under the section and the question should be left for determination by the Civil Court To have this effect, however, the claim must be *bonâ fide*, and not a mere pretence to oust jurisdiction, and it is for the Magistrate to say whether the claim be *bonâ fide* or not. QUEEN-EMPRESS *v* BISSESSUR SAHU [I L R, 17 Calc, 562

105 ——————— *Criminal Procedure Code (Act X of 1882), ss 133 and 137—Bona fide question of title—Jurisdiction of Magistrate—Public nuisance* —When a question of title is *bonâ fide* raised, the Magistrate ought not to make an order under ss 133 and 137 of the Criminal Procedure Code, but should allow the party an opportunity for the determination of the question by a Civil Court The claim of title must, however, be *bona fide* and not a mere pretence to oust jurisdiction, and it is for the Magistrate to say whether the claim is a *bona fide* one or a pretence *Luckhee Narain Banerjee v Ram Kumar Mukerjee, I. L. R, 15 Calc, 564,* and *Queen-Empress v. Bissessur Sahu, I L R, 17 Calc., 562,* followed Although no length of enjoyment can legalize a public nuisance see *Municipal Commissioners of Calcutta v. Mahomed Ali,*

NUISANCE—*continued.*

2. UNDER CRIMINAL PROCEDURE CODES —*continued.*

7 B. L. R., 499—yet the long possession or enjoyment of what is said to be a nuisance may give to the objection of the person so possessing or enjoying it the character of a *bonâ fide* dispute as to title such as might have the effect of ousting the jurisdiction of the Magistrate under ss. 133 and 137 of the Code, and making the question a proper one for the Civil Court. PREONATH DEY *v.* GOBORDHONE MALO [I. L. R., 25 Calc., 278

106. ———— *Criminal Procedure Code (Act V of 1898), s. 133—Bona fide question of title.*—When the person called upon under s. 133 of the Criminal Procedure Code to show cause why an obstruction should not be removed from a public way denies that it is a public way, it is for the Magistrate to determine whether this is a *bonâ fide* objection, and he cannot, in spite of the objection (unless he determines that it is not *bonâ fide*), refer the matter to a jury. KAILASH CHUNDER SEN *v.* RAM LAL MITTRA . I. L. R., 26 Calc., 869

107. ———— *Criminal Procedure Code (Act X of 1882), ss 133 and 137—Reference by Sub-Divisional Magistrate to a second class Magistrate.*—A Sub-Divisional Magistrate having made a conditional order under s. 133 of the Criminal Procedure Code (Act X of 1882) against a person to remove an obstruction on a public thoroughfare, or appear and shew cause before a second class Magistrate, the said person appeared as directed, and the order was made absolute under s. 137. In revision the High Court held that, having regard to the penultimate paragraph of s. 133, the order was not illegal on the ground that it was made absolute by a Magistrate with second class powers other than the Magistrate who made the conditional order. *In re Narasimha, I. L. R., 9 Mad., 201,* approved of. PREONATH DEY *v.* GOBARDHONE MALO [I. L. R., 25 Calc., 278

108. ———— **Order requiring abatement of nuisance in certain time**—*Criminal Procedure Code, ss. 133, 137, 140.*—A Sub-Divisional Magistrate having made a conditional order, under s. 133 of the Code of Criminal Procedure, against a person to abate a nuisance or appear and show cause before a second class Magistrate why the order should not be enforced, the said person appeared as directed and the order was made absolute under s. 137. The second class Magistrate then issued a notice and order under s. 140, requiring the nuisance to be abated within a certain date. The District Magistrate having referred the case on the ground that the second class Magistrate had no jurisdiction to pass final orders in such cases,—*Held* that the order was not illegal. IN RE NARASIMHA [I. L. R., 9 Mad., 201

109. ———— **Application for jury**—*Obligation of Magistrate to appoint jury—Criminal Procedure Code, 1872, s. 521.*—When the person, on whom a notice has been issued under s. 521, Code of Criminal Procedure, applies for a jury, the Magistrate is bound to appoint one and cannot decide the matter by a local inquiry. IN THE MATTER OF MOTHOOR CHUNDER DOSS . 2 C. L. R., 509

110 ———— **Question referred to jury**—*Effect of referring a question not for jury to decide.*—*Held* that the agreement of the accused to refer the matter to a jury, which had given the case against them, in no way deprived them of their legal rights, or affected the fact that the question of the expediency of discontinuing the alleged nuisance, which had been referred to the jury, ought not to have been so referred. MUZHUR ALI *v.* GUNDOWREE SAHOO . . . . 25 W. R., Cr., 72

111.———— **Discontinuance of proceedings**—*Criminal Procedure Code, 1872, s. 521—Absence after enquiry of ground for proceeding further.*—When after inquiry a Magistrate finds that there is no sufficient cause for proceeding under s. 521 of the Code of Criminal Procedure, he is competent to let the matter drop. IN RE SHONAI PORAMANICK. SHONAI PORAMANICK *v.* JOGENDRO SHAHA . . . . . 1 C. L. R., 486

112. ———— **Withdrawal of case**—*Code of Criminal Procedure (Act X of 1872), s. 521.*—Where a Magistrate, in a proceeding under s. 521 of the Code of Criminal Procedure, satisfies himself that there is no necessity for proceeding further under that section, he is competent to let the matter drop. *In re Shonai Poramanick, 1 C. L. R., 486,* followed. IN THE MATTER OF THE PETITION OF ISSUR CHUNDER NATH. ISSUR CHUNDER NATH *v.* KALI CHURN NATH [I. L. R., 8 Calc., 883: 11 C. L. R., 235

113. ———— **Procedure after decision by jury**—*Criminal Procedure Code, 1872, ss. 523, 526—Order of Magistrate after decision of jury.*—A Magistrate who on the application of the party called on refers a matter as to whether a pathway is a thoroughfare or not for the consideration of a jury under s. 523 of the Criminal Procedure Code, 1872, is bound to make an order upon the report of the jury and in accordance with their decision as required by s. 526 of the Code. NYAN *v.* SHER ALI [22 W. R., Cr., 86

3. PUBLIC NUISANCE UNDER PENAL CODE.

114. ———— **Prescriptive right.**—No length of enjoyment can legalize a public nuisance. MUNICIPAL COMMISSIONERS OF THE SUBURBS OF CALCUTTA *v.* MAHOMED ALI [7 B. L. R., 499: 16 W. R., Cr., 6

115. ———— **Unfenced well**—*Penal Code, ss. 290, 43.*—Omission to fence a well on private ground within eight yards of a highway and open to it, is not punishable as a public nuisance. QUEEN *v.* ANTHONY . . . I. L. R., 6 Mad., 280

116. ———— **Omission to keep ponies from straying**—*Penal Code, s. 290.*—The omission of a person to keep his ponies from straying is not a

NUISANCE—*continued.*

3 PUBLIC NUISANCE UNDER PENAL CODE —*continued.*

public nuisance punishable under s 290 of the Penal Code JOYNATH MUNDUL *v.* JAMUL SHEIKH [6 W. R, Cr, 71

117. ———— Prostitute visiting dâk-bungalow—*Penal Code, s 290* —A prostitute, by visiting a dak-bungalow at the request of a person staying there, but against whom there is no evidence of any impropriety of speech or gesture or act or that she had occasioned annoyance to the public generally or to any persons who in the exercise of their public right, were lodging in the bungalow, is *not liable to be convicted under s 290 of the Penal* Code as having committed a public nuisance QUEEN *v.* BEGUM . . 2 N. W, 349

118. ———— Keeping a gaming-house—*Penal Code, ss 109, 290 —Abatement* —The lessee of a house, who permitted disorderly people to use it for gambling and thereby caused annoyance to the public, was convicted of an offence under the Penal Code, s 290, it appeared, however, that the accused had not engaged the house with the object of letting it, but as a gaming house *Held* that the conviction was right QUEEN-EMPRESS *v* THANDAVARAYUDU [I L R, 14 Mad., 364

119. ———— Soliciting for purposes of prostitution—*Penal Code (Act XLV of 1860), ss 268, 290* —*Held* that the soliciting for purposes of prostitution of passers-by on a public road is not a public nuisance as that term is defined in s 268 of the Penal Code QUEEN EMPRESS, *v* NANNI [I. L R, 22 All, 113

120. ———— Requisite proof—*Penal Code, s. 290—Offence under special law* —In a case of public nuisance under s 290 of the Penal Code, it

class of people The fact that there is a special law [illegible]

121. ———— Penal Code, *s 291—Previous conviction and order to desist* —Be- [illegible]

from continuing such nuisance IN THE MATTER OF MOHESH CHUNDER . . 20 W. R., Cr., 55

122. ———— Erection of shed for religious ceremonies—*Penal Code, ss. 268, 290—Annoyance to persons of other religion* —Certain Mahomedan inhabitants of a village erected, during the Muharram, a temporary shed on land forming part of the village site and placed in the shed a religious symbol They were convicted by a Magistrate under s 290 of the Penal Code of committing a public nuisance, on the ground that their act was certain to cause annoyance to the Hindu inhabitants of the village whose temples were in the vicinity, and was therefore calculated to lead to a breach of the public peace *Held* that the conviction was illegal MUTTUMIRA *v* QUEEN EMPRESS I L. R., 7 Mad., 590

123 ———— Repeating or continuing public nuisance—*Penal Code, s 291—Injunction by public servant not to repeat or continue—Criminal Procedure Code, 1882 ss 134 143 144, sch V, form 20* —To support a conviction under s 291 of the Penal Code, there must be proof of an injunction to the accused individually against repeating or continuing the same particular public nuisance It must be shown that the person convicted had on some previous occasion committed the particular nuisance, had been enjoined not to repeat or continue it, and had repeated or continued it The authority under which a Magistrate can order or enjoin a person against repeating or continuing a public nuisance is s 143 of the Criminal Procedure Code It is the infringement of this order that is punishable under s 291 of the Penal C de What is contemplated is an order addressed to a particular person. A Magistrate's powers to deal with public nuisances are contained in Chs X and XI of the Criminal Procedure Code Chapter XI is only properly applicable to temporary orders in urgent cases It is only in such cases that an order may be made *ex-parte*, [illegible]

quenting or visiting a particular place, to abstain from a certain act, but this provision does not apply to a proclamation directed not to the public generally frequenting or visiting a particular place, but to a portion of the community QUEEN EMPRESS *v* JOKHU . I. L R., 8 All., 99

124. ———— Annoyance to a particular [illegible]

plained to the Magistrate that the accused had made the air offensive, and caused annoyance The Magistrate found that the meat was not in an offensive state, but convicted the accused of committing a public nuisance, under s 268 of the Penal Code, on the ground that he had done an act by which several persons, being Jains were much annoyed, it being a well known fact that they had great repugnance to the killing of animals of every sort *Held,* reversing the conviction and sentence, that in this case no real damage or injury was caused to the public or to the people in general dwelling in the vicinity, and that it was a case of private ratli r than of public nuisance, and therefore not one falling within the purview of the criminal law. The applicant's act

NUISANCE—*continued.*

3. PUBLIC NUISANCE UNDER PENAL CODE —*continued.*

was an annoyance merely by reason of its hurting the feelings of the Jains who have a repugnance to the killing of animals, and did not constitute an offence under s. 291 of the Penal Code. *Muttumira v. Queen-Empress, I. L. R., 7 Mad., 590,* referred to. QUEEN-EMPRESS *v* BYRAMJI EDALJI

[I. L. R., 12 Bom., 437

125. ———— Obstruction to public highway—*Penal Code (1860), ss. 268 and 283—Encroachment.*—Whoever appropriates any part of a street by building over it infringes the right of the public *quoad* the part built over, and thereby commits an offence punishable under the Penal Code, s. 290, if not one punishable under s. 283. QUEEN-EMPRESS *v.* VIRAPPA CHETTI . I. L. R., 20 Mad., 433

126. ———— Obstruction on tidal navigable river—*Penal Code, ss. 268, 283, 290.*—Persons placing a bamboo stockade across a tidal navigable river for the purpose of fishing, although leaving in such stockade a narrow opening for the passage of boats, which passage was, however, kept closed except on the actual passage of a boat, were charged at the instance of a subdivisional officer with causing an obstruction under s. 283 of the Penal Code. *Held* that, although it was doubtful whether s. 283 applied to the case, they had committed an offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code. IN THE MATTER OF THE PETITION OF UMESH CHANDRA KAR . . . . I. L. R., 14 Calc., 656

127. ———— *Penal Code (Act XLV of 1860), ss. 268, 283-290.*—The mere fact of an encroachment on a tidal navigable river does not necessarily amount to a public nuisance so as to render a person causing such encroachment liable to punishment under s. 290 of the Penal Code, but there must be evidence that such encroachment causes one of the results specified in s. 268. *In the matter of the petition of Umesh Chandra Kar, I. L. R., 14 Calc., 656,* considered and commented on. The rule laid down in that case to the effect that any encroachment, however slight, on a tidal navigable river constitutes an offence under s. 290, is too widely stated. Each case should be determined on its own merits, and a decision arrived at as to whether the encroachment has caused an obstruction or not. The petitioner was charged with having erected a jag in a tidal navigable river, constructed of trees and dams, and thereby having committed offences under ss. 283 and 290 of the Penal Code. There was evidence to show that the jag was about 45 cubits long and 20 cubits broad, and that it was erected on the silted side of the river where it was about 300 hats broad, and that it did not obstruct the ordinary navigation of the river. The lower Court held that the jag could not but cause an obstruction, and convicted the petitioner under s. 283. *Held* that, as there was no evidence to show that the petitioner had caused any danger, obstruction, or injury to any person in any public way or line of navigation, the conviction under that section could

NUISANCE—*concluded.*

3. PUBLIC NUISANCE UNDER PENAL CODE —*concluded.*

not be sustained. *Held* further that he could not be convicted under s. 290, as there was no evidence of any obstruction to the ordinary navigation of the river. JUGAL DAS DALAL *v.* QUEEN-EMPRESS

[I. L. R., 20 Calc., 665

128. ———— Slaughter of kine by Mahomedans on their own property—*Penal Code, ss. 268, 290.*—A person wilfully slaughtering cattle in a public street, so that the slaughter could be heard and seen by the passers-by, would commit an offence punishable under s. 290 of the Penal Code. But where certain Mahomedans, for a religious purpose, killed two cows before sunrise in a private compound partly visible from a public road, and the killing of one of the cows only was witnessed by one Hindu, —*Held* that the circumstances proved did not amount to the commission of a public nuisance as defined in s. 268 of the Code. *Muttumira v. Queen-Empress, I. L. R., 7 Mad., 590,* referred to. QUEEN-EMPRESS *v.* ZAKIUDDIN

[I. L. R., 10 All., 44

129. ———— Disobedience to an order duly promulgated by a public servant—*Penal Code (1860), ss. 188 and 290—Cremation—Criminal Procedure Code, s. 143—Illegal order.*—On the 11th August 1894 the District Magistrate promulgated an order prohibiting the people of the village of Thirukodikaval from using their burning grounds situated on the southern bank of the Cauvery, and directing them to use other burning grounds which had been provided. On the 11th May 1895 certain persons, in defiance of this order, cremated a corpse at the spot interdicted, and were convicted under ss. 188 and 290 of the Penal Code, but the conviction under s. 188 was reversed on appeal. *Held* that, when persons entitled to use a particular spot dedicated for the communal purpose of cremation use it for that purpose in a manner neither unusual nor calculated to aggravate the inconveniences necessarily incidental to such an act as is generally performed in this country, they cannot be convicted of a public nuisance on the ground that their act caused material annoyance and discomfort to persons near the place on the occasion referred to. *Held* further that the order of the District Magistrate was not warranted by s. 143, Criminal Procedure Code, or by any other law, and must therefore be set aside. QUEEN-EMPRESS *v.* SAMINADHA PILLAI

[I. L. R., 19 Mad., 464

NUNCUPATIVE WILL.

See DECLARATORY DECREE, SUIT FOR—REVERSIONERS . I. L. R., 7 All., 163

See DECLARATORY DECREE, SUIT FOR—SUITS CONCERNING DOCUMENTS.

[I. L. R., 1 All., 688
L. R., 5 I. A., 87

NUNCUPATIVE WILL—*concluded*

See CASES UNDER HINDU LAW—WILL—NUNCUPATIVE WILL

See WILL—NUNCUPATIVE WILLS
[3 W R, 63
I L R., 24 Bom., 8

O

OATH.

See WITNESS—CIVIL CASES—SWEARING OR AFFIRMATION OF WITNESSES
[1 Mad., 99 note
2 Mad, 246

See WITNESS—CRIMINAL CASES—SWEARING OR AFFIRMATION OF WITNESSES
[13 W R, Cr, 17

———— **Administration of, by arbitrators**

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—AWARD I. L R., 1 All, 535

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE I L R., 1 All, 535

———— **Agreement to take—**

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE
[4 Mad., 422
4 Mad Ap, 3
I L R, 12 Mad, 483
I L R, 14 All, 141

———— **Power to administer—**

See MUNSIF JURISDICTION OF
[I L R, 11 Mad, 375

1 ———— *Power to administer oath—Act X of 1861—Mad Regs III of 1832, s 6 and VI of 1816, s 27*—Since the repeal of s 7 of Madras Regulation VI of 1816 and s 6 of Madras Regulation III of 1802 by Act X of 1861, the Court has no longer the power of settling cases by "oath" ANONYMOUS . 4 Mad, Ap, 3

2. ———— *Non-judicial proceeding—Charge of giving false evidence on*—In a non-judicial proceeding the object of which is to discover the writer of a scandalous petition, it is not competent for the Magistrate conducting the proceeding to administer an oath. The High Court reversed a conviction for giving false evidence where an oath was administered under the above circumstances REG v JIBHAI VAJA . . . 11 Bom, 11

OATHS ACT (VI OF 1872)

———— **Omission to take oath or taking it irregularly**—Under Act VI of 1872, s 5 the omission to take any oath or any irregularity in the form in which it is administered, does not invalidate the proceedings QUEEN v TARINEE CHURN BOSE
[21 W R., Cr, 31

OATHS ACT (X OF 1873)

———— s 5.

See FALSE EVIDENCE—GENERAL CASES
[I L R, 16 Mad., 421
I L R, 27 Calc, 455

———— s 6

See FALSE EVIDENCE—GENERAL CASES
[I L R., 19 Calc, 355

1. ———— and s 13—*Witness—Omission to take evidence on oath or affirmation*—S 6 of the Oaths Act (X of 1873 imperatively re-

years of age is inadmissible if it has been advisedly recorded without any oath or affirmation. *Queen v Sewa Bhogta, 14 B L R, 294* dissented from The nature of judicial oaths and affirmations and the history of Indian legislation on the subject discussed QUEEN EMPRESS v MARU
[I L R., 10 All., 207

2 ———— *Omission to take evidence on oath or affirmation—Evidence Act (I of 1872), s 118—Competency of persons of tender years*—The competency of a person to testify as a witness is a condition precedent to the administration to him of an oath or affirmation and is a question distinct from that of his credibility when he has been sworn or has affirmed In determining the question of competency the Court, under s 118 of the Evidence Act has not to enter into inquiries as to the witness's religious belief, or as to his knowledge of the consequences of falsehood in this world or the next It has to ascertain, in the best way it can whether, from the extent of his intellectual capacity and understanding he is able to give a rational account of what he has seen or heard or done on a particular occasion If a person of tender years or of very advanced age can satisfy these requirements, his competency as a witness is established. Having regard to the language of the Oaths Act (X of 1873) a Court has no option, when once it has elected to take the statements of a person as evidence but to administer to such person either an oath or affirmation as the case may require *Queen Empress v Maru, I L R, 10 All, 207,* referred to In a trial for murder before the Court of Session, one of the witnesses was a boy of twelve years of age, and in answer to questions put by the Sessions Judge, he said that he worshipped Debi and understood the difference between truth and falsehood; that he did not know what would be the consequences here and hereafter of telling lies, but that he would tell the truth The Sessions Judge proceeded to record the boy's statement but without administering to him any oath or affirmation *Held* that there was nothing in law to sanction this procedure on the part of the Judge The High Court required the attendance of the boy and of the accused, and, having satisfied itself of the competency of the former to depose as a

OATHS ACT (X OF 1873)—*continued.*

witness, examined him as to his account of what had occurred. QUEEN-EMPRESS v. LAL SAHAL [I. L. R., 11 All., 183

1. ———— s. 8—*Oath purporting to affect a third person—Revocation of consent to be bound by statement made on oath taken in a particular form.*—The plaintiff in a civil suit offered to be bound by the statement which the defendant might make on oath holding the arm of his son. The defendant accepted the proposal, took the required oath, and made a statement which had the effect of defeating the plaintiff's claim When the defendant came into Court to take the oath, the plaintiff attempted to revoke his proposal, but alleged no further reason than that he did not understand what he had intended, and did not think the defendant would speak the truth. *Held* that the form of oath above indicated ought not, having regard to s. 8 of Act X of 1873, to have been administered; but as it had been administered, and was a form of oath especially binding upon Hindus, the statement made upon it should be accepted. *Held* also that, when one party to a suit offers to be bound by the oath of the other party, and such other party accepts the proposal, the party so offering to be bound should not be allowed to revoke his proposal except upon the strongest possible grounds proved to the satisfaction of the Court to be genuine grounds for revoking the proposal. *Lekh Raj Singh* v. *Dulhma Kuar, I. L. R., 4 All., 302*, referred to. RAM NARAIN SINGH v. BABU SINGH [I. L. R., 18 All., 46

2. ———— and ss. 9, 10, 11—*Applicability to criminal proceedings—"Party to a judicial proceeding" does not include complainant or accused.*—The provisions of ss. 8-11 of the Oaths Act (X of 1873) do not apply to criminal proceedings. The expression "party to a judicial proceeding" in s. 8 of the Act does not include either the complainant or the accused in a criminal case. In the course of a trial on a charge of assault the complainant's pleader agreed to be bound by the evidence on oath of a material witness, provided he swore on the Gita (a sacred book of the Hindus). The witness took the required oath, and stated that there was no assault, but merely a taking held of the hand. The Magistrate did not believe this witness, and proceeded with the trial. He convicted the accused on the other evidence in the case, and sentenced him to a fine of R25. *Held* that the Magistrate was not bound to decide the case on the evidence of the witness who swore the special oath. QUEEN-EMPRESS v. MURARJI GOKULDAS . . . . I. L. R., 13 Bom., 389

———— ss. 8-12.

See APPEAL—ARBITRATION. [I. L. R., 4 All., 283

See ARBITRATION—REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION. [I. L. R., 4 All., 302

———— s. 9.

See RE JUDICATA—ADJUDICATIONS. [I. L. R., 5 Mad., 259

OATHS ACT (X OF 1873)—*continued.*

1. ———— *Consent by guardian of a minor defendant to accept the oath of the plaintiff.*—It was agreed by the defendants who were majors, and by the father and guardian of a minor defendant on his behalf, that one of the issues in a suit should be determined under the Oaths Act, s. 9, by the oath of the plaintiff. The oath was taken, and a decree was passed accordingly. *Held* that the minor defendant was bound by the consent of his guardian since there was no evidence o fraud or gross negligence on the part of the latter, although the Court had not sanctioned the agreement under s. 462, Civil Procedure Code. CHENGALREDDI v. VENKATAREDDI [I. L. R., 12 Mad., 483

See ARUNA CHALLAM v. MURUGAPPA [I. L. R., 12 Mad., 503

2. ———— *Civil Procedure Code (Act XIV of 1882), s. 462—Offer by guardian of minor defendant to be bound by oath of plaintiff*—The offer of the guardian of a minor defendant on behalf of the minor to abide by the deposition to be given by a plaintiff on oath taken in a particular form under the Indian Oaths Act stands on a very different ground from an agreement or compromise contemplated by s. 462 of the Civil Procedure Code. In such a case the minor is bound by the consent of his guardian, although given without the leave of the Court, provided that there is no fraud or gross negligence on the part of the guardian. *Chengalreddi* v. *Venkatareddi, I. L. R., 12 Mad., 483*, approved of. SHEO NATH SARAN v. SUKH LAL SINGH [I. L. R., 27 Calc., 229 4 C. W. N., 327

3. ———— *Vakil, authority of, to bind client—Pleader—Agent holding a power-of-attorney authorizing him to act and appear for a party to a suit.*—An agent, holding a power-of-attorney authorizing him to act and appear for a party to a suit, cannot bring the suit to a close by offering to be bound by the oath of the opposite party in a particular form. Nor can a pleader so bind his client. Under the Indian Oaths Act (X of 1873), no person but the party himself can make such an offer as is contemplated in s. 6. SADASHIV RAYAJI v. MARUTI VITHAL . . I. L. R., 14 Bom., 455

4. ———— *Offer by one party to be bound by oath of other party if taken in a certain form—Acceptance of the offer—Subsequent retractation of the offer.*—The plaintiff offered under s. 9 of the Indian Oaths Act (X of 1873) to be bound by the oath or affirmation of the defendant in a prescribed form upon a certain point. The defendant accepted the offer and took the oath. *Held* that the plaintiff could not retract his offer to be bound by the oath. ABAJI v. BALA . I. L. R., 22 Bom., 281

5. ———— and ss. 10 and 11—*Offer by party to be bound—Conclusive proof of the matter stated.*—Defendant in a suit, before trial, filed a petition under s. 9 of the Indian Oaths Act, 1873, to the effect that, if the plaintiff should make an oath according to law regarding certain facts, "this defendant will forfeit his right of contesting

OATHS ACT (X OF 1873)—*continued*

this suit " He subsequently desired to withdraw the petition on insufficient grounds but the plaintiff took the oath and on the strength thereof all the issues were decided, and a decree passed, in plaintiff's favour The suit was however, remanded, on

who has agreed to the administration of an oath

so proved But if the facts so proved are not sufficient for the decision of the case such further facts as are necessary should be proved by evidence adduced on both sides. The Act provides not for the adjustment of a suit in an arbitrary way but merely for the conclusive proof of facts, such facts if not sufficient for the decision of the suit, should be supplemented by facts duly proved by evidence, and (4) that the facts proved by the special oath are conclusively proved and any further evidence that may be taken should be limited to matters not proved by the oath THOYI AMMAL *v* SUBBAROYA MUDALI I L R, 22 Mad, 234

——— ss 10, 11—*Referee's depositions inadequate for decision of question referred—Appeal after death of referee—Practice* —Where a case had been decided under the provisions of ss 10 and 11 of the Oaths Act (X of 1873) with reference

the case should be remanded to the lower Court for disposal according to the usual procedure MAHABIR PRASAD MISR *v* MAHADEO DAT MISR [I. L. R., 13 All., 366

——— s 11

See RES JUDICATA—ADJUDICATIONS [I L R, 5 Mad., 259

1 ——— *Agreement to be bound by oath—Judgment on such agreement—Mad Reg III of 1806, s 6* —The mere agreement of one of the parties to a judicial proceeding to be bound by the oath of the other is in itself no adjustment of the suit If the matter stated in the agreement is sufficient as the grounds of a decision, a judgment may be passed for then it would be conclusive evidence under the Oaths Act The difference between Regulation III of 1802, s 6 and the Indian Oaths Act, 1873, s. 11, discussed VASUDEVA SHANBOG *v.* NARAINA PAI [I. L. R., 2 Mad., 356

OATHS ACT (X OF 1873)—*continued*

2 ——— *Agreement to be bound by oath of a particular person—Discretion of Court* —The Oaths Act (X of 1873) does not constrain a Court to pass a decision in favour of a particular party If a party to a suit says he will be bound by the oath of a particular person, s 11 of the Act only means that *pro tanto* he will be bound, *i e* so far as the matter of that evidence is concerned, and that evidence will be conclusive as to its truth as against him throughout the whole of the litigation but it in no way compels the Court trying the case to accept it as conclusive *Vasudeva Shanbog* v *Naraina Pai I L R, 2 Mad, 356* approved MUHAMMAD ZAHUR *v* CHEDA LAL [I L. R., 14 All, 141

3 ——— and s 8—*Defendant examined in usual form* —S 11 of the Oaths Act (X of 1873) is not applicable to the evidence of a defendant who has been examined under the usual form of oath, and not under any oath or form of affirmation under s 8 SREEMUNT RAM TOTADAR *v* RAM KISHEN SEN 22 W R, 387

1 ——— s 12—*Refusal to take the oath—Presumption* —Where the Lower Appellate Court at the instance of the defendant called upon the plaintiff to swear on the Koran that the defendant's case was false which the plaintiff refused to do *Held* that the lower Appellate Court was justified in raising a presumption from the plaintiff's refusal that his case was false, the Court having power to act as it did under the provisions of Act X of 1873 ISSEN MEAH *v* KALARAM CHUNDER NAW [2 C. L R, 476

2 ——— *Refusal to take an oath—Effect of such refusal—Estoppel—Evidence* —

share of the rent In the course of the case he

plaintiff's refusal to take the proposed oath and the defendant's readiness to take it was, under the cir-

claim It was merely a piece of conduct which was

OATHS ACT (X OF 1873)—*continued.*

evidence to be considered in the case together with the other evidence. In this case there was abundant other evidence, all of which was in favour of the plaintiff, and his refusal to take the oath did not necessarily constitute a sufficient reason to set aside that evidence. A party who makes an oath as prescribed by his adversary confers by so doing on his statement the character of conclusive proof, but his mere refusal to make the oath does not, under the terms of the Oaths Act (X of 1873), justify any legal presumption against him. Such refusal is to be considered merely as a piece of conduct to be considered along with the other evidence. CHINTAMAN BHAT *v.* SHRINIVAS BHAT

[I. L. R., 22 Bom., 680

————s. 13.

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUNDS FOR SETTING THEM ASIDE . I. L. R., 1 All., 535

See FALSE EVIDENCE—GENERAL CASES

[I. L. R., 19 Calc., 355

1. ———— *Omission to take evidence on oath or affirmation.*—The word "omission" in s. 13 of Act X of 1873 includes any omission, and is not limited to accidental or negligent omissions. JACKSON, *J.*, dissented. QUEEN *v.* SEWA BHOGTA

[14 B. L. R., F. B., 294 : 23 W. R., Cr., 12

2. ———— *Omission to take evidence on oath or affirmation.*—S. 13 of Act X of 1873 does not render the evidence of a child of nine years of age inadmissible, if the evidence has been advisedly, and not by an omission, recorded without any oath or affirmation. QUEEN *v* ANUNTO CHUCKERBUTTY

[14 B. L. R., 295 note : 22 W. R., Cr., 1

3. ———— *Competent witness.*—The accused was charged with throwing *B* and *C* down a well. She was charged with the murder of *B* under s. 312 of the Penal Code, and on that charge she was tried and acquitted. Thereupon the Joint Magistrate, without holding any further preliminary inquiry, committed her on a charge, under s. 307, of attempting to murder *C*. The only eye-witness of the offence, according to the Sessions Judge, was a child, and as she did not understand the nature of an oath or solemn affirmation, her evidence was taken on simple affirmation. The jury found the prisoner guilty, and she was sentenced to ten years' transportation. *Held* that the omission to administer either an oath or solemn affirmation, although knowingly made, did not render the child's evidence inadmissible. QUEEN *v.* ITWARYA . 14 B. L. R., 54 : 22 W. R., Cr., 14

4. ———— *Omission to swear jury in sessions case.*—*Quære*—If the jury in a sessions case are not sworn, whether the omission is one which would be covered by s. 13 of the Oaths Act, 1873. QUEEN *v.* RAMSODOY CHUCKERBUTTY

[20 W. R., Cr., 19

5. ———— *Omission to administer an oath or affirmation—Witness, Competency of—Child, Evidence of.*—At a trial on a charge of murder one of the witnesses for the prosecution was a girl about ten years old. The Sessions Judge allowed her to be examined without administering any oath or affirmation, as it was found that she did not understand the nature of either. The prisoner's counsel objected to the admissibility of her statements, but the objection was overruled and the prisoner was convicted of murder and sentenced to death. *Held per* JARDINE, *J.*, that the girl's evidence was admissible. The "omission" referred to in s. 13 of the Indian Oaths Act (X of 1873) includes any kind of omission, and is not restricted to accidental or negligent omissions. *Queen v. Sewa Bhogta, 14 B. L. R., 294 : 23 W. R., Cr., 1*, approved; and *Queen-Empress v. Maru, I. L. R., 10 All., 207*, dissented from. QUEEN-EMPRESS *v.* SHAVA I. L. R., 16 Bom., 359

OATHS ACT (X OF 1873)—*concluded.*

6. ———— and s. 6—*Examination as witness of a child of tender years—Intentional omission to administer affirmation.*—A child, aged about six years, was called as a witness in a Sessions Court. The Judge satisfied himself of his intellectual capacity to give evidence, but intentionally omitted to administer an affirmation on the ground that he was of too tender years to render any attempt to bind his conscience expedient or practically operative. The Judge did not examine the child for the purpose of eliciting whether he knew it was wrong not to tell the truth, or whether he knew the difference between right and wrong, but he told him to tell the truth and permitted him to be examined as a witness. *Held* that the child should have been affirmed. *Quære*—Whether the omission to affirm the child having been intentional on the part of the Judge, the case came within the provisions of Oaths Act, s. 13. QUEEN-EMPRESS *v.* VIRAPERUMAL I. L. R., 16 Mad., 105

————s. 14.

See EVIDENCE ACT, s. 132.

[I. L. R., 12 Bom., 440

See FALSE EVIDENCE—GENERAL CASES.

[I. L. R., 19 Calc., 355
I. L. R., 19 Mad., 375

See MAGISTRATE—POWERS OF MAGISTRATES . . I. L. R., 16 Mad., 421

"OBJECT" HELD SACRED.

See RELIGION, OFFENCES RELATING TO.

[I. L. R., 17 Calc., 852

OBJECTION.

See CASES UNDER APPEAL — OBJECTIONS BY RESPONDENTS.

See CASES UNDER PRIVY COUNCIL, PRACTICE OF — PRACTICE AS TO OBJECTIONS.

See CASES UNDER REMAND — OBJECTIONS TO FINDINGS ON REMAND.

———— taken for first time on appeal.

See CASES UNDER APPELLATE COURT — OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

OBJECTION—*concluded*

See CASES UNDER JURISDICTION—QUESTION OF JURISDICTION

See CASES UNDER PRIVY COUNCIL PRACTICE OF—PRACTICE AS TO OBJECTIONS

See CASES UNDER SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL

OBJECTS AND REASONS FOR ACT

See STATUTES CONSTRUCTION OF
[11 Moore's I A, 551
I L R, 8 Bom, 241
I L R, 14 Calc, 145
I L R 19 Calc, 544
I L R, 21 Calc, 732
I L R, 22 Calc, 788
L R, 22 I A, 107

OBSCENE PUBLICATION

1 ———— "Obscene" Meaning of the word—*Penal Code (Act XLV of 1860) ss 292 and 293*—In interpreting the word 'obscene' in ss 292 and 293 of the Penal Code the Courts may rightly follow *Reg v Hicklin, L R 3 Q B 360* where Lord COCKBURN *C J* says "I think the test of obscenity is this, whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall" Whether a publication is obscene is a question of fact QUEEN EMPRESS v PARASHRAM YESHWANT
[I L R, 20 Bom, 193

2 ———— Destruction of book by order of Criminal Court—*Penal Code s 293 Act X of 1872 (Criminal Procedure Code), s 418*—A book may be obscene, within the meaning of the Penal Code although it contains but a single obscene passage *The defence to a charge of selling and distributing certain obscene books was that they were sold and distributed in good faith in prosecution of a religious controversy* *Held* that the excessive obscenity of such books took away the protection which their controversial nature might otherwise have afforded them Also that the intention of the seller and distributor must be gathered from the character of the matter contained in such books As

OBSCENE PUBLICATION—*concluded*

not empowered by that section to make such an order EMPRESS OF INDIA v INDARMAN
[I L R, 3 All, 837

OBSTRUCTION

———— Removal of—

See CASES UNDER NUISANCE

———— to flow of water

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—WATER

See LIMITATION ACT, 1877 s 26 (1871, s 27) I L R, 1 Mad, 335

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHTS OF WATER

See CASES UNDER RIGHT TO USE OF WATER

———— to navigation

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I L R, 14 Calc, 656
[I L R, 20 Calc, 665

———— *Beng Act V of 1864*—To render a person liable to punishment under *s 16* Bengal Act V of 1864 for obstructing the line of navigation of a Government canal it must be shown that he wilfully obstructed the navigation QUEEN v KABIL MANJI 2 B L R, A C, 23

S C QUEEN v KALIL 11 W R, Cr, 18

———— to rights of property

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY

See CASES UNDER RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY

———— to road or public way

See BENGAL MUNICIPAL ACT 1884 s 217
[I L R, 17 Calc, 634

See CASES UNDER JURISDICTION OF CIVIL COURT—PUBLIC WAYS, OBSTRUCTION OF

See MADRAS POLICE ACT 1859 *s 48*
[I L R, 4 Mad, 235

See MADRAS POLICE ACT 1888 s 71
[I L R, 14 Mad., 223

See MAGISTRATE—GENERAL JURISDICTION
[I L R, 15 Mad., 83

See PENAL CODE s 283
[I L R. 4 Mad., 235
I L R., 25 Calc, 275

See CASES UNDER RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY

OCCUPANCY.

See RIGHT OF OCCUPANCY.

OCCUPIERS AND OWNERS.

———— **Fine imposed on—**

See BENGAL MUNICIPAL ACT, 1864, s. 67.
[8 B. L. R., Ap., 9
3 W. R., Cr., 33, 57
8 W. R., Cr., 45

OFFENCE.

———— **by alien in Foreign State.**

See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS.
[I. L. R., 16 Bom., 178

———— **during journey.**

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY.

———— **in contempt of Court.**

See CASES UNDER CONTEMPT OF COURT.

See CASES UNDER CRIMINAL PROCEDURE CODES, s. 476 (1872, s. 471).

See CASES UNDER CRIMINAL PROCEDURE CODES, s. 487 (1872, s. 473).

———— **Specification of—**

See WARRANT OF ARREST—CRIMINAL CASES . . **6 B. L. R., Ap., 129**

OFFENCE BEFORE PENAL CODE CAME INTO OPERATION.

1. ———— **Murder**—*Beng. Reg. IV of 1797—Act XVII of 1862—General Clauses Consolidation Act (I of 1868), s 6—Repeal of statute, Effect of—Right of defence to High Court.*—Up to the 1st January 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII of 1862 the Regulations prescribing punishments for offences were repealed "except as to any offence committed before the 1st January 1862." By the same Act it was declared that no person who should claim the same should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations By s. 6 of Act I of 1868, the repeal of an Act does not affect anything done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section, the repeal of Act XVII of 1862 by Act VIII of 1868 and Act X of 1872 did not, in respect of offences committed before the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I of 1868. *Held* accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulations. *Held* also that, inasmuch as such right as the right of reference given by s. 3 of Regulation IV of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such right. EMPRESS OF INDIA *v.* MULUA
[I. L. R., 1 All., 599

2. ———— *Beng Reg. IV of 1797—Act XVII of 1862—General Clauses Consolidation Act (I of 1868), s. 6—Repeal of statute, Effect of.*—The prisoner was found guilty and sentenced under Regulation IV of 1797 to transportation for life, for a murder committed in 1861, before the Penal Code came into operation, and the case was sent up to the High Court to confirm the sentence. Regulation IV of 1797 was repealed by Act XVII of 1862, and that Act was wholly repealed by Acts VIII of 1868 and X of 1872. *Held*, on reference to a Full Bench, that the conviction was illegal, s. 6 of Act I of 1868, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable. EMPRESS *v.* DILJOUR MISSER . . . **I. L. R., 2 Calc., 225**

3. ———— **Perjury or forgery**—*Act I of 1848—Sanction in case of perjury or forgery.*—A case of perjury or forgery alleged to have been committed in a case before a Civil Court before January 1st, 1862, can be dealt with only under the old Procedure Law (Act I of 1848), according to which the sanction of the Court before which the offence was alleged to have been committed was necessary before criminal proceedings can be instituted. IN RE RADHAJEEBUN MOOSTAFFEE
[5 W. R., Cr., 8: 1 Ind. Jur., N. S., 97

4. ———— **Forgery**—*Procedure in case of forgery.*—In a case of filing a forged vakalutnamah in a Civil Court before January 1st, 1862, the prosecution can only proceed in the ordinary way, *i.e.*, by way of commitment by a Magistrate on the complaint of the party aggrieved. QUEEN *v.* ENAYET HOSSEIN . . . . **5 W. R., Cr., 43**

5. ———— **Mortgage of property previously mortgaged**—*Bom. Reg. XIV of 1827—Religious Law of Hindus.*—Regulation XIV of 1827 (Bombay), s. 1, cl 1, art. 7, and the Religious Law of the Hindus, are not applicable to the case of a party charged with mortgaging his house a second time previously to redeeming the same from a prior mortgagee. REG. *v.* ANNAJI VALAD GOVINDRAM
[1 Bom., 93

OFFENCE ON THE HIGH SEAS.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[8 Bom., Cr., 63
I. L. R., 5 Mad., 23

1. ———— **Punishment**—*Procedure—European British subject—7 Will. IV., and 1 Vict., c. 85, s. 2—14 & 15 Vict., c. 19, s. 5—Jurisdiction*

OFFENCE ON THE HIGH SEAS —*continued*

—*Act XIII of 1835* —In prosecuting a British subject for an offence committed on board a British ship upon the high seas —*Held* (1) (*dubitante* PHEAR J) that he must be charged with an offence under English law, (2) that the punishment must be according to English law (3) that the trial must be according to the procedure of the local Court There fore where a British subject was charged before the High Court with having committed an offence under 7 Will IV and 1 Vict, c 85 s 2 on board a British ship upon the high seas within the admiralty jurisdiction of the Court and found guilty of an offence under 14 & 15 Vict, c 19 s 5 —*Held* that the conviction was good and that the prisoner would be rightly punished with rigorous imprisonment which is defined by s 53 of the Penal Code to be equivalent to imprisonment with hard labour and that the trial had been rightly proceeded with under Act XIII of 1865 QUEEN v THOMPSON . . . 1 B L R., O Cr, 1

2 ——— Law applicable—*Stat 30 & 31 Vict, c 124 s 11—Procedure Power of Legislature* —The substantive law applicable to a British born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India is the English law, and not the Penal Code, notwithstanding the provisions of Stat 30 & 31 Vict c 124 s 11 The same substantive law is applicable to prisoners who conspire together in Bombay to destory such

power to legislate with reference to offences committed on the high seas considered There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship, when committed at a greater distance than three miles from the coast or for the abetment in British India of such an offence so committed REG v ELMSTONE . . 7 Bom., Cr, 89

3 ——— *Jurisdiction of Criminal Courts—Power to legislate for high seas —Stats 12 & 13 Vict c 96 and 23 & 24 Vict c 88* An offence committed on the high seas but within three miles from the coast of British India as being committed within the territorial limits of British India is punishable under the provisions of the Penal Code. The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of the Stat 12 & 13 Vict. c 96 ss. 2 and 3 extended to India by Stat 23 & 24 Vict c 88 *Semble*—The Governor General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits

Thompson 1 B L R. O Cr, 1 commented on REG v KASTYA RAMA . . 8 Bom, Cr, 63

OFFENCE ON THE HIGH SEAS —*concluded*

4 ——— *Jurisdiction of Criminal Court—Law applicable to offence committed within three miles of Goa—Treaty Act (IV of 1880) Stat 30 & 31 Vict, c 124 s 11—Stat 37 & 38 Vict, c 27 Procedure* —The rule laid down in *Reg* v *Elmstone 7 Bom Cr 89* to the effect that English and not Indian law is applicable to offences committed on the high seas is altered by Stat 37 & 38 Vict c 27 which provides that such offences shall be tried and punished according to the local law The accused who was captain of a native craft was charged with having dishonestly sold his of a voyage was arrested for trial to convicted him de and sen

committed within the territorial waters of Goa; and, 2ndly, because the offence, if committed on the high seas could only be tried according to the law of England and not according to the Penal Code *Held* (1) that the Court at Ratnagiri had jurisdiction If the offence were committed within three miles of Goa, the Treaty Act (IV of 1880) between England and Portugal as regards the Goa territory conferred the right to try such cases in British India (2) If the offence

QUEEN EMPRESS v ABDOOL RAHIMAN [I L R., 14 Bom., 227

5 ——— *Trial of British seaman for offence committed on a British ship on the high seas—Procedure at such trial—Merchant Shipping Act, 1854 (17 & 18 Vict, c 104) s 267—Merchant Shipping Act, 1855 (18 & 19 Vict, c 91), s 21—Courts (Colonial) Jurisdiction Act, 1874 (37 & 38 Vict c 27)—Jurisdiction of Criminal Court* —The trial of a British seaman for an offence committed on a British ship on the high seas must be conducted under the Code of Criminal Procedure though the offence charged must be an offence under English law QUEEN EMPRESS v GUNNING . . I L R, 21 Calc, 782

OFFENCE RELATING TO DOCUMENTS.

See CASES UNDER FALSE EVIDENCE—FABRICATING FALSE EVIDENCE

See CASES UNDER FORGERY

1. ——— Penal Code s 477—*Destruction of pottah* —The tearing up of a pottah is destruction of valuable security within the meaning of s 477 of the Penal Code QUEEN v NITTAR MUNDLE [3 W R, Cr., 38

2. ——— *Valuable security —Unstamped and inadmissible document* —The fact that a document has not been stamped and is not there

OCCUPANCY.

See RIGHT OF OCCUPANCY.

OCCUPIERS AND OWNERS.

——— Fine imposed on—

See BENGAL MUNICIPAL ACT, 1864, s. 67.
[8 B. L. R., Ap., 9
3 W. R., Cr., 33, 57
8 W. R., Cr., 45

OFFENCE.

——— by alien in Foreign State.

See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS.
[I. L. R., 16 Bom., 178

——— during journey.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY.

——— in contempt of Court.

See CASES UNDER CONTEMPT OF COURT.

See CASES UNDER CRIMINAL PROCEDURE CODES, s. 476 (1872, s. 471).

See CASES UNDER CRIMINAL PROCEDURE CODES, s. 487 (1872, s. 473).

——— Specification of—

See WARRANT OF ARREST—CRIMINAL CASES . . 6 B. L. R., Ap., 129

OFFENCE BEFORE PENAL CODE CAME INTO OPERATION.

1. ——— Murder—*Beng. Reg. IV of 1797—Act XVII of 1862—General Clauses Consolidation Act (I of 1868), s 6—Repeal of statute, Effect of—Right of defence to High Court.*—Up to the 1st January 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII of 1862 the Regulations prescribing punishments for offences were repealed "except as to any offence committed before the 1st January 1862." By the same Act it was declared that no person who should claim the same should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations By s. 6 of Act I of 1868, the repeal of an Act does not affect anything done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section, the repeal of Act XVII of 1862 by Act VIII of 1868 and Act X of 1872 did not, in respect of offences committed before the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I of 1868. *Held* accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulations. *Held* also that, inasmuch as such right as the right of reference given by s. 3 of Regulation IV of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such right. EMPRESS OF INDIA v. MULUA
[I. L. R., 1 All., 599

OFFENCE BEFORE PENAL CODE CAME INTO OPERATION—*concluded.*

2. ——— *Beng Reg. IV of 1797—Act XVII of 1862—General Clauses Consolidation Act (I of 1868), s. 6—Repeal of statute, Effect of.*—The prisoner was found guilty and sentenced under Regulation IV of 1797 to transportation for life, for a murder committed in 1861, before the Penal Code came into operation, and the case was sent up to the High Court to confirm the sentence. Regulation IV of 1797 was repealed by Act XVII of 1862, and that Act was wholly repealed by Acts VIII of 1868 and X of 1872. *Held*, on reference to a Full Bench, that the conviction was illegal, s. 6 of Act I of 1868, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable. EMPRESS v. DILJOUR MISSER . . . I. L. R., 2 Calc., 225

3. ——— Perjury or forgery—*Act I of 1848—Sanction in case of perjury or forgery.*—A case of perjury or forgery alleged to have been committed in a case before a Civil Court before January 1st, 1862, can be dealt with only under the old Procedure Law (Act I of 1848), according to which the sanction of the Court before which the offence was alleged to have been committed was necessary before criminal proceedings can be instituted. IN RE RADHAJEEBUN MOOSTAFFEE
[5 W. R., Cr., 8: 1 Ind. Jur., N. S., 97

4. ——— Forgery—*Procedure in case of forgery.*—In a case of filing a forged vakalutnamah in a Civil Court before January 1st, 1862, the prosecution can only proceed in the ordinary way, *i.e.*, by way of commitment by a Magistrate on the complaint of the party aggrieved. QUEEN v. ENAYET HOSSEIN . . . . 5 W. R., Cr., 43

5. ——— Mortgage of property previously mortgaged—*Bom. Reg. XIV of 1827—Religious Law of Hindus.*—Regulation XIV of 1827 (Bombay), s. 1, cl 1, art. 7, and the Religious Law of the Hindus, are not applicable to the case of a party charged with mortgaging his house a second time previously to redeeming the same from a prior mortgagee. REG. v. ANNAJI VALAD GOVINDRAM
[1 Bom., 93

OFFENCE ON THE HIGH SEAS.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[8 Bom., Cr., 63
I. L. R., 5 Mad., 23

1. ——— Punishment—*Procedure—European British subject—7 Will. IV., and 1 Vict., c. 85, s. 2—1 & 15 Vict., c. 19, s. 5—Jurisdiction*

OFFENCE ON THE HIGH SEAS —*continued*

—*Act XIII of 1835* —In prosecuting a British subject for an offence committed on board a British ship upon the high seas,—*Held* (1) (*dubitante* PHEAR, J) that he must be charged with an offence under English law, (2) that the punishment must be according to English law, (3) that the trial must be according to the procedure of the local Court There fore, where a British subject was charged before the High Court with having committed an offence under 7 Will IV, and 1 Vict, c 85, s 2 on board a British ship upon the high seas within the admiralty jurisdiction of the Court, and found guilty of an offence under 14 & 15 Vict, c 19, s 5, —*Held* that the conviction was good, and that the prisoner would be rightly punished with rigorous imprisonment, which is defined by s 53 of the Penal Code to be equivalent to imprisonment with hard labour, and that the trial had been rightly proceeded with under Act XIII of 1865 QUEEN *v* THOMPSON . . . 1 B L R., O Cr., 1

2 ———— Law applicable—*Stat 30 & 31 Vict, c 124, s 11—Procedure Power of Legislature* —The substantive law applicable to a British born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat 30 & 31 Vict, c 124, s 11 The same substantive law is applicable to prisoners who conspire together in Bombay to destory such

power to legislate with reference to offences committed on the high seas considered There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship, when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed REG. *v* ELMSTONE . . . . 7 Bom., Cr, 89

3 ———— *Jurisdiction of Criminal Courts—Power to legislate for high seas —Stats 12 & 13 Vict, c 96, and 23 & 24 Vict, c 88* An offence committed on the high seas, but within three miles from the coast of British India, as being committed within the territorial limits of British India is punishable under the provisions of the Penal Code The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of the Stat 12 & 13 Vict, c 96, ss. 2 and 3, extended to India by Stat 23 & 24 Vict, c 88 *Semble*—The Governor General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India though he has power to legislate in respect of offences committed on the high seas within three miles of its coasts Meaning and effect of Stat. 12 & 13 Vict., c 96, ss. 2 and 3, considered *Queen v Thompson 1 B. L R., O Cr, 1*, commented on REG *v*. KASTYA RAMA . . 8 Bom, Cr, 63

OFFENCE ON THE HIGH SEAS —*concluded.*

4. ———— *Jurisdiction of Criminal Court—Law applicable to offence committed within three miles of Goa—Treaty Act (IV of 1880) Stat 30 & 31 Vict, c 124, s 11—Stat 37 & 38 Vict, c 27 Procedure* —The rule laid down in *Reg v Elmstone, 7 Bom, Cr, 89*, to the effect that English and not Indian law is applicable to offences committed on the high seas is altered by Stat 37 & 38 Vict, c 27, which provides that such offences shall be tried and punished according to the local law The accused who was captain of a native

sold his
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tenced him to five years rigorous imprisonment On appeal, the accused contended that the Sessions Judge of Ratnagiri had no jurisdiction to try the case 1st, because the first offence, if it took place at all was committed within the territorial waters of Goa, and, 2ndly, because the offence, if committed on the high seas could only be tried according to the law of England and not according to the Penal Code *Held* (1)

QUEEN-EMPRESS *v* ABDOOL RAHIMAN [I. L. R., 14 Bom., 227

5. ———— *Trial of British seaman for offence committed on a British ship on the high seas—Procedure at such trial—Merchant Shipping Act, 1854 (17 & 18 Vict, c 104), s 267—Merchant Shipping Act, 1855 (18 & 19 Vict, c 91), s 21—Courts (Colonial) Jurisdiction Act, 1874 (37 & 38 Vict, c 27)—Jurisdiction of Criminal Court.*—The trial of a British seaman for an offence committed on a British ship on the high seas must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under English law QUEEN EMPRESS *v* GUNNING . . . I L R, 21 Calc, 782

OFFENCE RELATING TO DOCUMENTS.

See CASES UNDER FALSE EVIDENCE—FABRICATING FALSE EVIDENCE

See CASES UNDER FORGERY

1. ———— Penal Code, s 477—*Destruction of pottah* —The tearing up of a pottah is destruction of valuable security within the meaning of s 477 of the Penal Code QUEEN *v* NITTAR MUNDLE [3 W. R, Cr. 38

2. ———— *Valuable security —Unstamped and inadmissible document* —The fact that a document has not been stamped, and is not there-

OFFENCE RELATING TO DOCUMENTS—*concluded.*

fore receivable in evidence, does not prevent its being a "valuable security" within the meaning of s. 477 of the Penal Code. ANONYMOUS . 7 Mad., Ap., 26

3. ——————— and s. 426—*Destruction of promissory note—Mischief—Jurisdiction of Sessions Court.*—*P M* was convicted by a Magistrate under s. 426 of the Indian Penal Code on a charge of mischief by tearing up a promissory note for R20. *Held* that the offence charged fell under s. 477 of the Penal Code, and was therefore triable by a Sessions Court only. IN RE MADURAI [I. L. R., 12 Mad., 54

4. ——————— and s. 95—*Destruction of a valuable security—Unstamped document purporting to be a valuable security—Act causing slight harm.*—*A*, having had certain transactions with *B*, wrote out a rough account showing his indebtedness to *B* and signed the total. The paper was not stamped. *B* afterwards presented it to *A* and demanded payment of the total amount. *A* paid part only, and after an altercation tore up the paper. *Held* that the act of tearing up the paper constituted the offence of destroying a valuable security, and the harm caused was such that a person of ordinary sense and temper would complain of it. QUEEN-EMPRESS *v.* RAMASAMI . . I. L. R., 12 Mad., 148

5. ——————— s. 477A—*Criminal Procedure Code (Act V of 1898), s. 222 (2)—Criminal breach of trust by public servant—General falsification of accounts for a period extending over two years.*—The alteration in the law by s. 222 (2) of the Criminal Procedure Code (Act V of 1898) does not apply to a charge under s. 477A of the Penal Code (falsification of document). It applies only to criminal breach of trust or dishonest misappropriation of money. QUEEN-EMPRESS *v.* MATI LAL LAHIRI [I. L. R., 26 Calc., 560
3 C. W. N., 412

OFFENCE UNDER THREAT.

——————— Penal Code, s. 94—*Proof requisite.*—To obtain the benefit of the exception allowed by s. 94 of the Penal Code, it must be shown that the prisoners were compelled to set as they did from apprehension that instant death would be the consequence of a refusal. QUEEN *v.* SONOO . . 10 W. R., Cr., 48

OFFER MADE WITHOUT PREJUDICE.

See WRITTEN STATEMENT.
[12 B. L. R., Ap., 19

OFFICE.

——————— Intrusion on—

See CASES UNDER INJUNCTION—SPECIAL CASES—INTRUSION ON OFFICE.

——————— Suits concerning—

See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

See CASES UNDER RIGHT OF SUIT—OFFICE OR EMOLUMENT.

OFFICER.

——————— acting in two capacities.

See CASES UNDER COLLECTOR.

See MAGISTRATE . 5 B. L. R., Ap., 89
[8 B. L. R., 422
24 W. R., Cr., 1

——————— appointed to conduct appeal.

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.
[I. L. R., 2 Calc., 273

——————— Dismissal of—

See RELIGIOUS COMMUNITY.
[I. L. R., 11 Bom., 185

——————— Liability of—

See COMPANY—WINDING UP—LIABILITY OF OFFICERS.

See GOVERNMENT OFFICERS, ACTS OF.

See JUDICIAL OFFICERS.

——————— of Corporation or Company.

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.
[I. L. R., 12 Calc., 41
I. L. R., 20 All., 167

See PLAINT—VERIFICATIONS AND SIGNATURE . I. L. R., 21 Calc., 60
[L. R., 20 I. A., 139

See WRITTEN STATEMENT.
[I. L. R., 22 Calc., 268

——————— of Government.

See COLLECTOR . I. L. R., 1 Bom., 318

See GOVERNMENT OFFICERS, ACTS OF.

See JUDICIAL OFFICERS.

——————— of Sea Customs.

See JURISDICTION OF CIVIL COURT—REVENUE . I. L. R., 1 Mad., 89

——————— Suit against—

See CIVIL PROCEDURE CODE, s. 424.
[13 C. L. R., 195
I. L. R., 20 Bom., 697
I. L. R., 24 Calc., 584

See PARTIES—PARTIES TO SUITS—GOVERNMENT.

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GOVERNMENT, SUITS AGAINST.

See SUBORDINATE JUDGE, JURISDICTION OF . I. L. R., 21 Bom., 754, 773
[I. L. R., 22 Bom., 170

——————— Suit to set aside order of—

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—ORDERS OF REVENUE COURTS.

OFFICER—*concluded.*

See LIMITATION ACT 1877 ART 12
[I. L R, 11 Bom, 429

See CASES UNDER LIMITATION ACT 1877, ART 14

See RIGHT OF SUIT—ORDERS SUITS TO SET ASIDE

——— with head quarters in Municipality

See MADRAS DISTRICT MUNICIPALITIES ACT, s 55 I L R, 17 Mad, 453

——— with powers of Civil Court

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION
[I L R., 18 Calc, 133

OFFICIAL ASSIGNEE

See COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES
[I. L R., 16 Bom, 80

See COSTS—SPECIAL CASES—OFFICIAL ASSIGNEE I L. R., 7 Bom, 484
[I L R, 14 Bom., 189

See INSOLVENT ACT s 73
[I L R, 14 Bom, 189

See PARTIES—PARTIES TO SUITS—OFFICIAL ASSIGNEE
[I L R, 18 Calc, 43
I. L R., 16 Bom, 452
I. L R., 22 Calc, 259

See RIGHT OF SUIT—INSOLVENCY
[I L. R, 16 Bom., 452

See RIGHT OF SUIT—OFFICIAL ASSIGNEE
[I L R., 11 Bom, 620
L R, 14 I. A, 111

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—FRAUD
[I. L R., 11 Bom., 620
L R, 14 I A., 111

——— Commission to—

See INSOLVENT ACT s 19
[I L R., 8 Mad, 79
I. L. R., 13 Calc., 66

——— Election by—

See INSOLVENCY—SALES FOR ARREARS OF RENT I. L R, 1 Mad., 59

——— Liability of—

See COSTS—SPECIAL CASES—OFFICIAL ASSIGNEE I L R., 7 Bom, 484

——— Power of, to convey.

See INSOLVENT ACT s. 7.
[I L R., 19 Mad, 74

——— Priority of—

See CASES UNDER INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE

See INSOLVENT ACT, s 7
[5 B. L R, 309

OFFICIAL ASSIGNEE—*concluded*

——— Right of—

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER
[I L R, 8 Calc, 556
I L. R., 19 Bom, 232
I L R, 17 Mad., 21
I L R, 18 Mad., 24

See INSOLVENCY—RIGHT OF OFFICIAL ASSIGNEE IN SUITS
[10 B L R, Ap, 23

See CASES UNDER INSOLVENT ACT s 7

——— Validity of sale as against—

See INSOLVENCY—SALES FOR ARREARS OF RENT I L R., 1 Mad 59
[I L R, 9 Calc, 855

OFFICIAL LETTERS

See EVIDENCE—CRIMINAL CASES—GOVERNMENT GAZETTE 7 B L R, 63

OFFICIAL TRUSTEE

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT
[I L R, 12 Mad., 250

[illegible]

[I L R, 12 Mad, 250

2 ——— *Civil Procedure Code 1877, s 2 and s 424—Notice of suit*—The Official Trustee is a public officer' within the definition given in s 2 of the Civil Procedure Code The cases in which a public officer is entitled to notice of suit under s 424 of the Code are those in which [illegible] advertently [illegible] his official [illegible] that if a [illegible] rs happens to commit an inadvertence irregularity, or wrong [illegible] rights of the *cestuis que trustent* in respect of the trust fund and not to a wrong committed by him SHAHUNSHAH BEGUM *v* FERGUSSON
[I L R., 7 Calc., 499

3 ——— Appointment of Official Trustee—*Official Trustees Act (XVII of 1864),* [illegible] Official Trustee appointed as trustee of the will IN THE GOODS OF COLLETT I. L. R., 25 Calc., 856

OFFICIAL TRUSTEE—*concluded.*

4. ——— Official Trustees Act (XVII of 1864), ss. 10, 15, and 17—*Trustees' and Mortgagees' Powers Act (XXVIII of 1866), s. 34—Indian Trustee Act (XXVII of 1866), ss. 6 and 26.—"Property," Meaning of—"Vesting," Meaning of.*—The main purpose of the Official Trustees Act was to place the Official Trustee and his successors in office in the same position and vested with the same powers as the persons who held the property in trust previous to the appointment of the Official Trustee, and a wide meaning must be given to the words "property" and "vest." That "property" in the Official Trustees Act was meant also to include action or actionable claims, and the vesting thereof was intended to have the effect of giving the Official Trustee complete power of enforcing all claims or demands in respect of the trust estate. The plaintiff, as a creditor of *S E E*, had obtained letters of administration to his estate and now brought this suit for the recovery of R12,000 on a mortgage which had been executed in favour of *S E E*. *S E E* in his lifetime was the trustee of a sum of R70,000, and the Official Trustee, who had been appointed trustee in his place and who was made a defendant in this suit, claimed the benefit under the said mortgage on the allegation that the said sum had been advanced by *S E E* out of the trust funds. The plaintiff contended that she was entitled to the usual mortgage decree and to get in the money thereunder, and that the proper course for the rival claimants to the money represented by the plaintiff in her personal capacity on the one side and the Official Trustee on the other was then to proceed to establish their rights to the money by separate suit or otherwise. *Held* that the contention of the plaintiff was not correct, and the Court was bound to determine the question raised by the plaintiff representing the estate of the deceased and the Official Trustee representing the trust estate, and that the Official Trustee could adduce evidence in this suit to shew that the money was advanced out of the trust estate. GABRIEL *v.* SOLOMON 4 C. W. N., 70

OFFICIAL TRUSTEE'S ACT (XIX OF 1841).

See LIMITATION ACT, 1877, ART. 13 (1859, s. 1, CL. 5) . . . Marsh., 573
[11 Moore's I A., 405
B. L. R., Sup. Vol., 633

OFFICIAL TRUSTEE'S ACT (XVII OF 1864).

See CASES UNDER OFFICIAL TRUSTEE.

OFFICIATOR.

See BOMBAY REVENUE JURISDICTION ACT, s. 4. . . I. L. R., 18 Bom., 319

OMISSION TO DECIDE ISSUE.

See CASES UNDER REMAND—GROUND FOR REMAND.

OMISSION TO DECIDE ISSUE—*concluded.*

See REVIEW—GROUND FOR REVIEW.
[3 B. L. R., A. C., 346
16 W. R., 134, 150
I. L. R., 5 All., 14
I. L. R., 2 Mad., 53

OMISSION TO GIVE INFORMATION OF OFFENCE.

See CASES UNDER CRIMINAL PROCEDURE CODES, s. 45 (1872, s. 90).

See CASES UNDER INFORMATION OF COMMISSION OF OFFENCE.

ONUS OF PROOF.

ONUS OF PROOF—*continued*

See Cases under Benami Transaction —Onus of Proof

See Bill of Lading 13 B L R 394
[I L R 5 Bom 313

See Escheat 1 B L R., P C, 44

See Cases under Hindu Law—Joint Family—Presumption and Onus of Proof as to Joint Family

See Insolvency—Insolvent Debtors under Civil Procedure Code
[I L R, 4 Calc, 888
I L R., 19 All., 125

See Khoja Mahomedans
[I L R, 12 Bom, 280
I L R, 13 Bom, 534

See Landlord and Tenant—Damage to Premises let 5 B L R, 401

See Landlord and Tenant—Payment of Rent—Non payment
[I L R, 4 Calc, 314
I L R, 9 Bom, 419
I L R., 3 Mad, 118
5 Bom., A C, 85

ONUS OF PROOF—*continued*

See Landlord and Tenant—Property in Trees and Wood on land
[I L R, 13 All, 571
I L R, 22 Calc, 742, 744 note, 746 note, 748 note 751 note
[I L R, 23 Calc, 854
I L R, 21 All., 297

See Limitation Act 1877 art 127 (1859 s. 1 cl 13) 12 B L R, 219
[4 Mad, 354
3 Agra, 133
15 W R, 400
3 W R, 173
6 W R, 170
23 W R 381
I L R, 22 Bom, 259
1 C W N, 543

See Cases under Malicious Prosecution

See Cases under Pardanashin Women

See Partnership—Suits respecting Partnerships
[I L R, 26 Calc, 281

See Penal Code s 373
[I L R., 22 Calc, 164

See Penal Code s 498
[8 B L R, Ap, 63

See Railway Company 2 Agra, 200
[I L R, 3 Bom, 120
I L R, 26 Calc, 465
I L R, 22 All, 361

See Recognizance to keep Peace—Likelihood of Breach of Peace and Evidence 2 N W, 431
[I L R, 9 All., 452

See Sonthal Pergunnahs Settlement Regulation I L R, 15 Calc, 765
[I L R, 22 Calc, 473

See Stolen Property—Offences relating to I L R, 20 Bom, 348

See Vendor and Purchaser—Notice
[I L R., 4 Calc, 897

1 ACCOUNT

1. ——— Balance of account—*Suit for sum due on balance of account* —Where a plaintiff sues for a specific sum of money due on a balance of account it is for him to start his case and show what sum is due on the account and until he has done so the defendant need not be called upon to rebut him Ruttun Chand Byrack *v* Bocha Bibee
[12 W R., 529

2. ——— *Suit founded on statement of account* —Where a claim was founded upon a distinct statement of an account signed by [illegible]

Mull [illegible]

ONUS OF PROOF—*continued.*

2. ACCOUNT BOOKS, ENTRIES IN.

3. ———— Suit for possession—*Dispute as to whether transaction was a mortgage or sale—Entries in account books showing debts.*—The plaintiffs sued for possession of certain lands, alleging that they had been mortgaged to the defendant by their father under two documents. The defendant produced them and relied upon them as deeds of sale which conveyed to him absolutely the lands mentioned in them. The form of the instruments was not conclusive, but it appeared *aliunde* by the conduct of the defendant himself that the deeds were intended as mere securities for money, and that he had treated them as such. Certain entries in the defendant's accounts also treated the respective considerations named in the deeds as continuing debts due to the defendant from the plaintiffs' father. *Held* that the entries, when put in evidence, were sufficient to shift the burden of proof from the plaintiffs to the defendant, and that it was incumbent on the latter to give either oral or documentary evidence which in some way neutralised or explained away their effect, or showed that they related to other transactions than those mentioned in the two documents. GOVINDA *v.* JESHA PREMAJI . . **I. L. R., 7 Bom., 73**

3. AGENT.

4. ———— Gomastah, Suit against—*Suit to recover advances due from discharged gomastah.*—In a suit to recover advances alleged to be due from a discharged gomastah, who pleaded acquittance at the time of his discharge,—*Held* that plaintiff was bound to prove the payments to, and the receipts from, the gomastah, and to put in original documents, and not mere transcripts, even if the defendant had remained silent. WATSON & Co. *v.* SREEDHUR MUNDLE . . . **10 W. R., 421**

5. ———— Agents of official assignee, Suit against—*Proof of items of account.*—Agents who have collected money on account of an insolvent estate are severally bound to prove to the assignee or his representative that the expenditure of the several amounts charged in their accounts has been actually and properly made and the *onus probandi* rests on such agents. It is incumbent on such agents to offer proof in support of all the items in their accounts which are impugned, and the propriety, or the actual expenditure of such items should form the subject-matter of issues properly framed. NUJUF ALI *v.* PATTERSON . . . . **2 N. W., 104**

6. ———— Principal, Suit against, for acts of agent—*Authority of agent, Proof of.*—In a suit against a principal as liable for the acts of an accredited agent of the latter, the onus lies on the plaintiff to prove that the alleged agent was the duly accredited agent of the defendants in reference to the transaction, the subject of the claim. HATHE RAM *v.* GOBIND RAM . . . **3 Agra, 131**

4. ARBITRATION.

7. ———— Reference to arbitration—*Consent obtained by threats and undue influence.*—

ONUS OF PROOF—*continued,*

4. ARBITRATION—*concluded.*

When it is averred that the consent of one of the parties to an arbitration was obtained by threats and through undue influence exerted by persons in authority, the *onus probandi* is on the person making the averment. PURVATHA VURDHAY NAUCHIAR *v.* JAYAVERA RAMAKOMARA ETTYAPA NAICKER
[4 W. R., P. C., 31

S. C. ZAMINDAR OF RAMNAD *v.* ZAMINDAR OF YETTIAPOORAM . . **7 Moore's I. A., 441**

5. ATTACHMENT IN EXECUTION.

8. ———— Attachment of person of debtor—*Execution of decree.*—In an application for an order for execution of a decree by attachment of the person of the debtor, the onus is on the judgment-debtor to show that he has no means of satisfying the debt, and that he has not been guilty of any misconduct; and not on the creditor to show that, by sending the debtor to prison, some satisfaction of the debt would be obtained. SETON *v.* BIJOHN . . **8 B. L. R., 255 : 17 W. R., 165**

9. ———— Claim by judgment-debtors to property seized in execution of a decree against them as representatives of original debtors—*Civil Procedure Code (Act XIV of 1882), s. 234.*—Where, in execution of a decree against the representatives of a deceased debtor, specific property was seized as the property of the deceased debtor and as being in the possession of his representatives and the judgment-debtors claimed the property so seized as their own,—*Held* that the burden of proof lay on the decree-holder who asserted that the property seized in execution of his decree was the property of the deceased debtor and as such in the possession of the judgment-debtors. ABDUL RAHMAN *v.* MAHOMED AZIM
[4 C. W. N., 151

6. BAILMENTS.

10. ———— Negligence—*Hiring—Accident—Evidence Act (I of 1872), s. 106—Contract Act (IX of 1872), ss. 150, 151, 150.*—The question of the burden of proof in cases of accidental injury to goods bailed depends upon the particular circumstances of each case. In some cases, from the nature of the accident, it lies upon the bailee to account for its occurrence, and thus to show that it has not been caused by his negligence. In such cases it is for him to give a *primâ facie* explanation in order to shift the burden of proof to the person who seeks to make him liable. If he gives an explanation which is uncontradicted by reasonable evidence of negligence, and is not *primâ facie* improbable, the Court is bound in law to find in his favour, and the mere happening of the accident is not sufficient proof of negligence. *S* hired a horse from *W*, and while it was in his custody it died from rupture of the diaphragm, which was proved to have been caused by over-exertion on a full stomach. In a suit by *W* against *S* to recover the value of the

ONUS OF PROOF—*continued*

6 BAILMENTS—*concluded.*

horse the defendant gave evidence to the effect that

dence was not contradicted on any point, nor was

diaphragm was a likely result of the horse running away while its stomach was distended with food The Court of first instance held that the defendant was bound to prove that he had taken such care of the horse as a man of ordinary prudence would under similar circumstances have taken of own property, that he must have used his whip freely, or done something else which caused the horse to bolt, and that in so doing he acted without reasonable care, and had thus caused the animal's death The Court accordingly decreed the claim *Held* by EDGE, *C J*,

Court had no jurisdiction to pass and should consequently be set aside in revision under s 622 of the Civil Procedure Code *Per* BRODHURST, *J*, that as the decree was not only unsupported by proof but opposed to the evidence on the record the lower Court had "acted in the exercise of its jurisdiction illegally," within the meaning of s 622 SHIELDS *v* WILKINSON . I. L R., 9 All., 398

7 BOUNDARY

11 ———— Disputed boundary—*Removal of boundary* —Where a dispute arises regarding the direction of a boundary which one of the parties to a suit has demolished and the other party proves its general direction, the onus of proof that the direction is wrongly stated, if it be so lies on the former, who removed the boundary JUDOONATH MULLICK *v* KALLEE KISTO TAGORE

[25 W. R, 524

12 ———— *Failure of proof* —Suit concerning the boundary line between contiguous mehals The land in dispute (which, with the mehals adjacent originally formed part of a permanently settled zamindari consisted of revenue paying mehals and of mehals alleged to be lakhiraj all belonging to one proprietor) was so situated that *it necessarily belonged either to Havelee, one of the* latter, or to the contiguous rent paying mehals The Permanent Settlement did not define the boundary, nor was it fixed in subsequent resumption proceedings against Havelee, which ended in a temporary settlement of that mehal for twenty years The ownership of Havelee having become severed from the ownership of the other mehals, the question of

ONUS OF PROOF—*continued.*

7. BOUNDARY—*continued*

boundary arose, not as a question of revenue between the Government and a zamindar, but as one of title to land between the zamindars and proprietors of two contiguous and separate estates The appellant having failed to prove that no part of the disputed land was included in the respondent's settlement (some portion at least being shown to belong to Havelee), and also having failed to prove by independent evidence his own right to recover the land specified in the plaint,—*Held* that the suit should not have been determined upon that mere failure on his part to support the burden of proof cast upon him, because the judgment would be as final and conclusive between the parties as an adjudication on the merits would be, and its effect would be to give something to the respondent which on the evidence belonged to the appellant s mehals LEELANUND SINGH *v* MOHESHUR SINGH

[3 W R, P. C, 19. 10 Moore's I A, 81

See LELANUND SINGH *v* LUCHMUNUR SINGH

[10 C L. R., 169

where the Privy Council explain this case

13 ———— *Lakhiraj tenure and mâl land of zamindar* —In a question of boundary between a lakhiraj tenure and a zamindar's mal land there is no presumption in favour of one or the other, but the onus is on the plaintiff to prove his case. BEER CHUNDER JOOBRAJ *v* RAM GUTTY DUTT 8 W. R., 209

14. ———— *Failure to prove alleged boundary* —Where the plaintiff sued to recover a quantity of land by rectification of certain survey awards which he averred demarcated erroneously the boundary between his zamindari and the zamindaris of the defendants it was held on a consideration of the evidence, that his suit was rightly dismissed because he failed to prove the position or existence of a stream which he stated was the true boundary between the zamindaris LEELANUND SINGH *v* MOHENDRO NARAIN SINGH

[13 W. R, P C, 7 13 Moore's I. A, 57

15. ———— *Suit for possession where defendant alleges land to be within zamindari but in protected tenure* —In a suit by a talukhdar to obtain khas possession of certain land as being an encroachment by the defendants, who admittedly held land within a howla appertaining to the talukh, the defendants alleged that the land in dispute was situate within a nim howla which they held within the howla. *Held* that the onus was on the plaintiff to show that the land was not within the howla, and that he was entitled to khas possession. RHIDOY KRISTO MISTRI *v* NOBIN CHUNDER SEN

[12 C L. R., 457

16 ———— *Suit for khas possession—Onus of proving intermediate tenure—Onus of proving that a parcel is outside intermediate tenure—General rule as to onus of proof in suits for ejectment* —In a suit by a landlord for khas possession of land in defendants' possession, the defendants set up and proved an intermediate tenure *Held* that it was on the plaintiffs to show that the

ONUS OF PROOF—*continued.*

7. BOUNDARY—*continued.*

parcel of land sought to be resumed was outside such tenure. *Sahib Perhlad Sein v. Budhoo Sing, 12 Moore's I. A., 275*, explained. *Rhidoy Kristo Mistri v. Nobin Chunder Sen, 12 C. L. R., 457*, followed. In this respect it makes no difference whether the plaintiff admits the existence of the under-tenure or the defendant proves such tenure to exist, although denied by the plaintiff. *Mohima Chunder Mazumdar v. Mohesh Chunder Neogi, I. L. R., 16 Calc., 473; Forbes v. Mahomed Hossein, 12 B. L. R., 210; Hurryhur Mookhopadhya v. Madab Chunder Baboo, 14 Moore's I. A., 152*, referred to and discussed. RAJENDRO KUMAR BOSE *v.* MOHIM CHANDRA GHOSE . . 3 C. W. N., 763

17. ———— *Lands in zamindari—Settlement of shikmi talukh.*—Lands situate within a zamindari must *primâ facie* be considered as part of the zamindari; and it is for those who insist on the separation of lands from the general lands of the zamindari and on their settlement as a shikmi talukh to establish their title. WISE *v.* BHOOBUN MOYEE DEBIA

[3 W. R., P. C., 5: 10 Moore's I. A., 165

18. ———— *Suit for confirmation of possession of lands alleged to be within certain talukh.*—In a suit for confirmation of right and possession in respect of lands alleged to be within plaintiff's permanently-settled talukh, where plaintiff incidentally remarked that defendant (as intervenor in a previous rent suit) had claimed the lands as appertaining to another talukh which plaintiff alleged had no existence,—*Held* that it was an error of law in the lower Appellate Court to place on the defendant the onus of proving the existence of that other talukh, instead of following the usual and recognized course of requiring the plaintiff to prove that the lands in suit belonged to his talukh. GUNGAMALA CHOWDHRAIN *v.* MADHUB CHUNDER ROY 10 W. R., 413

19. ———— *Mouzah which may belong to one of two zamindaris—Possession.*—If a particular mouzah has been held for many years as part of a particular mehal or zamindari, the fact of such holding affords a strong presumption that it is part of that mehal, even as against a purchaser at a sale for arrears of revenue of another mehal who claims that part of the mehal purchased by him. It is not conclusive evidence against such auction-purchaser, nor could any length of adverse holding prior to his purchase preclude the auction-purchaser from recovering it, if he could show clearly that it belonged to the mehal which he had purchased. PRAN KISHEN BANERJEE *v.* JUGGOBUNDOO DUTT

[7 W. R., 207

20. ———— *Suit for possession of land once bed of a nullah.*—In a suit for possession of land which had once formed the bed of a nullah of which defendants held a julkur settlement, but which was situated within plaintiff's settled estate,—*Held* that, as defendants had failed to show that their settlement extended beyond the fishery rights, plaintiff was entitled to recover possession. MONOHUR CHOWDHRY *v.* NURSINGH CHOWDHRY . . . . 11 W. R., 272

ONUS OF PROOF—*continued.*

7. BOUNDARY—*concluded.*

21. ———— *Suit for possession—Disputed plots of land.*—In a suit to recover possession of two parcels of land alleged to have been comprehended in one plot on the ground that they had been held by the plaintiff and defendant jointly until by certain proceedings the former was virtually deprived by the latter of the usufruct, the defendant's case being that the parcels were divisible into two distinct plots, one held by the plaintiff and himself jointly and the other by himself exclusively. *Held* that it was on the plaintiff to prove that the disputed parcel was a part of the land held jointly by him and the defendant. GUNGA PERSHAD DUTT *v.* LOKENATH NUNDEE . 12 W. R., 179

22. ———— *Suit by purchaser of share of co-sharer in land jointly settled.*—Where the settlement proceedings showed that the question of extent of the shares of several persons on settlement was in dispute, and that the settlement was made jointly without prejudice to title, the onus, in a suit by a purchaser of one of the shares, was held to be on the plaintiff to show the extent of his vendor's share. GOOROO CHURN PODDAR *v.* HAFEEZA BIBEE . . . 7 W. R., 366

8. CLAIMS TO ATTACHED PROPERTY.

23. ———— **Allegation of application by debtor during attachment.**—*Plaintiff alleging that an attachment subsisted, and that therefore the mortgage under which defendant claimed was invalid, is bound to prove his allegation, and the onus is not discharged by showing that the attachment was made some years previous to the alienation.* TOOLSEE DUTT MISSER *v.* BROJO MOHUN THAKOOR

[9 W. R., 332

24. ———— **Proof of attachment**—*Civil Procedure Code, 1859, ss. 235, 239, 270—Priority.*—Plaintiff claimed priority under s. 270, Act VIII of 1859, asserting that the property attached and sold by defendant was an identical property which he had attached prior to defendant's attachment. *Held* that he was bound to prove the due attachment of the property, *viz.*, by proof of having obtained a written order, under s. 235, prohibiting defendant from alienating the property by sale, gift, etc., and by the publication of the said order in the manner prescribed by s. 239. KANHYA LALL PUNDIT *v.* DINONATH SIRCAR . . . . 17 W. R., 23

25. ———— **Suit by unsuccessful claimant for confirmation of alleged possession and adjudication of title**—*Civil Procedure Code, 1859, s. 246.*—Where an unsuccessful claimant, under s. 246, Code of Civil Procedure, sues for confirmation of alleged possession and adjudication of title, the onus in the first instance is on plaintiff, and an important question in the case is, who was in possession at the time of the attachment. TOOFANEE DOSS *v.* MUN RAKHUN ROY

[15 W. R., 202

ONUS OF PROOF—*continued.*

8 CLAIMS TO ATTACHED PROPERTY —*continued*

26 ——— Right to begin—*Civil Procedure Code, 1859 s 246* —Where a claim was made under s 246 of Act VIII of 1859, by a third party, to some timber, which had been attached by a prohibitory order under s 234,—*Held per* PEACOCK, C J, L S JACKSON, PHEAR, and MACPHERSON, JJ (MITTER J, dissenting) the claimant must begin The onus is on him to prove that the goods attached were his property, or in his possession, and therefore not in the possession of the judgment debtor His evidence must be confined to proving his own claim and he cannot be allowed to show a title in a third person with whom he has no connection *Held (per* MITTER, *J)* that on the proper construction of the words "proceed to investigate the same with like

YAH *v* BURN
[2 B L R F B, 91: 11 W R, F B, 8

27 ——— Suit by a claimant to property under attachment —The defendant having attached certain property as belonging to his judgment debtor *B* the plaintiff applied for the removal of the attachment, alleging that she had purchased the property from *B* prior to the defendant's decree Her application was rejected and an order maintaining the attachment passed The plaintiff thereupon brought the present suit to establish her right to the property in question The Court of first instance dismissed the suit The plaintiff appealed to the District Judge, who reversed the lower Court's decree, holding that it was incumbent

defendant The defendant had obtained an order maintaining his attachment, and it was incumbent on the plaintiff who impugned that order by the present suit to prove her case For this purpose it was necessary for the plaintiff to prove the payment of the purchase money, and that she had been in possession since the alleged sale GOVIND ATMARAM *v* SANTAI . . I. L. R, 12 Bom, 270

finding that the deed ...
objector then brought a separate suit to have the property declared *not liable to be taken in execution*, but he did not file the sale deed in question or account for its non production *Held* that under the circumstances of the case it was in this instance for the plaintiff to prove that the deed he relied on was not fraudulent and collusive, as has been found in the previous proceedings *Govind Atma v San tai, I L R, 12 Bom, 317,* referred to RAM NATH *v* BINDRABAN . . I. L. R, 18 All, 369

29 ——— Suit for confirmation of possession—*Civil Procedure Code, 1859, s 246—Claim—Deed of sale* —A decree holder caused the right, title and interest of his debtor in certain land to be attached in execution A claim was preferred under s 246, Act VIII of 1859 by a previous purchaser, but was rejected In a suit thereupon instituted for confirmation of possession on reversal of the order the defence was that the purchase was benami. *Held* the onus was on the plaintiff to make out his case MAHIMA CHANDRA KUNDU *v* NURUDDIN
[3 B L R, A C, 70 11 W R., 422

TULSEE MONEE DOSSEE *v* PEARY MOHUN BABOO
[25 W. R., 79

his decree, but stated that it had passed to him by conveyance executed by that judgment debtor in his favour, the plaintiff alleged that this deed of sale was fraudulent and void *Held* the onus was on the plaintiff to show that the deed was not *bona fide* and not on the defendant to prove the actual execution of the deed LALA RUDRA PRASAD *v* BINODE RAM SEN 3 B L R, A C, 71 note: 10 W R., 321

31 ——— *Civil Procedure Code, 1859 s 246—Claim* —The plaintiff sued to establish his right to a decree, of which he stated he was the assignee, and which he alleged the defendant had seized and sought to sell as the property of the plaintiff's assignor The defendant admitted the assignment, but alleged that it was a fraudulent transaction *Held* the onus was on him to prove that the transaction was not a *bonâ fide* one LALBEHARI DUTT *v* SRINATH MOOKERJEE
[3 B L R, A C, 73 note

32 ——— Suit to establish right to attach—*Civil Procedure Code, s 283—Right of defendant to set up title of third person* —In a suit brought under s 283 of the Civil Procedure Code (Act XIV of 1882) to establish the right to attach property, it is for the plaintiff to prove that the property in question is the property of the judgment-debtor The onus of proof is upon him He can have no right to attach property which is proved either never to have belonged to his judgment-debtor, or having been his to have passed out of his possession and ownership and become, in law, the property of others prior to the time at which attachment is sought The defendant in defending such a suit

ONUS OF PROOF—*continued.*

8. CLAIMS TO ATTACHED PROPERTY —*continued.*

may therefore rely on the title of a third person. ADAM ISUFBHAI *v.* JAMNADAS RANCHORDAS [I. L. R., 17 Bom., 94

33. ———— **Suit for declaration of title** —*Civil Procedure Code, 1859, s. 246—Equitable right.*—Certain property belonging to one *S* was mortgaged by him in 1810 and 1813 to *O*, under form of conditional sale. *S* had three sons, *H*, *A*, and *N*, and in 1819 he sold the property included in the mortgages of 1810 and 1813 to his sons, *H* and *A*. In 1820 *H* and *A* entered into a fresh arrangement with *O*, who accepted from them a fresh mortgage of the property in lieu of those of 1810 and 1813, and of this mortgage in 1831 he obtained a decree for foreclosure. Subsequently, the Government resumed the property and settled it with *O*'s widow as representing the proprietor, and the plaintiff afterwards purchased a one-third share of the estate. The defendant was the holder of a decree obtained in 1836 against the heirs of *S* on a money-debt of *S*, and in execution of that decree he, in 1866, caused the rights of *N* in the property to be attached and sold, and himself became the purchaser. On attachment, the plaintiff preferred a claim to it under s. 246, Act VIII of 1859, but it was disallowed. In a suit by the plaintiff praying for his right of ownership and possession, which was menaced by the defendant's decree and sale,—*Held* the onus was on the defendant to show that he had an equitable right which he could assert against the plaintiff. SHURFUN BIBEE *v.* COLLECTOR OF SARUN [12 B. L. R., 66 note: 10 W. R., 199

34. ———— **Allegation of assignment by deed of sale** – *Civil Procedure Code, 1859, s. 246.* —If a plaintiff coming into Court, under s. 246 of the Code of Civil Procedure, to set aside an attachment and sale, shows in proof of his title that a deed of sale has been executed in his favour by the judgment-debtors, and that consideration-money has passed and possession has been given him, he starts his case sufficiently. If the defendant alleges, notwithstanding, that the sale was collusive and fictitious, it is for him to show that it was so. DIGUMBUREE DOSSEE *v.* RANEE MADHUB GHOSE [15 W. R., 155

35. ————**Suit by unsuccessful claimant to set aside sale of land**—*Civil Procedure Code, 1859, s. 246.*—Where the plaintiff filed a suit to set aside a sale of land after he had been unsuccessful in an application made under s. 246 of the Civil Procedure Code, 1859, to raise an attachment that had been laid on such land,—*Held* that the onus lay on the plaintiff to prove his title, and not on the purchaser to prove that of the judgment-debtor. NATHU SADASHIV *v.* RAMCHANDRA ANNAJI [5 Bom., A. C., 76

36. ———— **Suit to establish title under deeds of gift**—*Proof of bonâ fides.*—In a suit to establish title, unsuccessfully asserted in an execution case, to property sold in satisfaction of a decree, where plaintiff claims under a gift and other titles originating with the judgment-debtor, it is not sufficient for plaintiff to make out a *primâ facie* case, leaving it to defendant to demonstrate fraud; plaintiff is bound to satisfy the Court of the genuine *bonâ fide* nature of the transfer. RAM KISHORE SINGH *v.* RAMSURBO CHATTERJEE . 11 W. R., 454

37. ———— **Suit for value of goods taken in execution where a claim to them is allowed under s. 246, Act VIII of 1859**—*Evidence of title.*—*M*, to whom *C*, his judgment-debtor, had made over certain goods, attached the same in execution of his decree as the property of his judgment-debtor, but, on a claim being preferred to the goods by *D* and *B* under s. 246 of Act VIII of 1859, they were ordered to be released from attachment; they remained, however, in the possession of *M*. *D* and *B* having sued *M* to recover the value of the goods, the lower Court held that, inasmuch as *M* failed to sue within a year to set aside the order of the miscellaneous department, and to establish his right to take the property in satisfaction of his decree as belonging to his judgment-debtor, the plaintiff's right to it must be admitted without further enquiry or proof, and decreed the claim on the basis of that order alone. It was held in special appeal that the defendant was not debarred by that order or by the law of limitation from disputing the plaintiff's right to the goods, and that the plaintiffs were bound to prove their right to entitle themselves to a decree, and that the miscellaneous order was not conclusive proof of their right, and still less such an adjudication on the question as precluded a readjudication of it. MADHO PARSHAD *v.* DURGA PARSHAD [7 N. W., 85

9. CONTRACT.

38. ———— **Construction of contracts** —*Allegation of special law.*—The onus is on the party who contends that a contract is governed by special and not by general rules of law. TEJ CHUND *v.* SREEKANTH GHOSE [6 W. R., P. C., 48: 3 Moore's I. A., 261

10. CONTRIBUTION.

39. ———— **Suit for contribution for Government revenue.**—In a suit to recover the amount of excess payments of Government revenue made by the plaintiffs on account of their co-sharers to save the estate from sale (each proprietor holding a well defined although not actually separated share).—*Held* that the onus was on the plaintiffs to prove their shares and amount of revenue payable on them. AGHOREE RAM SAHOY *v.* RAMOLEE SAHOO [W. R., 1864, 309

40. ———— *Money paid to Government treasury.*—In a suit for contribution for money admittedly paid by plaintiff into the Government treasury on account of defendants' share of the revenue, where defendants plead previous payment to the plaintiff,—*Held* that the burden of

ONUS OF PROOF—*continued.*

10 CONTRIBUTION—*concluded.*

proving such payment was upon the defendants. MOHADEO MISSER *v.* LAHOREE MISSER [24 W. R., 250

11 CUSTOM

41. ———— **Custom at variance with law of inheritance**—*Proof of custom—Khojas*—Where a defendant alleged a special custom of the Khoja community at variance with the Hindu law of inheritance,—*Held* that the burden of proving the alleged custom rested upon her RAHIMATBAI *v.* HIRBAI . . . . I. L. R., 3 Bom., 34

42. ———— **Impartibility**—*Suit for partition—Presumption as to partibility*—In a suit for the partition ... the younger ... their eldest ... the vatan w... ance, subject to a right, by custom, that a brother should receive maintenance out of the income derived from it *Held* that there was no such general presumption in favour of the impartibility of estates of this kind as to shift the burden of proof, which was ... had, contrary ... ited by him ... evidence of ... that it was ... mily custom ... impartibility ... ng enough to rebut the presumption of the prevalence of the general Hindu law. ADRISHAPPA *v.* GURUSHIDAPPA [I. L. R., 4 Bom, 494

43. ———— **Adoption**—*Custom, Proof of*—It is a general rule and fundamental principle amongst Brahmans, Kshatryas, and Vaishyas, that they are absolutely prohibited from, and incapable of, adopting a daughter's or sister's son or son of any other woman whom they could not marry by reason of propinquity The burden of proving a special custom to the contrary amongst any members of these three regenerate classes, prevalent either in their caste or in a particular locality, lies upon him who avers the existence of that custom GOPAL SAFRAY *v* HANMANT SAFRAY . . . I. L. R., 3 Bom., 273

44. ———— **Forfeiture of rights of mohuntship by marriage**—*Right of succession.*—Where the plaintiff proved his right of succession to a math on the death of its mohunt, the burden of proving that his subsequent marriage worked a forfeiture of his office and its appendant property and rights, lay upon the defendant who impugned the plaintiff's right on account of the marriage. GOSAIN RAMBHARTI JAGRUPBHARTI *v* SURAJBHARTI HARIBHARTI . . I. L. R, 5 Bom, 682

45 ———— **Maintenance**—*Custom to reduce maintenance*—Suit by a late Rajah's brother ...

ONUS OF PROOF—*continued.*

11 CUSTOM—*concluded.*

defendant to prove a custom of entitling him to diminish the allowance heretofore enjoyed in right of plaintiff's position in the family. MOOKOOND NARAIN DEB *v* MOORALEE MOHUN 6 W. R., 91

46. ———— **Right to take fees**—*Vatandar joshi, Right of, to take fees*—The burden of proving that the vatandar joshi of a village is not entitled to officiate and take fees in the family of any particular caste, lies upon the person or persons asserting exemption RAJA VALAD SHIVAPA *v* KRISHNABHAT [I. L. R., 3 Bom., 232

12. DAMAGES

47. ———— **Suit for damages against defaulting witness**—*Proof of liability*—In a suit for damages against a defaulting witness the onus is on the plaintiff to prove that he was damaged by the non attendance of the witness The mere failure of the defendant to appear as a witness is not *per se* a sufficient proof of his liability to damages DWARKANATH KOOREE *v* ANANDO CHUNDER SANNEL . . . 5 W. R, S. C. C. Ref., 18

48. ———— **Suit for damages for wrong...** ...*ip possession* ... of a mouzah ... *images on the* ... ntion ... were ... time ... omising them to give over possession, but that, when the time came, defendant refused to give over possession and was still occupying the land *Held* that it lay upon the plaintiff to show wrongful occupancy on the part of the defendant GOUR SURUN DASS *v* SORONDEY . . . . 15 W. R., 144

13 DEBTOR AND CREDITOR

49. ———— **Release of debtors**—*Debt owing by partnership*—The burden of proof that a creditor by agreeing to an arrangement whereby a ...

50. ———— **Debts contracted by persons in wrongful possession**—*Suits to charge zamindari*—Where it was sought to charge a zamindari with debts contracted by persons who were at the time usurpers in wrongful possession of the ...

ONUS OF PROOF—*continued.*

13. DEBTOR AND CREDITOR—*concluded.*

to the circumstances in which the transactions were had with the usurping zamindar in possession, and the failure to connect the loans with the debts contracted by the former and lawful zamindars, the suit was rightly dismissed. The case of *Hunooman Pershad Panday* v. *Munraj Kooeeree, 6 Moore's I. A., 393,* distinguished. CHIDAMBARA SETTI v. MUTTUVIJEYA . . . . 3 Mad., 260

14. DECLARATION OF TITLE.

51. ——— Suit for declaration of title —*Proof of title.*—Where a plaintiff brings a suit for a declaration of his title as owner, he is bound to establish his title affirmatively. He is in the same position as any other plaintiff, and must make out his case, and the *onus probandi* that he is in possession as owner is upon him. RASSONADA RAYAR v. SITHARAMA PILLAI . . . . 2 Mad., 171

52. ——— *Production of title-deeds.*—The plaintiff sued for declaration of her title to property, of which the defendant was in possession, but of which she produced the title-deeds in favour of herself. *Held* the onus was on the defendant to disprove the plaintiff's title. SWARNAMAYI RAUR v. SRINIBASH KOYAL . 6 B. L. R., 144

53. ——— *Reversioner—Setting aside deed of sale.*—In a suit for a declaration of plaintiff's reversionary title as heir to his late uncle's property, and for reversal of a deed of sale from that uncle set up by the defendant, the widow not having been made a party to the suit and her consent to or dissent from the alleged conveyance not having been ascertained, the issue tried was whether the deed was genuine, and whether defendant has possession under it. *Held* that the onus was rightly placed on the defendant. BYKUNT NATH ROY v. GREESH CHUNDER MOOKERJEE . 15 W. R., 96

54. ——— *Suit for confirmation of possession—Intervenor.*—In a suit for confirmation of possession and declaration of title (the principal defendants admitting plaintiff's possession and title), in which a vendee from such defendants intervenes and claims the property on the allegation of being in possession,—*Held* that such vendee must prove possession before he could question the plaintiff's title. LALLA RAM SUHAE SINGH v. LALLA OOJOODHYA PERSHAD . . . 5 W. R., 233

15. DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE.

55. ——— Decree, Suit to set aside—*Decree alleged to be fraudulent.*—Where a decree in execution of which formal possession has been obtained is impugned by the party in actual possession as fraudulent and collusive, the onus lies on the impugners to prove their allegation. RABIA KHANUM v. WISE . . . . . 23 W. R., 329

56. ——— Deed, Suit to set aside—*Allegation that document is false.*—In a suit for a declaration that a document propounded by the defendant is false, it lies upon the plaintiff to prove that allegation. RAM NIDHEE KOONDOO v. GOLUCK CHUNDER MOSHANTO . . . 11 W. R., 230

57. ——— *Relationship between parties as showing bonâ fides of transaction.*—The relationship between parties to a conveyance of property may be immaterial if the purchase is found true, but is not immaterial where the question to be decided is whether the purchase was true or fraudulent. The mere handing over of the purchase-money from one party to the other in the presence of strangers, and the registration of the deed, are not sufficient to prove the transaction to be *bonâ fide.* PRAN KISHEN DEB v. LOKENATH SINGH MOJOOMDAR . . . . 10 W. R., 445

58. ——— *Suit for possession and to have deeds declared fraudulent—Purchaser.*—The plaintiff executed a deed of sale of a moiety and a lease of the other moiety of certain property to *B*. *B* instituted a suit under s. 15, Act XIV of 1859, which was dismissed. *B* then returned the deed of sale and lease to *A*, with the following endorsement under his signature: "Returned; no claim" *A* instituted the present suit for recovery or possession of the said property, and the defendant set up in his defence that he had no right to sue for a moiety of the property, as the same had been conveyed to *B*, and that the endorsement on the deed of sale was not admissible in evidence, as it had not been registered. *Held* that the onus was upon the defendant to prove his purchase. GIRISH CHANDRA ROY CHOWDHRY v. AMINA KHATUN

[3 B. L. R., Ap., 125

59. ——— *Suit to have deed cancelled as a forgery.*—Under the special procedure provided in the Registration Act (III of 1877), the defendant, in whose favour a document was said to have been executed, succeeded in obtaining an order from the District Registrar for the registration of the same, although the plaintiff, who was alleged to have executed it, appeared before the Sub-Registrar, and subsequently before the Registrar, and denied executing it, and alleged it to be a forgery. In a suit brought under the above circumstances to have the document declared void, and to have it cancelled,—*Held* that, under the circumstances, the onus of proof was properly placed on the defendant. MOHIMA CHUNDER DHUR v. JUGUL KISHORE BHUTTACHARJI

[I. L. R., 7 Calc., 736: 9 C. L. R., 471

60. ——— *Suit to set aside agreement on ground of fraud—Want of opportunity of giving evidence in lower Court.*—Where an appellant alleges that a razinamah was obtained from him by duress or fraud, the onus is on him to prove his allegation. Where also an appellant complains that he had not an opportunity of giving his evidence to the Court below, the onus is on him to show that he tendered evidence which the Court rejected. MOTEE LALL OPADHIYA v. JUGGURNATH GURO

[5 W. R., P. C., 25: 1 Moore's I. A., 1

ONUS OF PROOF—*continued.*

15 DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE—*continued.*

61 ———— Suit to set aside order finding deed not genuine—*Proof of bonâ fides* —In a suit brought to set aside an order of the Small Cause Court in which that Court had held that a

S C ESHAN CHUNDER DOSS *v* RUKEEMOODDEEN SOUDAGUR . 10 W R, 412

62. ———— Suit for declaration of

able presumption that there has been fraud and collusion in the case, it becomes the duty of the Court

63 ———— Proof of bona fides of deed made under suspicious circumstances—Where the authenticity and *bonâ fides* of a hibba were called into question on the ground that, at the time the instrument was executed the executants were in a state of indebtedness, and the registration was delayed until the making of certain decrees

[24 W. R., 292

64. ———— Allegation of want of bonâ fides of trust deed—Where it is found on the face of a deed creating a trust that the transaction is *bonâ fide*, it is for the creditors who impugn the *bonâ fide* nature of the trust to prove their plea KASHESHUREE DASSEE *v* KRISHNA KAMMEE DEBEA [2 Hay, 557

65 ———— Proof of mooktearnama alleged to be forged—Where a mooktearnama

the parties charged to prove its genuineness BISRAM SINGH *alias* BISHEN SINGH *v* INDURJEET KOONWAR . 6 W R., 2

66 ———— Execution of deed by purda-nashin lady—*Suit to set aside deed* In a suit ... to set ... living ... pur- ... ktear, deed

ONUS OF PROOF—*continued.*

15 DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE—*continued*

should be given by the plaintiffs before the onus of supporting it is thrown on the purchaser THAKOOR DEEN TEWARRY *v* ALI HOSSEIN KHAN [13 B L R, 427. 21 W R, 340 L R, 1 I A, 192

S C in lower Court 8 W R, 341

67 ———— Execution of document by purda ladies—*Evidence—Agency*—The plaintiff sought to make two purda ladies liable on a document which he alleged had been executed by a third person as their agent *Held* by the Privy Council (reversing the decision of the High Court) that strict proof of the agency must be given AZEEZOONISSA *v* BAQUR KHAN 10 B L R, 205: 17 W R, 393

68. ———— Suit to set aside deed on

judgment debtor s wife set aside as executed in fraud of creditors, where plaintiff showed the existence in the mind of the judgment debtor of a sufficient motive for the fraud, and also that the said debtor was in the management of the estate claimed and in the receipt of its rents, it was held that plaintiff had started a *primâ facie* case, which shifted the onus on the defendant to prove the *bonâ fides* of the deed. GOWHUR ALI KHAN *v.* SAKHEENA KHANUM [15 W. R, 507

69. ———— Suit to recover possession—*Fraudulent deed*—In a suit to recover immoveable property alleged to have belonged to the plaintiff's husband which she inherited from him and from which, after seven years' possession, she was ousted by the defendant, whose possession was conferred by the Magistrate under s 318 of the Code of Criminal Procedure 1861 the defendants claimed under a deed of sale which the lower Courts found to have been executed in fraud of creditors—*Held* that, if plaintiff

SEE . 12 W. R, 155

70 ———— Suit to set aside compromise of claim—*Consideration—Disputed adoption*—The defendant, the divided brother of a deceased Hindu, disputed the title of the plaintiff, a minor adopted by his deceased brother, to succeed to

veyance, that the burden of proving that the defendant's objection to the validity of the adoption was groundless and the conveyance therefore without consideration was upon the plaintiff SUBRAMANIA AYYAN *v* VENKATA RAYAR [I. L. R., 6 Mad., 254

ONUS OF PROOF—*continued.*

15. DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE—*continued.*

71. ———— **Suit to set aside sale**—*Allegation of fraud.*—*N*, as reversionary heir of the former proprietor, and as now entitled to possession on the death of that proprietor's mother, sued for land in the possession of *C*, who obtained it by purchase at a sale in execution of a decree passed on a bond granted by *O*, which bond and decree were alleged by *N* to be fraudulent and collusive transactions. *Held* that the burden was on the plaintiff to prove that the decree was fraudulently obtained. GREESH CHUNDER CHATTERJEE *v.* MOHESH CHUNDER NYALUNKAR [10 W. R., 173

72. ———— **Transfer of interest in joint family by one member to the other members.**—Where one brother of a joint undivided family transferred his interest in the joint property to the other brothers after a decree had been passed against him, although before attachment,—*Held* that, when a question arose in such a case, the onus was on the brothers to whom the transfer was made to prove the *boná fide* character of the transaction. BROJO LALL SANDYAL *v.* BHOBO SOONDUREE DEBIA CHOWDRAIN . . . . . 17 W. R., 499

73. ———— **Suit to set aside collusive decree**—*Suit by judgment-debtor on allegation of decree being fraudulent and collusive.*—*A*, having obtained a decree in a suit instituted on a bond, purporting to have been executed by plaintiff's father and one *D*, proceeded to execute it by putting up for sale certain rights and interests of plaintiff as the legal representative of her father. Plaintiff sued on the allegation that the decree was fraudulent and collusive, and that she had not been served with notice of proceedings taken in execution. *Held* that it was for the plaintiff to make out her case of fraud, and that it was not for defendant to show that the decree obtained from a competent Court was not collusive, or that notice had been actually served. MOHIMA CHUNDER MULLICK *v.* BURODA SOONDUREE DOSSEE [12 W. R., 147

74. ———— **Suit to have deed declared a forgery**—*Setting up forged lease.*—*D* sued *T* for arrears of rent on the allegation that he held a khusra jumma. *T* admitted only a lower rent, alleging that he held a jumma under a miras howladari pottah. *D*, failing in that suit, brought another suit for a declaration that the deed put forward by *T* was a false document. *Held* that the plaintiff was bound to make out a *primâ facie* case before the onus could be thrown upon the defendant of proving the genuineness of his pottah. JOY CHUNDER TUPPADAR *v.* RAM CHURN DOSS . . 15 W. R., 117

75. ———— **Deed conveying property to other than legal heir**—*Suit by Mahomedan widow for share of property.*—In a suit by a Mahomedan widow against the brother of her deceased husband for her share of the property of her husband, the defendant set up a tumliknamah by which the deceased conveyed the property away to the son of the defendant. *Held* that the burden of proof was on the defendant, and that he was bound to adduce the very strictest proof of the conveyance, as it cut away property from the natural heir. The tumliknamah was rejected, having regard to its terms and to the probabilities and facts of the case. SADUK ALI KHAN *v.* PEAREE . 9 W. R., 142

76. ———— **Voluntary deed**—*Suit by settlor to set aside his deed.*—One *M* (the original plaintiff) was priest in the family of the first and second defendants, and was treated with much kindness by the first defendant (*N*), upon whom he chiefly relied for advice in worldly matters. A sum of R30,000, which was the bulk of his property, was in deposit in the defendants' firm at interest. Early in 1887 he became ill, and in June 1887 he expressed a wish to execute a trust-deed and an English will. He gave instructions to *N* for the trust-deed. By this deed, which contained no power of revocation, he settled R30,000 upon the first and second defendants (who were uncle and nephew), as trustees to perform his funeral ceremonies and to carry out certain religious observances and to pay two annuities, each of R25, and with the residue to found a Sanskrit class. The deed provided for the payment during his lifetime, of a sum of R100 per mensem for his maintenance and expenses, or such larger sum as he might require for such purposes, but in other respects it was not to come into operation until after his death. The will of even date gave certain property to his wife, and subject to this bequest gave the residue of his property to his sister. After receiving instructions for these documents, *N* took them to an attorney. From these instructions drafts were prepared, which were read over to *M* in his room by the attorney's managing clerk. Neither drafts, nor instructions, nor the documents themselves were, however, left with *M*. The drafts were then engrossed, *M* having made some trifling corrections in them. On the 23rd June 1887 he attended at the house of the attorney. The documents were explained to him by the attorney, and were interpreted to him by a High Court interpreter. *M* was then examined by a medical man with a view to ascertain whether he was capable of understanding what he was doing. *M* then executed the trust-deed and the will, and both were then duly attested. At the same time *M* signed the accounts in the defendants' books, and the balance of the money, which stood to his credit over and above the R30,000 comprised in the deed, was produced and made over to him, and he made it over to *N* to be kept by him personally. Shortly after this, *M*'s sister and her son came to Bombay, and he fell under their influence. He became dissatisfied with what he had done with the R30,000, and on the 21st November 1887 he executed a will by which he purported to remove the deed and the will of the 23rd June, and he left the whole of his property to his sister. On the 2nd September 1888 his nephew took him to Surat, and on the 14th September 1888 at Surat he executed a deed revoking the trust-deed of the 23rd June 1887. He also signed instructions and a power-of-attorney under which this suit was filed. He died subsequently to the filing of the suit, and his

ONUS OF PROOF—*continued*

15 DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE—*continued*

sister and executrix became plaintiff The pla nt

be set as de on the ground that the circumstances of the case threw upon the defendants the burden of showing that *M* understood the effect of the settle ment and its final ty This they had failed to do The facts of the case brought it within the principles deducible from *Anderson* v *Elsworth 3 Giff 154 Forshaw* v *Welshy 30 Beav 243* and *Wollaston* v *Tribe L R 9 Eq 44* BAI MANI GAVRI v NARONDAS CALLIANDAS [I L R., 15 Bom, 549

77 ———— **Suit for cancellation of instrument** -*Act I of 1877 (Specific Relief Act) s 39—Fiduciary relationship—Undue influence—Gift to spiritual adviser—Act I of 1872 (Evidence Act) s 111* —In a suit under s 39 of the Specific

heard the defendant recite the holy book called Bhagwat Almost immediately after execution of

(I of 1872) the burden rested po i the defendant to show that the transaction was made without undue influence and in good fa th and in the absence of such proof the pla ntiff was ent tled to obtain cancellation of the deed *S tal Prasad* v *Parbhu Lal I L R 10 All 535* referred to MANNU SINGH v UMADAT PANDE I L R, 12 All, 523

78 ———— **Deed of gift and endowment executed by Mahomedan widow in favour of agent**—*Fiduciary relationship—Burden of proving absence of undue influence* —An instrument executed by a wido v, after setting apart the rental of villages belonging to her as her patrimony to defray the expenses of her and her deceased husband s tombs gave to her managing agent who was her sole adviser the management of the endow ment in perpetuity with the residue after the above expenditure should have been met for himself so

towards another of showing conclusively that he has acted honestly and *bond fide* without influencing the donor who has acted independently of him In a suit by the agent s representative to have the gift enforced against the widow s successor in the estate, this burden had not in the opinion of the Courts belo v with which their Lordships concurred been sustained and it was held that the gift had been rightly set as de WAJID KHAN v EWAZ ALI KHAN [I. L. R, 18 Calc, 545 L R., 18 I. A., 144

16 DEED EFFECT AND OPERATION OF

79 ———— **Deeds of gift between joint brothers of part of family estate**—*Deeds of partition—Subsequent partition between them of* ... joint deeds ecified rs t e

t a sact on To negat ve their eff ct the burden of proving that the transact on was not real but only a pretence was laid upon the defendant who failed to adduce that proof SHAM CHAND PAL v PROTAP CHUNDER PAL I. L R, 25 Calc. 78 [L R, 24 I A, 186 1 C W N, 594

17 DOCUMENTS RELATING TO LOANS EXECUTION OF AND CONSIDERATION FOR AND CASES OF MONEY LENT

80 ———— **Execution Admission of**—*Suit on document* —Where a defe idant admits the

MOKOOND NARAIN DEO v JONARDUN DEY BURMICK 15 W R., 208

81. —— ———— *Mortgage deed Possession under* —Where the execution of a mort

cut on was paid HURPAUL SINGH v ZAHOORUN [2 Agra, 202

82. ———— *Mortgage deed — Registration Act (III of 1877) s 59—Endorsement certificate by Registrar* —In a suit bro ght by a mortgagee upon a mortgage by cond tional sale for payment of the mortgage-debt or in default for foreclosure one of the defendants not being one of the original mortgagees but a purchaser at auction sale under a Rent Court decree resisted the suit

ONUS OF PROOF—*continued.*

17. DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR, AND CASES OF MONEY LENT—*continued.*

and put the plaintiff to proof of the document under which he claimed. *Held* that the mere production of the deed of mortgage which had been thus questioned, and the fact that that deed of mortgage contained an endorsement certificate by the Registrar in the usual manner under s. 59 of Act III of 1877, were not sufficient to shift the burden of proof on to the defendants. MANOHAR SINGH *v.* SUMIRTA KUAR . . I. L. R., 17 All., 428

83. ———— Consideration, Payment of—*Recital in deed—Presumption.*—When it has been found that a deed has been duly executed, and that a certain sum of money has passed in consideration of that deed, and where there is a recital in the deed of the fact that the balance of the consideration-money was paid previously to the execution of the deed, then there is something more than a presumption that the whole consideration has passed upon the deed. DOMUN SINGH *v.* BHUGGOBUTTY DEBEA [8 W. R., 215

84. ———— *Presumption as to bonâ fides.*—Where a mortgage is found to be genuine, and the receipt of consideration admitted, the Court is bound to assume, unless it be shown to the contrary, that the transaction was a real one, and that the consideration money was paid. RADHANATH BANERJEE *v.* JODOONATH SINGH [7 W. R., 441

85. ———— *Deed of sale—Acknowledgment of payment in deed—Delivery of deed.*—In a suit to recover the balance of purchase-money alleged to have been due upon the sale of a decree where the plaintiff's case was that the consideration-money was not paid, but a rooqua given for it, payable when the mutation of names took place,—*Held* that the onus of proving non-payment was thrown upon the plaintiff in consequence of the acknowledgments she had made of the receipt of the whole purchase-money, *viz.*, an admission which was made and recorded under Act XX of 1866, at the time when the deed was registered, and again an acknowlegment made in the petition presented to the Court which made the decree for mutation of names. Although when a deed of sale containing an acknowledgment of payment is written, payment is not made, it may become an acknowledgment afterwards, *i.e.*, when the deed is handed over. ALLEE SHAH *v.* AMANEE BEGUM . . 19 W. R., 149

86. ———— Proof of execution and bonâ fides of transaction—*Suit on mortgage-bond.*—Where a claim is made under an alleged mortgage against a *bonâ fide* purchaser for value, and the defendant puts in issue the genuineness of the transaction, the onus is upon the plaintiff of proving *primâ facie* the *bonâ fides* as well as the actual execution of the mortgage; and if the Court discredits the plaintiff's witnesses as regards the *bonâ fides* of the transaction, it is at liberty to dismiss the suit, although the defendant gives no substantial evidence of fraud. BRAJESHWARA PESHKAR *v.* BUDHANUDDI [I. L. R., 6 Calc., 263: 7 C. L. R., 6

87. ———— Proof of execution and consideration—*Suit on bond.*—In a suit on a bond, the plaintiff is entitled to recover upon showing that it was executed by the defendant. The onus lies on the defendant of showing the want of consideration. JUGGUT CHUNDER CHOWDHURY *v.* BHUGWAN CHUNDER FUTTEHDUR . . Marsh., 27: 1 Hay, 57 [1 Ind. Jur., O. S., 67

KURUFOOL KOOER *v.* RAJKALEE KOOER [17 W. R., 439

88. ———— Receipt of consideration—*Suit on bond.*—Though a bond may be genuine and duly executed, the receipt of consideration must nevertheless be proved. GHANSAM SINGH *v.* CHUKOWREE SINGH . . . W. R., 1864, 197

89. ———— *Payment under letter of assignment.*—When a defendant admits execution of a bond, but denies receipt of consideration, the onus of proving receipt is on the plaintiff. When a defendant admits having written a letter of assignment directing the plaintiff to pay certain sums of money due by the defendant to the third parties named in the letter, the plaintiff is bound to prove such payment. ROOP MUNGUL SINGH *v.* ANUND ROY . . . . 3 W. R., 111

JHALOO *v.* FURZUND ALI . . 5 W. R., 20

90. ———— Proof of consideration—*Promissory note—Suit by professional money-lender against a young man recently come of age—Presumption—Negotiable Instruments Act (XXVI of 1881), s. 118—Evidence Act (I of 1872), s. 114, ill. (c).*—Professional money lenders sued a young man recently come of age to recover certain loans of money alleged to have been advanced by them to him on promissory notes. The defendant, who under the will of his father was entitled to a large property but had not yet come into possession of it, was of an extravagant and reckless character. He pleaded, as to part of the consideration for the notes, that he did not receive it, and as to a further part, that the consideration was immoral. In dealing with the case the Court laid down the following propositions, not as rules of law, but as guides in considering the evidence in such a case: (1) That upon the above facts the ordinary presumption that a negotiable instrument has been executed for value received was so much weakened that the defendant's allegation that he had not received full consideration was sufficient to shift the burden of proof and to throw upon the money lenders (the plaintiffs) the obligation of satisfying the Court that they had paid the consideration in full. That is the practical effect of ill. (c) to s. 114 of the Evidence Act (I of 1872). (2) Where the plaintiff, in answer to such a defence, affirmed that

ONUS OF PROOF—*continued*

17 DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR, AND CASES OF MONEY LENT —*continued*

he had paid the consideration in full, and was corroborated by his books and witnesses the onus of proof again shifted over upon the defendant (3) The burden of proof thus thrown upon the defendant could only be met by a perfectly truthful and harmonious statement which the Court felt able to rely upon with confidence In the absence of this the ordinary presumption laid down in s 118 of the Negotiable Instruments Act (XXVI of 1881) must prevail, *viz*, that until the contrary is proved the presumption should be made that every negotiable instrument was made for consideration MOTI GULABCHAND *v* MAHOMED MEHDI THARIA TOPAN

[I L R, 20 Bom, 367

91. ——— *Proof of consideration for a registered mortgage—Income tax returns—Evidence Act (I of 1872), ss 76 and 77* —The defendant in a suit for money secured by registered mortgage to be paid by him to the plaintiff denied the consideration of which he had, before the registering officer, acknowledged the receipt The original Court which dismissed the suit, would not have decided in favour of the defendant but for its having been shown on an inspection of copies, officially certified, of income tax returns made by the

should not have been admitted in evidence, in reference to ss 76 and 77 of the Indian Evidence Act (I of 1872), and also that, assuming the false statement of income to have been made it still remained unproved by the defendant that the acknowledged consideration had not been paid The judgment of the Appellate Court was affirmed by their Lordships, who concurred in the opinion that the returns if the plaintiff had wrongly omitted to make a full return of income, would not have had any weight in changing the onus which lay upon the defendant of showing that no consideration had passed for this mortgage ALI KHAN BAHADUR *v* INDAR PERSHAD . I L R, 23 Calc, 950

[L R, 23 I A, 92

92. ——— *Suit on bond*—

defendants proved that acknowledgment to be fictitious, and that *only a part of the money had been advanced*. *Held* that the onus was upon the plaintiff to prove in some other way the advance which he alleged LALA LAKMI CHAND *v* HAIDAR SHAH

[4 C W. N., 82

93 ——— Proof of amount due—*Suit on bond*—In a suit on a bond, it is for the plaintiff to prove the amount of the debt, and this will be done sufficiently in the first instance by proof of the execution of the bond It is for the defendant to prove in answer if he can, that such amount is less than the sum sued for. SIVARAMAIYAR *v* SAMU AIYAR

[1 Mad., 447

94 ——— Recital in bond—*Consideration*—The plaintiff sued on a bond, which recited that the defendant had received the consideration mentioned in the bond *Held* that the onus was on the defendant to show that the recital in the bond was not correct FULLI BIBI *v* BASSIRUDI MIDHA

[4 B L R, F. B, 54

S C FOOLEE BIBEE *v* BASSIRUDI MIRDHA. BAMA NATH CHUCKERBUTTY *v*. LOMANATH ROY

[12 W R, F B, 25

RUGHOONATH DOSS *v* LUCHMEE NARAIN SINGH

[10 W. R., 407

95 ——— *Admission—Consideration*—*A* sued *B* on a bond, in which it was recited that *B* had received the amount *B*, in his written statement admitted execution, but stated that he had received the amount mentioned therein, not under the bond but on the pledge of certain jewellery *Held* that on the admission of the execution of the bond which contained the recital of payment, the onus was upon *B* to prove that payment had not been made under the bond MANIKLAL BALOO *v* RAMDAS MAZUMDAR

[1 B. L. R, A C, 92 10 W R., 132

96 ——— Proof of want of consideration—*Suit for money due on bond*—When in a suit for money due on a bond both the execution and

97. ——— *Suit on bond*—

evidence of these witnesses proved that the consideration of the bond had not been paid at the time of execution and that if it had been paid at all, it had been paid at some subsequent time *Held* that

which the onus was shifted back to the plaintiff to establish that he had, not at the time alleged in the

ONUS OF PROOF—*continued.*

17. DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR, AND CASES OF MONEY LENT —*continued.*

bond, but at some subsequent time, paid to the defendants the consideration for the bond. MAKUD *v.* BAHORI LAL . . I. L. R., 3 All., 824

98. ———— Non-receipt of full consideration—*Suit on bond.*—In a suit for money due on a bond between the representatives of the original parties to it, the defendant attempted to reduce the claim on the ground that the money had not been received in full, the bond having been given partly in respect of an old debt, and partly in respect of a credit, in account, upon which the debtor had not, in fact, drawn certain items. The Judicial Committee concurred with the High Court, which had reversed so much of the decree of the Court of first instance as disallowed these items; the latter Court not having correctly adjusted the burden of proof, and having acted as if the plaintiff had relied on his own books to prove the debt, besides having erred in weighing the evidence. RAJESWARI KUAR *v.* RAI BAL KRISHAN [I. L. R., 9 All., 713 L. R., 14 I. A., 142

99. ———— Judge's duty to decide secundum allegata et probata.—The plaintiffs sued upon two bonds executed by the defendant in their father's favour, one for R200 and the other for R99-15 annas. The defendant in his written statement, as well as in his deposition, admitted execution of the bonds in question, but pleaded non-receipt of consideration. The Subordinate Judge held that the bond for R200 was not proved, but awarded the claim upon the other bond On appeal, one of the issues raised by the Assistant Judge was—are the bonds in suit proved? He held that the plaintiffs had failed to prove execution of the bonds, and dismissed the claim *in toto*. *Held*, reversing the decision of the lower Court, that the defendant having admitted execution of the bonds in question, the Assistant Judge acted illegally in the exercise of his jurisdiction in raising the question of the execution. The first rule of adjudication is that a Judge shall decide *secundum allegata et probata*. The only question that could be tried in the present case was non-receipt of consideration. GORAKH BABAJI *v.* VITHAL NARAYAN . . I. L. R., 11 Bom., 435

100. ———— Allegation of payment—*Allegation of loss of document.*—The plaintiff in a suit on a bond for money accounted for not producing it by alleging that the defendant had stolen it. The defendant admitted the execution of the bond, but alleged that he had paid it. *Held* that the defendant was bound to begin and prove payment either by the production of the bond or other evidence, or by both. CHUNI KUAR *v.* UDAI RAM . [I. L. R., 6 All., 73

101. ———— Plea of payment—*Suit on bond—Alleged theft of bond by obligors.*—The plaintiff sued on a bond made in his favour by the defendants, which he alleged had been stolen by the defendants. The defendants, while admitting the execution of the bond, pleaded payment, and that the bond had been returned by the plaintiff to them. They did not produce the bond, nor did they offer any evidence of the alleged payment. *Held* that, as the defendants admitted the bond and pleaded payment, the burden of proof of such payment lay on them. SAVJI BIN SATU *v.* PATLU . 8 Bom., A. C., 139

MEHEROONNISSA *v.* ABDOOL GUNEE [17 W. R., 509

102. ———— Bond in favour of one undivided brother for the benefit of himself and others—*Suit by promise alone—Payment to younger undivided brother—Discharge.*—In a suit on a bond executed by the deceased father of defendants, in favour of the plaintiff, the defendants, while admitting the bond and the consideration for which it had been given, contended that, inasmuch as plaintiff had four undivided brothers and the deed had been executed in his name for the benefit of himself and his brothers, the latter should have been joined as plaintiffs, and that plaintiff could not maintain the suit alone. They also pleaded payment to plaintiff's undivided younger brother, which payment, they contended, was binding on the plaintiff. *Held* that plaintiff was entitled to sue for the family debt without joining his undivided brothers, the contract on which the suit was based being in plaintiff's sole name and not purporting to have been obtained on behalf of any others but himself. And that, as to the payment pleaded, if true, plaintiff was, as regards the promisor, the only person *primâ facie* entitled to payment; it therefore lay on the promisor to show that a payment to a third party was binding on the plaintiff, which had not been done. The contention that payment to any member of the family was by itself necessarily binding on the member who took the contract, could not be supported. ADAIKKALAM CHETTI *v.* MARIMUTHU . I. L. R., 22 Mad., 326

103. ———— Bond in favour of one co-sharer—*Payment of such bond made to another co-sharer when a discharge.*—Where a debt due to one member of a joint family has been paid by the debtor to another member of the family, the question whether such payment operates as a discharge depends on the circumstances under which it was made. *A* and *B* were members of joint Hindu family. Both managed the joint property for the common benefit. Each used to recover debts due on bonds taken in the other's name. In 1890 defendant passed a bond to *A*. In 1892 he passed a mortgage bond to *B*, the consideration for which was stated to be the balance due on the former bond. Subsequently *A* sued defendant on the bond of 1890. *Held* that under the circumstances the mortgage-bond passed to *B* operated as a valid discharge of *A*'s claim under the previous bond. GURUSHANTAPPA *v.* CHANMALLAPPA I. L. R., 24 Bom., 123

104. ———— Suit for money lent on acknowledgment—*Proof of consideration.*—Where

ONUS OF PROOF—*continued.*

17. DOCUMENTS RELATING TO LOANS, EXECUTION OF AND CONSIDERATION FOR, AND CASES OF MONEY LENT —*continued*

the plaintiff sued to recover money lent, relying upon a samadaskat or acknowledgment of debt given by the defendant —*Held* that s 9 of Bombay Regulation V of 1827 contained the rule of law applicable

10 Bom, A C, 61

105 ———— Suit for money lent —*Admission of receipt of note* —Where a plaintiff suing for repayment of a loan fails to prove to the satisfaction of the Court that a pledge alleged to have been made as security was made he is nevertheless entitled to a decree unless the Court holds that the loan itself was not made A party admitting the receipt of a note for R1,000 on loan becomes primarily liable for it to the lender, and it is for him to show that the advance was made, not on his credit but on that of some other person MONOHUR DOSS v GUNGA PERSHAD . 2 N W, 264

106 ———— Suit for value of hundi—*Proof of payment—Possession of hundi* —On 2nd August 1872 *A K* filed a plaint against *M H* and *U R*, in which he alleged that on 1st April 1870 *M R* had given a hundi for R500 for value received to *A K* that on 27th March 1871 *M H* purchased this hundi from *A K*, promising to pay him R534 for it, that *M H* gave the hundi to his brother *I H* for the purpose of obtaining payment of the amount from

payment, and that, though the possession by *M R* of the hundi was a circumstance in his favour, yet, as it did not in itself amount to proof of payment, the *onus probandi* was not thereby shifted on to the plaintiff. ABDUL KARIM v MANJI HANSRAJ [I. L R, 1 Bom, 295

107 ———— Statement in ikrar reser-

as the mortgage which reserved the equity of redemption to the mortgagor This ikrar was made over to

ONUS OF PROOF—*continued.*

17 DOCUMENTS RELATING TO LOANS, EXECUTION OF, AND CONSIDERATION FOR, AND CASES OF MONEY LENT —*concluded*

the defendant the mortgagor Plaintiff's allegation was that the ikrarnamah was returned to him by the mortgagor, who thus surrendered the equity of redemption. Defendant alleged that the ikrar had been lost, and had somehow found its way to the plaintiff *Held* that the presumption of law was in favour of the plaintiff, who had possession of the ikrar, and that the onus of proving its loss lay upon the defendant RAJ KOOMAR SINGH v RAM SUHAYE ROY [11 W. R., 151

108. ———— Satisfaction of decree—*Proof of payment made out of Court—Statement in receipt* —Where money was paid in satisfaction of a decree, not through the Court, and a receipt was taken, but execution was afterwards enforced in a suit for refund of the money so paid, —*Held* that the statement contained in the receipt to the effect that the decree had been satisfied was sufficient to shift the burden of proof to the defendant to show that it was an incorrect statement DAVLATA v GANESH SHASTRI [I L R, 4 Bom, 295

18 EASEMENTS

109 ———— Claim to restrain exercise of proprietary rights—*Criminal Procedure Code (Act X of 1882) s 147* —The right to restrain another from exercising ordinary proprietary rights over his own land is of the nature of an easement different from the ordinary rights of owners of land, the burden of proof would therefore lie upon the party alleging such rights HARI MOHUN THAKUR v KISSEN SUNDARI [I. L R, 11 Calc, 52

110 ———— Right of way or water

disputed by the owner thereof and an order, under s 532 of the Code of Criminal Procedure, has been passed by the Magistrate in favour of the person claiming the right, the fact of such an order having been made will not be sufficient to relieve the latter from the onus of proving the claim, in a subsequent suit by the owner to establish his right to the exclusive use of the land *Luchai Khan v. Abed Sirdar, 21 W R, 140,* dissented from OBHOY CHURUN DEY v LUKHY MONEE BEWA [2 C L. R., 555

111 ———— Right of way—*Suit for declaration that party who has obtained an order under s 320, Criminal Procedure Code, 1861, has no right of way—Proof of right to possession* —In a suit for a declaration that defendant had no right of way over certain land belonging to the plaintiff, where it appears that the defendant had obtained an order from the Magistrate under the Criminal Procedure Code, 1861, s 320 it was held that the onus of

ONUS OF PROOF—*continued.*

18. EASEMENTS—*concluded.*

proving an easement did not lie with the defendant, but that it was for the plaintiff to prove that he was entitled to exclusive possession. PUCHAI KHAN *v.* ABED SIRDAR . . . . 21 W. R., 140

112. ———— **Right to water**—*Suit for removal of outlets for water: plaintiff alleging right to its exclusive use.*—In a suit for the removal of certain outlets made by defendant in an aqueduct, on the ground that plaintiff was entitled to the exclusive use of the water of the aqueduct, where the defence set up was that the portion of the aqueduct to which the dispute related was where water flowed through the lands of the defendant's zamindari,—*Held* that it was for plaintiff to make good the title he alleged. ONRAET *v.* KISHEN SOONDUREE DOSSEE [15 W. R., 83

19. EJECTMENT.

113. ———— **Suit for ejectment**—*Limitation Act, 1859, s. 15.*—The law obtaining in India requires that in actions of ejectment the Courts should always enforce the rule that a plaintiff must recover by the strength of his own title; and a party who might have shifted the burden of proof, if he had proceeded under s. 15 of Act XIV of 1859, cannot, if he let slip that opportunity, obtain the same advantage in an action of ejectment. DADABHAI NARSIDAS *v.* SUB-COLLECTOR OF BROACH [7 Bom., A. C., 82

114. ———— *Trespass—Proof of title.*—In an ejectment suit, the defendant, though a trespasser, is entitled to require the plaintiff, who seeks to eject him, to prove that he has a superior title. KALU *v.* BARSU . I. L. R., 19 Bom., 803

115. ———— *Defence of right of permanent occupancy—Defence of special character.*—In suits by the trustee of a temple to recover possession of certain lands with mesne profits, defendants set up in defence that they were absolute owners of the land in question, or, at least, were entitled to rights of permanent occupancy. In support of the latter contention, they relied, *inter aliâ,* upon certain pymash documents, which contained the word ulavadai, the use of which term, they contended, established the alleged right of permanent occupancy. *Held* (1) that, where the occupier of land resists a suit for ejectment by setting up a claim of a right of permanent occupancy, the onus of establishing such a right lies on the defendant, inasmuch as by it he seeks to derogate from the ordinary incidents of property; and (2) that the right expressed by the term ulavadai (which means an act or right of ploughing or cultivating lands) cannot be assumed to be a permanent right. RANGASAMI REDDI *v.* GNANA SAMMANTHA PANDARA SANNADHI [I. L. R., 22 Mad., 264

116. ———— *Limitation—Tenancy.*—When a plaintiff seeks to eject persons from premises claimed by him, on the ground that they are in wrongful possession of the premises, he is bound to show that he or some of the persons under whom he claims have been in possession of the property within twelve years before suit. A mere allegation in the plaint that the persons sought to be ejected were the tenants of the person through whom the plaintiff claims will not shift the burden of proof. *Rao Karan Singh* v. *Bakar Ali Khan, L. R., 9 I. A., 99,* explained and distinguished. GOPAUL CHUNDER CHUCKERBUTTY *v.* NILMONEY MITTER . . . I. L. R., 10 Calc., 374

ONUS OF PROOF—*continued.*

19. EJECTMENT—*concluded.*

117. ———— *Claim to joint ownership.*—In a suit to eject the special appellant from a portion of a house which he claimed to be in possession of as part owner,—*Held* that the lower Appellate Court was wrong in laying down that it was not called upon to decide whether the defendant was entitled to share in the house, as the onus of proving an exclusive title to the property lay on the plaintiff. ISUBJI *v.* KHATIZA [2 Bom., 189: 2nd Ed., 181

118. ———— *Proof of possession.*—*Quære*—Whether a plaintiff in ejectment is entitled to succeed upon mere proof of antecedent undisturbed possession. JOYTARA DASSEE *v.* MAHOMED MOBARUCK [I. L. R., 8 Calc., 975: 11 C. L. R., 399

119. ———— **Ejectment, Evidence of**—*Presumption of acts of Courts being bonâ fide.*—An ejectment alleged to have taken place under direct action of Court, and supported by documents issued by, and filed in, the Court, must be presumed to have been real and *bonâ fide*, until the party ejected proves that all these proceedings were fictitious, and that he never lost possession of the land, but still holds it. BUDURUDDEN *v.* HANIFF MULLICK . 5 W. R., 180

20. ENHANCEMENT OF RENT.

120. ———— **Suit for enhancement**—*Fair and equitable rent.*—A plaintiff who sues for enhanced rent is bound to prove that the present rate is not fair and equitable. HILLS *v.* JENDAR MUNDUL . . . . 1 W. R., 3

GOLAM ALI *v.* GOPAL LALL TAGORE 1 W. R., 56

SUMEERA KHATOON *v.* GOPAL LALL TAGORE [1 W. R., 58

121. ———— *Bengal Tenancy Act (VIII of 1885), ss. 7 and 188—Customary rate of rent—Fair and equitable rent.*—In a suit for enhancement of rent of a tenure under s. 7 of the Bengal Tenancy Act, it is for the plaintiff to start his case by proving that the existing rate was below the customary rate payable by persons holding similar tenures in the vicinity, or that it was not fair and equitable, before the onus can be shifted to the defendant to prove that the existing rent was fair and equitable. HEM CHANDRA CHOWDHRY *v.* KALI PRASANNA BHADURI . I. L. R., 26 Calc., 832

122. ———— *Act X of 1859, s. 13.*—S. 13 of Act X of 1859 was applicable, not

ONUS OF PROOF—*continued.*

20 ENHANCEMENT OF RENT—*continued*

merely to raiyats having rights of occupancy, but to all under tenants and raiyats The landlord cannot, by giving notice of enhancement, compel the tenant to pay more than a reasonable rent, and he cannot enhance without notice specifying the grounds of enhancement The onus of proving the existence of the grounds alleged is upon the landlord BAKRANATH MANDAL v BINODRAM SEN

[1 B. L R., F. B, 25. 10 W. R, F. B, 33

123 — ——— *Ground of enhancement—Act X of 1859, s 17*—In a suit for enhancement of rent, on the ground that "the produce and productive powers of the land have increased otherwise than by the agency or at the expense of the raiyat," the onus is upon the plaintiff to prove the grounds upon which he seeks enhancement RAJ KRISHNA MOOKERJEE v KALI CHARAN DOBAIN

[6 B L R., Ap, 122: 15 W. R., 109

DHUNRAJ KOONWAR v OOGGUR NARAIN KOONWAR . 15 W. R, 2

124 ——— *Act X of 1859, s 17, cl 2*—Where in a suit for enhancement on the ground that the productive powers of the land h. [illegible]

ai [illegible]

ir [illegible]

c. [illegible]

h [illegible]

tiff PULIN BEHARI SEN v WATSON

[B L R, Sup Vol, 904

S C POOLIN BEHAREE SEIN v WATSON

[9 W. R., 190

Overruling NOBEEN KISHEN BOSE v SHOFAT OOLLAH . . . 1 W R., 24

125 ——— *Nature of tenancy—Grounds of enhancement*—In a suit to recover rent at an enhanced rate after notice had been granted, a kabuliat was put in in support of the plaintiff's case and admitted by defendants A pottah put in by defendants was found by the lower Court to be a forgery *Held* that plaintiff's contention that the kabuliat does not give the full terms of the agreement binds him to show beyond all reasonable doubt what were the actual terms of the pottah Having failed to do this the kabuliat was treated as complete and conclusive evidence of the nature of the tenancy, which was inferred by the Court to be permanent and at a fixed rate *Held* that it lay upon the plaintiff to make out distinctly the different [illegible]

[9 W. R., 65

S C on appeal to the Privy Council, SOORASOONDERY DEBI v. GOLAM ALI 15 B L R, 125 note

[19 W. R., 142

126. ——— *Purchaser of estate settled in perpetuity*—When the purchaser of a moiety of an estate settled in perpetuity some years

ONUS OF PROOF—*continued.*

20 ENHANCEMENT OF RENT—*continued.*

ago according to a jumabandi then made does not sue directly to set aside the jumabandi of settlement [illegible]

quently to entitle him to an increased share of the surplus profits arising from the lands RAM LOCHUN PAUL v BROJO MOHINEE

[W. R., 1864, Act X, 118

127 ——— *Similar rates*—Where a plaintiff sues for enhancement, on the ground that the defendant does not pay the rents paid by others in the neighbourhood for similar lands, and the defendant denies his liability to pay such rents owing to his having mokurari pottahs the onus is on the defendant to prove those pottahs PRANNATH ROY CHOWDHRY v. MOHSHOODEEN AHMED

[6 W R, Act X, 39

128 ——— *Custom to exempt certain land*—In a suit for enhancement, where the defendant pleads that rent has been assessed on lands covered by hedges and ditches and forming boundaries between fields, and that according to custom such land is not liable to pay rent at all, the onus is on the defendant to prove the custom HAROO CHOWDHRY v JOYESSUR NUNDEE

[6 W. R, Act X, 43

129 ——— *Excess lands*—In a suit for enhancement of rent on the ground that defendant holds land in excess of what he pays rent for, it is plaintiff's duty to show that the lands in question are all included within the tenure of the defendant, but that the latter has been paying rent for a quantity less than the area of those lands AHMED HOSSEIN v BUNDEE 15 W. R, 91

130. ——— *Alteration of area of tenant's holding*—To entitle the plaintiff to [illegible]

land the defendant is paying rent SURJA KANTA ACHARJEE v BANESWAR SHAHA

[I L R., 24 Calc., 531

131. ——— *Act X of 1859, s 16—Presumption*—In a suit for enhancement, the burden of proof that a tenure is protected under s 16 Act X of 1859, is on the defendant, and it is only for the plaintiff to rebut any presumption which the defendant may make out under that section NOBOKRISTO MOJOOMDAR v TARA MONEE

[13 W. R., 320

132 ——— *Proof of variation in rate of rent—Act X of 1859, s 16*—In a suit for enhancement, the presumption under s 16, Act X of 1859, established by twenty years' holding at a uniform rate, cannot be rebutted by the fact that the plaintiff did not obtain direct possession of

ONUS OF PROOF—*continued.*

20. ENHANCEMENT OF RENT—*continued.*

the estate for many years, and was for other reasons prevented from suing, but the onus is on the plaintiff to prove that the present rent has been varied or fixed at a period subsequent to the decennial settlement. DHUN SINGH *v.* CHUNDER KANT MOOKERJEE . . . . W. R., 1864, Act X, 25

133. ——————— *Variation of rent.*—The fact alone of variation in the amount of rent paid between one year and another does not necessarily establish a right in the plaintiff to enhance or affect the defendant's right to hold at a fixed rent. It is for the defendant to account for such variation. HURO NATH ROY *v.* CHITTRAMONEY DOSSEE . . . . . 3 W. R., Act X, 122

134. ——————— *Proof of uniformity of rent.*—In a suit for enhanced rent of a talukh, the existence of which as an ancient talukh is undoubted, and in which the only question is whether the rent is fixed or variable, the onus is first on the defendant to prove that he has held at a uniform rate for twenty years, and (if the defendant prove so much) then on the plaintiff to prove that the rent has varied since the permanent settlement. RASHMONEE DEBEA *v.* HURRONATH ROY . 1 W. R., 280

135. ——————— *Beng. Reg. VIII of 1793, ss. 48, 51—Registration.*—In a suit for enhancement of rent,—*Held* that, in order to bring a talukh within the scope of s. 51, Regulation VIII of 1793, it was sufficient to show that the tenure existed, and was capable of being registered at the time of the decennial settlement, the fact of actual registration not being an essential element in the formation of a talukh. *Held* further that the effect of proof of the existence of such a talukh at the time of the decennial settlement was sufficient to throw the onus on the plaintiff to prove that it was held at a variable rent. RADHIKA CHOWDHRAIN *v.* BAMASUNDARI DASI . . 4 B. L. R., P. C., 8

S. C. BAMASOONDUREE DOSSEE *v.* RADHIKA CHOWDHRAIN . . . 13 W. R., P. C., 11
[13 Moore's I. A., 248

Reversing decision of High Court in BAMA SOONDEREE DOSSEE *v.* RADHIKA CHOWDHRAIN
[1 W. R., 339

136. ——————— *Liability of land comprised in a zamindari to enhancement—Dependent talukh—Resumed lakhiraji—Beng. Reg. XIX of 1793.*—In a suit for enhancement of rent in respect of land which the defendant claimed to hold as a dependent talukh,—*Held* the onus was upon the zamindar to show that the land was included in the zamindari at the time of the permanent settlement. ASSANULLAH *v.* BUSSARAT ALI CHOWDHRY
[I. L. R., 10 Calc., 920

137. ——————— *Plea that some lands never paid rent—Suit for enhancement.*—When a landlord sues for enhanced rent and is met by an allegation that certain plots of land never paid any rent at all, the onus is on him to prove that the lands did at some former time pay him rent. GUNGADHUR SINGH *v.* BIMOLA DOSSEE
[5 W. R., Act X, 37

SHEEB NARAIN ROY *v.* CHIDAM DOSS BYRAGEE
[6 W. R., Act X, 45

DHUN MONEE DEBEE *v.* SUTTOORGHUN SEAL
[6 W. R., Act X, 100

UMBIKA CHURN MUNDLE *v.* RAMDHONE MOHURIR . . . . . . 11 W. R., 35

GUMANI KAZI *v.* HARIHAR MOOKERJEE
[B. L. R., Sup. Vol., 15: W. R., F. B., 115

RAM COOMAR GHOSAL *v.* DEBEE PERSHAD CHATTERJEE . . . 6 W. R., Act X, 87

138. ——————— *Lakhiraj.*—The suit was for enhancement of rent. The defendant set up that certain plots of land, the rent of which was sought to be enhanced, were lakhiraj, and therefore not liable to pay rent. *Held* that the onus was not upon the defendant to prove the land was lakhiraj, but upon the plaintiff to prove that the land was mâl, or rent-paying. *Semble*—The Courts are accustomed to require some *primâ facie* evidence from defendants raising such defence that they hold some lakhiraj lands. SRIDHAR NANDI *v.* BRAJA NATH KUNDU CHOWDHRY . 2 B. L. R., A. C., 211
[14 W. R., 286 note

139. ——————— *Separation of mâl and lakhiraj lands.*—In a suit for assessment at enhanced rates, in which the defendant admits that the main portion of the lands in dispute are mâl, but does not separate the rent-free lands, the plaintiff is not bound to prove that the lands are mâl until the defendant points out their precise situation. SUTTO CHURN GHOSAL *v.* TARINEE CHURN GHOSE
[3 W. R., 178

ASHRUFOONISSA *v.* UMUNG MOHUN DEB ROY
[5 W. R., Act X, 48

NEHAL CHUNDER MISTREE *v.* HUREE PERSHAD MUNDUL . . . . . . 8 W. R., 183

140. ——————— *Plea that certain of the lands included in notice are not enhanceable—Onus of proof of such fact—Notice of enhancement.*—In suits for enhancement of rent, where the tenant pleads that a portion of the land sought to be enhanced is held by him rent-free, the onus is on the tenant to prove *primâ facie* that such portion of the land is so held by him; and if he be successful in this, the onus is then shifted upon the landlord to rebut such *primâ facie* evidence. NEWAJ BUNDOPADHYA *v.* KALI PROSONNO GHOSE
[I. L. R., 6 Calc., 543: 8 C. L. R., 6

141. ——————— *Alienation of land being lakhiraj.*—In a suit for enhancement of rent upon a certain area of land which plaintiff alleged to be mâl, defendant set up that a portion of that area was lakhiraj and did not belong to plaintiff's zamindari. *Held* that plaintiff was bound to prove that he had received rent for the disputed portion before he could obtain a decree for rent for

ONUS OF PROOF—*continued.*

20 ENHANCEMENT OF RENT—*concluded.*

such port on *Quære*—Is it sufficient that defendant's plea is a mere allegation of lakhiraj, or must it be supported by *primâ facie* evidence? MUN MOHUN DEY v. SREERAM ROY . 14 W. R., 285

142 ——————— *Evidence of receipt of rent*—In a suit for enhancement of rent, where defendant gives *primâ facie* proof of a rent-free title, such as a proceeding of the resumption authorities releasing his lands under s 48, Bengal Regulation XIX of 1793, the onus is on the plaintiff to prove receipt of rent HEERA RAM BHUTTACHARJEE v. ASHRUF ALI . 9 W. R., 103

143 ——————— *Allegation of debutter land*—In a suit for enhancement of rent, where defendant pleads that a parcel of it is debutter land the property of another party, the onus lies on the plaintiff to prove that the land is mal, even though the alleged owner puts forward no claim PREM CHAND BARIK v BROJONATH KOONDOO CHOWDHRY . . 10 W R., 205

144. ——————— *Suit for arrears of rent*—In a suit for arrears of rent at an enhanced rate where the defendant set up that he had relinquished all the mal land in his occupation, and that the residue of the land in dispute was lakhiraj,—*Held* that the onus was upon the plaintiff to prove that the land for which he sued for enhanced rent was rent paying, and not on the defendant to make good his defence MAHOMED AZSSAR ALI v NASSIR MAHOMED . 3 B L R, A C, 304

145 ——————— **Suit to contest enhancement**—*Act X of 1859, s 14*—In a suit brought by a raiyat under s 14, Act X of 1859, to contest a notice of enhancement, the *onus probandi* is on the raiyat. PRITHEE RAM CHOWDHRY v CHIDAM CHUNDER SHAHA . . . 8 W. R., 8

21 GENEALOGICAL DESCENT

146. ——————— **Suit for partition of here-** [illegible]

[illegible]

him to show that he and they are the only representatives of the person who last held the property If others claim a share, it is for them to show that they have any rights which operate to restrict the plaintiff's *prima facie* right to treat such property as the exclusive property of himself and the defendants KAKAJI BIN RANOJI v BAPUJI BIN MADHAVRAV [8 Bom, A. C, 205

147. ——————— **Common ancestor**—*Claim as collateral heir*—Where the plaintiff claimed as paternal uncle's grandson and only heir of *N*, and the evidence showed that *N*'s father was one of three brothers, but it was not stated in the plaint, nor shown by the evidence, who was the father of the three brothers,—*Held* that the suit ought to be dismissed, it being incumbent on the plaintiff, claiming as a collateral heir, to show who the common ancestor was from whom he derived title. KEDARNAUTH DOSS v PROTAB CHUNDER DOSS [I. L. R, 6 Calc., 626. 8 C. L. R, 238

22 HINDU LAW

(*a*) ADOPTION

148 ——————— **Suit to set aside adoption**—*Invalidity of adoption*—A plaintiff suing for a declaration that an adoption is invalid is bound to prove the invalidity BROJO KISHOREE DOSSEE v SREENATH BOSE 9 W. R, 453

149 ——————— *Allegation of fraudulent adoption*—In a suit to have it declared that an adoption which has long taken place, and has been acted upon, and in virtue of which defendants are [illegible]

[illegible]

[21 W. R., 84

150. ——————— *Improper and unauthorized adoption.*—In a suit in which plaintiffs, claiming as heirs of a deceased Hindu sought to set aside an adoption effected by the widow as without authority and otherwise improper, the lower Appellate Court held that the onus lay with the plaintiffs to prove their affirmation in respect to the adoption. HUR DYAL NAG v ROY KRISTO BHOOMICK [24 W. R., 107

151 ——————— *Adoption under will*—*Proof of validity of adoption*—A Hindu died leaving a son (who afterwards died a minor and unmarried), a widow, and three daughters On the death of the minor, the widow succeeded to the pro[illegible]

[illegible]

recovery of possession of the property left by her minor brother The defence set up was that the will was genuine, that the plaintiff should have sued [illegible]

[illegible]

SUNDARI DASI [3 B. L. R., A. C., 145: 11 W. R., 468

152. ——————— **Validity of adoption depending on whether natural son alive or dead**—*Deed or will conferring estate on a person described as adopted son*—*Evidence Act (I of 1872), ss 107, 108*—*Person not heard of for seven years*—*Presumption of death.*—One *S* died in September

ONUS OF PROOF—*continued.*

22. HINDU LAW—*continued.*

1878, leaving a widow *B*. The year before his death his only son (Bala), a child of eight years old, had left his home and was never heard of again. A few days before his death, *S* adopted the plaintiff (his nephew) and executed a deed of adoption, which stated that he had no hope that his son Bala was alive, and that he had therefore adopted the plaintiff. The deed further declared the plaintiff to be the owner of all *S*'s property with all the rights of a natural son, but provided that, in the event of the lost son returning, he should have half. In 1892 the plaintiff, as *S*'s adopted son, brought this suit to recover some of *S*'s property, which was in the hands of the defendants, who claimed it as *S*'s heirs. They (*inter alia*) impeached the plaintiff's adoption. *Held* that, in order to recover the property as the adopted son of *S*, it lay on the plaintiff to prove a valid adoption. It was a condition precedent to prove that at the date of the adoption *S* was without a son. It was therefore for the plaintiff to prove that Bala was then dead. There was at that time no presumption that Bala was dead, and, there being no evidence on the point, it was impossible to say when he died, or consequently that the adoption was valid. *Held*, however, that plaintiff was entitled to succeed as donee under the deed of adoption. It was clearly *S*'s intention to give the estate to the plaintiff as being his adopted son. But if the adoption was invalid, the gift had no effect. The onus here was on the defendants. It was for them to show that Bala was at that date alive and the adoption therefore invalid. That burden they had not discharged, and the plaintiff therefore was entitled to a decree. *Per* FARRAN, *C.J.* — Where a deed of gift or will confers an estate upon a named person, because he fills or by reason of his filling a certain character, he is entitled to recover the estate without affirmatively proving that he fills such character. The onus of proving that he does not fill the character, which is the reason of the gift, lies upon those who dispute his claim. The whole question is one of onus of proof. RANGO BALAJI *v.* MUDIYEPPA [I. L. R., 23 Bom., 296

153. ———— Suit to enforce the mortgage against son's shares—*Joint Hindu family—Mortgage by father—Legal necessity—Burden of proof.*—As a general rule, a creditor endeavouring to enforce his claim under a hypothecation-bond given by a Hindu father against the estate of a joint Hindu family in respect of money lent or advanced to the father having only a limited interest, should, if the question is raised, prove either that the money was obtained by the father for a legal necessity, or that he made such reasonable inquiries as would satisfy a prudent man that the loan was contracted to pay off an antecedent debt, or for the other legal necessities of the family. There is a distinction between such cases as this and cases in which a decree has been obtained against the father and the property sold, or cases in which the sons come into Court to ask for relief against a sale effected by their father for an antecedent debt. Where a decree was obtained against the father and a sale effected, the presumption is that the decree was properly made. Where a son comes into Court to ask for relief against a sale effected by his father for an antecedent debt, it is for the son to make out a case for the relief asked for. In a suit against the members of a joint Hindu family upon a bond given by their father and in which family property was hypothecated no evidence was given on either side as to the circumstances in which the bond was given. There was no evidence to show that any inquiry had been made by the plaintiff as to the objects for which the bond was executed by the father. *Held* that the burden of proof was upon the plaintiff to show either that the money was obtained for a legal necessity, or that he had made reasonable inquiries and obtained such information as would satisfy a prudent man that the loan was contracted to pay off an antecedent debt or for the other legal necessities of the family, and that, no evidence having been given, the suit must be dismissed. JAMNA *v.* NAIN SUKH . . . I. L. R., 9 All., 493

(*b*) ALIENATION.

154. ———— Alienation by Hindu widow—*Proof of necessity*—Where the validity of an alienation by a Hindu widow is the question for the consideration of the Court, the onus of proving the necessity for the alienation rests with the alienee. Where in such a case the plea of necessity fails, the Court will not grant a decree for immediate possession unless a very strong case of waste and deterioration be made out. What is sufficient evidence to support a sale by a Hindu widow of property in which she has only a life interest. CHUTTER DHAREE SINGH *v.* HURCOOMAREE . . 1 Ind. Jur., O. S., 99

NUND COOMAR SINGH *v.* GUNGA PERSAUD NARAIN SINGH . . . . 10 W. R., 94

And the same is the case in a suit by a son to annul an alienation of ancestral property by the father. JUGDEL NARAIN SUHAYE *v.* LALLA RAM PROKASH . . . . . 2 W. R., 292

155. ———— Purchaser, Duty of—*Suit for possession—Plea of bonâ fide purchase.*—In a suit to recover possession the onus is on the defendant who pleads that he is a *bonâ fide* purchaser for value without notice of plaintiff's title to make out that plea JEEBUNISSA *v.* UMUL CHUNDER CHACKLANUVIS . . . . . 18 W. R., 151

See VARDEN SETH SAM *v.* LUCKPATHY ROYJEE [9 Moore's I. A., 303

156. ———— *Widow's power of alienation.*—It is incumbent on the purchaser of realty from a Hindu widow to enquire whether the circumstances are such as to confer on her the power of alienation. HEERALALL SHAHA *v.* JADUB CHUNDER CHENCHKEY . . . . Cor., 119

157. ———— *Good faith—Failure to make inquiry as to widow's right to sell.*—A purchaser from a childless Hindu widow is bound to satisfy himself as to her right to sell. If he does not act with due care in the matter, he cannot be said to have acted legally in good faith, although he

ONUS OF PROOF—*continued.*

22 HINDU LAW—*continued.*

may have fully believed, or taken for granted, that all was right RAMDHONE BHUTTACHARJEE *v* ISHANEE DABEE . . . 2 W. R., 123

158 ——————— *Purchase from Hindu widow*—Upon those who claim under an alienation from a Hindu widow rests the onus of showing that the transaction was within her limited power COLLECTOR OF MASULIPATAM *v* CAVALY VENCATA NARAINAPAH

[2 W. R., P C, 61: 8 Moore's I A, 529

So with a purchaser of immoveable property dealing with any one with a qualified power

See VADALI RAMAKRISTNAMA *v* MANDA APPANYA [2 Mad, 407

159 ——— **Voluntary transfer alleged to have been made by a Hindu widow**—*Burden of proving her knowledge of her rights—Gift*—Where a voluntary transfer by a Hindu widow is alleged the burden of proving that it was a free gift, made with knowledge by her of her rights is on the donee The plaintiff, widow of the only son who survived his father, who was the owner of village lands and other property, had become, on her husband's death without issue, entitled, as the widow, to the estate which he had inherited But she obtained possession of only half of it The other half was in the recorded possession, when this suit was brought, of the widow of her late husband's younger brother, who died in his father's lifetime The case which the latter widow, as defendant, now sought to make was that she had become entitled to a share in the estate as the result of a series of transactions, by way of family arrangement, in which the two widows, and their mother in law, widow of the deceased father, had taken part These included a reference to arbitration, a release, and dakhil kharij in settle [illegible]

ledge of her right, as widow, to the whole, and had freely made what in effect was a gift DEO KUAR *v* MAN KUAR . . . I L R., 17 All, 1 [L R, 21 I. A., 198

160. ——— **Power of widow of sonless Hindu to mortgage ancestral property**—*Pardanashin woman, Conditions necessary to the execution of a valid deed by—Power of reversioner to sell or mortgage reversionary interest in—Expectancy—Transfer of Property Act (IV of 1882), s 6, cl (a)*—*K* died in 1866 possessed of [illegible]

time subsequent to 1881, as did also his father *L*. In December 1877, a mortgage-deed was executed over certain of the ancestral property of the family of *K*, the ostensible executants being *L* for himself, and *H*, *A*, and *I* through *L* as their general attorney. This deed was to secure a debt of R10,000 stated to be to some small extent for an advance in cash, and [illegible]

advance to pay Government revenue, an advance for expenses of the marriage of *L*'s daughter, and a very small balance in cash It was not shown that the debts secured by either of these two bonds were debts [illegible]

existed nor was it shown that the m[illegible] were entered into with the consent of all the husband's kindred under circumstances which might raise a valid presumption that the debts secured by them were properly incurred It was further not shown that the power of attorney under which *L* purported to act in executing the bond of 1877 on behalf of *H*, *A*, and *I* was ever properly explained to the professed executants or that they understood its import, nor was it shown that either of the bonds was duly explained to and comprehended by the professed executants other than *L* himself, in manner required by law in the case of documents executed by pardanashin women, nor, though at the date of the execution of the second bond *I* had attained the age of majority, did it appear that he signed the bond with any clear knowledge of its contents or of the liability which [illegible]

in his lifetime in enforcement of the two mortgages abovementioned, that the mortgages were not binding on the alleged executants or on the ancestral property at the date of suit in the hands of *A* *I*'s interest in the family property in suit could only be affected by the mortgage of the 2nd of April 1881 on proof that the debt was in fact one or was on reasonable inquiry by and statements made to the lenders of the money believed by them to be one in respect of which his mother *A*, as a Hindu daughter in possession, could mortgage or charge the family property beyond her own then vested interest in it, or on proof that he, as one of the reversioners by joining with his mother in executing the documents of mortgage, led the lenders of the money to believe that such a necessity existed for the loan as enabled the Hindu daughter to create a valid mortgage on the family property beyond the extent of her own life interest The Hindu law which prevails in the N.-W. Provinces recognizes no power in a reversioner to sell or [illegible]

made by her or in consequence of an alleged execution by her of a general power of-attorney, to be reasonably satisfied that the liability she was incurring

ONUS OF PROOF—*continued.*

22. HINDU LAW—*continued.*

and the nature of the transaction were explained to her; and more particularly is this the case if it is sought by reason of her having executed a document, to fix her and her property with a liability to pay a debt, which, if the document had not been executed by her or by an agent appointed by her with adequate power, could not have been enforced against her property. It is also necessary when money-lenders in this country seek to enforce against the property of a Hindu family a contract of mortgage made by a reversioner, who, although of age at the time, was then still of tender years and without experience of business; for the Court, when the question is raised, to be satisfied that the reversioner understood the nature of the transaction and the effect of the contract which he was entering into, or that the reversioner of the family property, in which the reversioner had an estate in expectancy only, was liable for the debt in respect of which the mortgage is sought to be enforced, and that no unfair advantage was taken of the reversioner's youth and inexperience. ACHHAN KUAR *v.* THAKUR DAS . . I. L. R., 17 All., 125

Affirmed by Privy Council in SHAM SUNDER LAL *v.* ACHHAN KUNWAR . I. L. R., 21 All., 71 [L. R., 25 I. A., 183

161. ——— Necessity for alienation—*Adequacy of consideration—Purchaser.*—The onus of proving the necessity for a sale by a Hindu widow and the adequacy of the purchase-money lies on the purchaser. JADU NATH SIRCAR *v.* SONAMONEE DOSSEE . . . . Cor., 70

BISSONAUTH ROY *v.* LALL BAHADOOR SINGH [1 W. R., 247

WOOMA CHURN BANERJEE *v.* HARADHUN MOOKERJEE . . . . 1 W. R., 347

162. ——— *Mortgage by Hindu widow.*—The burthen of proving the necessity for a mortgage by a Hindu widow rests on the mortgagee where that necessity is disputed by the next heir. GOLAB SING *v.* RAO KURUN SING. RAO KURUN SING *v.* MAHOMED FYAZ ALI KHAN

[10 B. L. R., P. C., 1: 14 Moore's I. A., 176

163. ——— *Purchaser of ancestral property—Proof of inquiry as to existence of necessity.* In justifying the purchase of ancestral property, the purchaser is not bound to prove the fact that family necessity actually existed; it is sufficient if he establishes that he made *bonâ fide* inquiry into the matter and was in that inquiry reasonably led to suppose that the necessity did exist. SOORENDRO PERSHAD DOBEY *v.* NUNDUN MISSER [21 W. R., 196

164. ——— *Duty of purchaser of ancestral property.*—Where ancestral property is to be sold or mortgaged, all that the purchaser has to do is to see that there is sufficient pressure upon the estate to render the transfer necessary. The fact of there being a decree, an attachment, and a proclamation for sale, is sufficient pressure. SHEORAJ KOOER *v.* NUCKCHEDEE LALL . 14 W. R., 72

ONUS OF PROOF—*continued.*

22. HINDU LAW—*continued.*

165. ——— *Alienation by Hindu.*—In a suit brought by a Hindu son, for himself and on behalf of three infant brothers, to set aside a sale of certain ancestral lands which had been made by his father without his concurrence,—*Held* that the onus of proving that the payment o the debts, on account of which the property was sold, was not a common family necessity, was properly laid by the District Judge upon the plaintiff. BABAJI SAKHOJI *v.* RAMSHET PANDUSHET . 2 Bom., 23

166. ——— *Proof of power to alienate—Degree of proof.*—Although as a general rule it may lie upon those who claim under an alienation of ancestral property for necessary purposes to show that the transaction was within the limited power of the party alienating, yet particular circumstances may shift the burden of proof. No fixed rule can be laid down as to the degree of proof requisite in such cases. KAIHUR SINGH *v.* ROOP SINGH . . . . . 3 N. W., 4

TASOUWAR ALI *v.* KOONJ BEHAREE LAL [3 N. W., 8 note

167. ——— *Malabar law—Loan to karnavan.*—There is no invariable presumption on whom the burden of proof lies as to the necessity of a loan made to the karnavan. ELAYACHANIDATHIL KOMBI ACHEN *v.* KENATUMKORA LAKSHMI AMMA . . . I. L. R., 5 Mad., 201

168. ——— *Application of purchase-money—Sale by Hindu widow—Duty of purchaser.*—Where a Hindu widow sells as guardian of her minor son and for his maintenance, the purchaser must show the necessity for the sale, but he need not see to the application of the money. RADHA KISHORE MOOKERJEE *v.* MIRTOONJOY GOW [7 W. R., 23

KOOL CHUNDER SURMA *v.* RAMJOY SURMONA [10 W. R., 8

RAM PERSHAD SINGH *v.* NAJBUNNISSA KOOER [9 W. R., 501

169. ——— *Duties of purchaser—Application of purchase-money.*—A purchaser for value is not bound to prove the antecedent economy or good conduct of a Hindu widow who alienates a portion of her husband's estate, nor to account for the due appropriation of the purchase-money, but he is bound to use diligence in ascertaining that there is some legal necessity for the loan, and he may be reasonably expected to prove the circumstances connected with his own particular loan. GOBINDMONEE DOSSEE *v.* SHAM LOLL BYSACK. KALI COOMAR CHOWDHRY *v.* RAM DOSS SHAHA [W. R., 1864, 153

170. ——— *Application of purchase-money—Alienation by Hindu widow.*—In a sale by a Hindu widow under necessity, where the vendee pays a fair price and acts *bonâ fide*, the mere fact of only two-thirds of the purchase-money being paid to creditors does not invalidate his conveyance, as he is not bound to see to the application of

ONUS OF PROOF—*continued*

22 HINDU LAW—*continued*

the purchase-money RAM GOPAL GHOSE *v* BULLODEB BOSE . W. R, 1864, 385

171 ———— *Obligation on creditor seeking to enforce a charge on property sold*—In transactions such as the alienation by a widow of her estate of inheritance derived from her husband any creditor seeking to enforce a charge on such estate is bound at least to show the nature of the transaction and to show that in advancing his money he gave credit on reasonable grounds to an assertion that the money was wanted for one of the recognized necessities KAMESWAR PERSHAD *v* RAM BAHADUR SINGH

[I L R, 6 Calc, 843 8 C L R, 361
L R, 8 I A., 8

KASHINATH SITARAM OYE *v* DADKI
[6 Bom, A C, 211

172 ———— *Proof of execution of deed by Hindu widow*—The plaintiff, to

widow, and dismissed the suit The burden of proving due execution by the widow lay upon the plaintiff, who relied upon it as binding the estate which she represented a matter commented on in *Kameswar Pershad* v *Run Bahadur Singh, I L R, 6 Calc, 843 L R, 8 I A, 8* RAMRATAN SUKAL *v* NANDU . I. L R, 19 Calc, 249
[L R, 19 I A, 1

173 ———— *Creditor, Obligation of—Proof of satisfaction of debt*—Where a party, entitled to impeach an alienation by a widow of her husband's estate, sues to set aside such an alienation, and the defendant establishes not only that he had a charge on the estate in virtue of a mortgage deed executed by the widow, but that the debt to him was on account of advances made to her for purposes for which she would have been entitled to alienate the estate as against the next heirs, it does not follow that because plaintiff had a right to demand this peculiar proof of the ordinary rule which requires the party who alleges payment to prove payment is to be inverted in his favour, or that the debt is to be presumed to be satisfied, unless the contrary is shown by the creditor, and if he alleges that the mortgage-deed was not *bonâ fide*, the burthen lies on him to prove his allegation CATALY VENCATA NARAINAPAH *v* COLLECTOR OF MASULIPATAM

[10 W R, P C, 47: 11 Moore's I A, 619

174 ———— **Suit to set aside alienation**—*Suit to set aside sale in execution of decree of joint family property as improperly made*—Where joint family property is sold in execution of a decree against the head of the family, and purchased *bonâ fide* and for valuable consideration, the onus lies on members of the family who impugn the sale to show that the decree was an improper one SHEO PERSHAD SINGH *v* SOORJBUNSEE KOOER
[24 W. R., 281

ONUS OF PROOF—*continued*

22 HINDU LAW—*continued*

175 ———— **Suit for share of alienated property**—*Mortgage by one member of joint family—Suit for possession of property*—In a suit by a Hindu widow to recover a share of property alleged to have been inherited from her husband (*J*), and which had been mortgaged by her husband's brother (*B*) and sold under a decree obtained on the mortgage the question was raised whether the money for which the property was mortgaged had been borrowed by *B* for his own private use or for the benefit of the family *Held* that the onus was on the defendant to show that the plaintiff had derived any benefit from the money SREEMUTTY *v* LUKHEE NARAIN DUTT 22 W R, 171

176. ———— **Alienation by Hindu father**—*Necessity—Specific performance Suit for, against father*—There is no legal presumption in the Madras Presidency that a sale by a Hindu father is valid until the contrary is shown Where a suit is brought against the father of an undivided Hindu family having an infant son for the specific performance of a contract to sell land, presumably ancestral the Court, having thereby notice that the vendor's powers can be exercised without a breach of trust only where there exists a necessity sufficient in law to justify the sale and that the infant son is entitled to interdict the sale, is bound to require the plaintiff to give some proof of the necessity for the sale GURUSAMI SASTRIAL *v* GANAPATHIA PILLAI
[I L. R, 5 Mad, 337

177 ———— **Alienation by widow**—*Proof that money on mortgage was advanced for purpose justified by legal necessity—Evidence of sufficiency of husband's estate to maintain widow*—A Hindu proprietor's heirs in possession after the death of his widow, who had mortgaged part of the inheritance were sued by the mortgagee's heir who represented him to enforce the mortgage as binding on the land There was evidence that after the mortgage was executed, previous mortgages made by the widow were paid off with the borrowed money, but there was no evidence connecting any of those securities with a debt of the husband, or that the mortgage was made for a legitimate purpose *Held* that although the suit was brought by the representative and not by the original mortgagee, the burden of proving the money to have been advanced to the widow for a purpose justified by legal necessity was on the plaintiff, and that it was incumbent on him to adduce sufficient evidence of the nature of the transaction That general evidence to the effect that the husband died in debt and that the widow substituted new securities at reduced interest for former mortgages was not sufficient to exempt the plaintiff from having to prove the particulars of the transaction and its justification That the burden of proving that the estate left by the husband was sufficient to maintain the widow was not thrown upon the defendants *Hunooman Pershad Pandey* v *Mundraj Koonweree, 6 Moore's I A, 393,* discussed MAHESHAR BAKSH SINGH *v* RATAN SINGH
[I. L. R, 23 Calc, 766
L R., 23 I. A, 57

ONUS OF PROOF—*continued.*

22. HINDU LAW—*continued.*

178. ———— **Purchase by son at sale for arrears of rent against father**—*Proof of bonâ fides of sale.*—Where a son purchased a property sold for arrears of rent, on account of the default of his father, and both father and son were living together at the time of the purchase,—*Held* that the onus was on the son to prove that his purchase was *bonâ fide.* HUR SUHAYE MISSER *v.* DEEN DYAL SINGH . . . . . **7 W. R., 275**

179. ———— **Alienation by manager of infant's estate**—*Presumption of bonâ fides—Obligation of purchaser to inquire—Necessity for charge.*—Under the Hindu law, the right of a *bonâ fide* incumbrancer who has taken from a *de facto* manager a charge on lands created honestly, for the purpose of saving the estate, or for the benefit of the estate, is not (provided the circumstances would support the charge had it emanated from a *de facto* and *de jure* manager) affected by the want of union of the *de facto* with the *de jure* title. The question as to the onus of proof in such cases is one not capable of a general and inflexible answer, but the presumption proper to be made will vary with circumstances. Thus, a mortgagee, who is setting up a charge in his favour made by one whose title to alienate he knew to be limited, must prove the facts which embody the representations made to him of the alleged deeds of the estate and the motives influencing his immediate loan; but such proof must not be required from one not an original party, after a lapse of time and enjoyment and apparent acquiescence. Where, also, a charge is created by the substitution of a new security for an older one, and the consideration for the older one was an old precedent debt of an ancestor not previously questioned, the presumption will arise in favour of a consideration that binds the estate. The lender is bound to inquire into the necessity for the charge, and to satisfy himself that the manager is acting for the benefit of the estate. But if he does so inquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge, and he is not bound to see to the application of the money. HUNOOMAN PERSHAD PANDEY *v.* MUNDRAJ KOONWEREE

[**6 Moore's I. A., 393 : 18 W. R., 81 note**

180. ———— **Sale of property by guardian for minor**—*Allegation of fraud.*—In a suit by three brothers to recover an estate sold by their two brothers as their guardians during their minority, as they alleged, without necessity and in collusion with the purchaser,—*Held* that the onus was on the plaintiff to prove the sale fraudulent and collusive. ACHUNTH SINGH *v.* KISHEN PERSHAD SINGH

[**W. R., 1864, 37**

181. ———— **Sale of property of minor or person under disqualification by party in fiduciary position**—*Proof of bonâ fides.*—When a person, after attaining majority, questions any sale of his property made by his guardian during his minority, the burden lies on the person who upholds the purchase not only to show that, under the circumstances of the case, either the guardian had the power to sell or that the purchaser reasonably supposed he had such power, but, further, that the whole transaction, so far as regarded the purchaser's part in it, was *bonâ fide.* Following the principle laid down by the Court in the case of *Kanailal Jowhari* v. *Kaminee Dabee, 1 B. L. R., O. C., 31 note,* it was held that, when either the person who sells labours under disqualification, or the purchaser stands in a fiduciary relation to the owner of the property, the *bonâ fides* of the dealing cannot be presumed, but must be made out by the purchaser. ROOP NARAIN SINGH *v.* GUGADHUR PERSHAD NARAIN . . . . . **9 W. R., 297**

182. ———— **Suit to set aside sale made by guardian**—*Act XL of 1858, s. 18—Fraud or collusion—Purchaser.*—Where a plaintiff alleges fraud or illegality as a ground for setting aside a sale made under s 18, the onus lies upon him to make out a *primâ facie* case of fraud or illegality, and to show that the debt, which formed the consideration for the sale in such case, was one for which the minor was not responsible. *Per* PRINSEP, *J.*—A stranger purchasing from a guardian, acting under the authority granted under s. 18 of Act XL of 1858, will be entitled to every protection from the Courts, so long as it is not shown that he acted in a fraudulent or collusive manner, knowing that the debts, for the liquidation of which the purchase-money would be applied, were not debts lawfully binding on the minor. The burden of proof in such a case would lie heavily on the person seeking to set aside the alienation. But where the purchaser is himself the creditor, and therefore has the means of satisfying a Court as to the origin and nature of the debts and how they are binding on the minor, the burden of proof is shifted on the purchaser, when the plaintiff has established a *primâ facie* case. SIKHER CHUND *v.* DULPUTTY SINGH

[**I. L. R., 5 Calc., 363 : 5 C. L. R., 374**

183. ———— **Alienation for debt contracted by karnavan**—*Presumption—Proof of agency and authority to contract debts.*—There is no presumption of law that every debt contracted by the karnavan of a Malabar tarwad is for the uses of the tarwad and chargeable on the tarwad estate. The creditor must shew, in the first instance, if it is disputed, that the obligor had authority from the tarwad as their agent and manager to contract debts, and that he assumed to act in the particular instance as such agent and manager. The creditor having established these facts, it lies on the tarwad to show that the obligor was not acting within the scope of his authority in the particular instance. KUTTI MANNADIYAR *v.* PAYANU MUTHAN

[**I. L. R., 3 Mad., 238**

184. ———— **Suit on a mortgage executed by a Hindu father**—*Transfer of Property Act (IV of 1882)—Joint Hindu family—Sons not made parties—Notice.*—Where the sons in a joint Hindu family come into Court seeking to get

ONUS OF PROOF—*continued*

22 HINDU LAW—*concluded*

rid of the effect as against their interests in the joint family property, of a decree on a mortgage executed by their father obtained in a suit to which they were not made parties, the burden of proof lies on them to establish that the mortgagee, when he brought his suit, had notice of their interests in the mortgaged property. RAM NATH RAI *v.* LACHMAN RAI [I L R, 21 All, 193

BIJAI BAHADUR SINGH *v* MEWA LAL [I L R, 21 All., 195 note

185 ———— Alienation by ancestor—*Suit by heir* Where an heir's title to an estate is uncontested and his possession is only obstructed by an alleged conveyance on the part of an ancestor it lies upon the party holding possession, and who causes the obstruction to prove that such a conveyance has taken place KAMINEE MOHUN CHUCKERBUTTY *v* KALEE KANT SEIN 14 W R, 275

186 ———— Subject of purchase—*Evidence of right and interest on purchased property*—A purchaser of another's rights and interests is bound to show what may be properly comprised under that denomination RAM NATH ROY *v* SALEEM AHMED KHAN JADOO NATH ROY *v* SALEEM AHMED KHAN . . . 3 N W, 183

(*c*) MAINTENANCE

187 ———— Right in property beyond mere maintenance—*Right of widow exercising rights of ownership over estate of husband* Where the widow has been allowed to exercise acts of ownership in respect of landed property belonging to her deceased husband incompatible with a mere right to maintenance from his estate, the onus of proof that the widow is entitled to nothing beyond a bare maintenance lies upon the party asserting this NOWINDH SINGH *v* SOHUN KOOER . . 3 N W, 12

(*d*) STRIDHAN

188 ———— Purchase with stridhan, Proof of—*Hindu wife seeking to exempt property from the debts of her husband*—A Hindu wife seeking to exempt property from responsibility for her husband's debts must clearly prove that she had stridhan and that the property was purchased *bonâ fide* with her exclusive funds. BROJOMOHUN MITTER *v* RADHA KOOMAREE W. R, 1864, 60

189 ———— Proof of property being stridhan—*Gift of Hindu widow*—The burden of proving property (the subject of a gift of a Hindu widow) to be stridhan rests with those claiming under her CHUNDER MONEE DOSSEE *v* JOYKISSEN SIRCAR . . . 1 W. R, 107

BISSESSUR CHUCKERBUTTY *v*. RAM JOY MOJOOMDAR . . . . . . 2 W R, 236

23 HUSBAND AND WIFE

190 ———— Suit by wife to recover property from husband—*Alienation by husband of securities belonging to wife*—In a suit by a Mahomedan wife who had left her husband's protection on account of ill usage, for recovery, among other property, of certain securities belonging to her

[illegible]

[illegible]

ities from her, was bound to show something more than mere endorsement and delivery, that the relation of the parties being what it was it lay upon him to prove that the transactions which he set up were *bonâ fide* sales and purchases and that he actually gave full value for what he received from her, and where it was proved that the wife had the securities while under her husband's protection, and some had passed from her to him and others to his creditors and that the wife left her husband's house in destitution, the proof adduced by the husband as to the sale for full consideration to him must be full and clear, and such as to satisfy a Court of Justice that the transactions were conducted fairly and properly, and with a due regard to the rights and interests of the wife Where it was in proof that a portion of the immoveable property of the wife had passed to a *bonâ fide* purchaser under conveyances executed by the wife to her husband or to such purchaser, the burden of proof in a suit by her to recover the property is upon her, as she seeks to be relieved from the effect of her own conveyances, the execution of which she does not dispute against one who if not an absolute stranger, stands in no fiduciary relation to her BUZLOOR RUHEEM *v* SHUMSOONNISSA BEGUM JUDOONATH BOSE *v* SHUMSOONNISSA BEGUM [8 W. R, P C, 3. 11 Moore's I A, 551

S C in High Court BUZZUL RUHIM *v* SHUMSHEROONNISSA BEGUM MIRTUNJOY BOSE *v* SHUMSHEROONNISSA BEGUM JUDOONAUTH BOSE *v* SHUMSHEROONNISA BEGUM . W R., F B, 60

191 ———— Suit by wife for property after divorce—*Mahomedan law*—In a suit by a Mahomedan lady against her husband after divorce for recovery of property belonging to her which her husband held before the divorce, the possession of the husband being the possession of the wife, the onus lies on the husband to prove his right to the property, till that was done the presumption was that the property so held by the husband was held by him on behalf of the wife ABDOOL ALI *alias* SHOAGEEA *v* KUIRUMNISSA 9 W R., 153

192 ———— Suit for possession of property of which husband and wife have been tenants—*Nature of possession*—In a suit to recover certain property on the allegation that plaintiff's father had obtained it in gift from his wife *L*, and that it had been in the possession of father and son more than thirty years, defendant having had his name recorded in the Collectorate as heir to *L*,—*Held* with reference to the fact

ONUS OF PROOF—*continued.*

23. HUSBAND AND WIFE—*concluded.*

that there had been a tenancy of husband and wife together: that it was incumbent on plaintiff to prove that his possession was possession on his own account, and not that of an agent. VELAET ALI KHAN *v.* AZMUN . . . . . . 11 W. R., 513

24. INTERVENORS.

193. ——— Suit for rent—*Proof of receipt and enjoyment of rent.*—In a suit for rent under a kabuliat, if a third party intervenes and supports the defendant's case that the rents have been paid, not to the plaintiff, but to the intervenor, the onus of proving such previous receipt and enjoyment is altogether on the intervenor; and until his intervention is disposed of, the plaintiff need not prove his title or the kabuliat. RAM BHUROSE SINGH *v.* JEWA MAHATOON [11 W. R., 319

RADHA KISHORE TALOOKDAR *v.* GOLUCK CHUNDER ROY . . . . . 11 W. R., 366

194. ——— *Suit against person holding under decree under s. 77, Act X of 1859.*—The onus of proving title was on a plaintiff seeking to oust a person formally declared by a decree under s. 77, Act X of 1859, to be in enjoyment of the rent of disputed land and consequently in possession. RUNGO MONEE DOSSEE *v.* UNNOPOORNA DEBIA . . . . 7 W. R., 149

195. ——— *Suit to get rid of decision in favour of intervenor.*—In order to get rid of the effect of a Collector's decision in favour of an intervenor under s. 77, Act X of 1859, the party entitled must bring a suit to establish his title, it being not enough for him merely to establish a vague allegation of dispossession and throw it upon the defendant to prove title. MOHESSUR MOOKERJEE *v.* KALEE DOSS MOOKERJEE . 11 W. R., 573

196. ——— *Suit after successful intervention under s. 77, Act X of 1859.*—Plaintiff's suit for rent against the raiyats of certain land alleged to belong to a mouzah (Baboolee) which they had bought at an auction sale having been dismissed in consequence of defendant's intervention, under s. 77, Act X of 1859, they brought an action against her to recover possession. The defence was that the land in dispute did not belong to plaintiffs' mouzah, but to defendant's mouzah, Gyrutpore. *Held* that the plaintiffs were bound to prove their own case, and to show that the land belonged to their purchased estate (Baboolee). In this case, however, both parties had consented to have the case decided on the question whether mouzah Gyrutpore was or was not in existence, and the defendant could not therefore make out a new case in special appeal. MOONDUR BIBEE *v.* HONOOMAN PERSHAD . 11 W. R., 277

197. ——— *Suit after intervention under s. 77, Act X of 1859—Right to rent.*—Where a suit by the purchaser of an alleged lakhiraj tenure for rent from his under-tenant was thrown out by the intervention of the superior landlord, under s. 77, Act X of 1859,—*Held* that all the plaintiff had to do in a regular suit brought by him in consequence was to prove that he was entitled to the rent from the under-tenant. It was not necessary for him to prove that his land was valid lakhiraj. RAJ CHUNDER GHOSE *v.* JOY CHUNDER DUTT [12 W. R., 197

ONUS OF PROOF—*continued.*

24. INTERVENORS—*continued.*

198. ——— *Civil Procedure Code, s. 73.*—Where the plaintiff sued to recover possession of certain property which he alleged he had purchased from *H*, and proved his purchase, and *B*, the mother of *H*, intervened and contended that the property was her own and purchased for herself and not on behalf of *H*,—*Held* the onus was on *B* to prove the title. JAGGADANAND MISSER *v.* HAMID RASUL . . 8 B. L. R., 182 note

S. C. JUGGODANUND MISSER *v.* HAMID RUSSOOL [10 W. R., 52

199. ——— In a suit upon a registered kobala for possession of certain property the appellant intervened alleging a prior purchase by him from the plaintiff's vendor, and was made a defendant. On the plaintiffs having proved their title against the original defendants, the lower Courts held that the onus was on the appellant, who was not shown to be actually in possession, to prove his allegation. *Held* that the lower Courts were right in so holding. *Jaggadanand Misser* v. *Hamid Rasul*, *8 B. L. R., 182 note : 10 W. R., 52*, approved and followed. BALNIA KUNDU DUBOYE *v.* ADIKUNDA PUNDA, ... 7 C. L. R., 560

200. ——— *Proof of title.*—A plaintiff who sues by right of inheritance for the recovery of lands in the possession, not illegal or forcible, of defendants, to the rents whereof it was held in a previous suit, in which he intervened, that he had not been in the actual enjoyment, is bound to prove as well his title to the estate as his lineal descent from, or relation in such degree of contiguity as would entitle him to part succession to, the original acquirer thereof. CHYTUN MYTEE *v* LUKHEE CHURN PATNAIK . . . 8 W. R., 258

201. ——— Suit for kabuliat—*Act X of 1859, s. 77—Intervenor.*—In a suit to obtain a kabuliat, the defendant admitted the plaintiff's title. A third party intervened (under s. 77, Act X of 1859) alleging that he was in actual receipt and enjoyment of the rent. *Held* that the onus was on the intervenor to prove that he was *bonâ fide* in actual receipt and enjoyment of the rent, and not on the plaintiff to prove his possession. BAHARULLA *v.* MAJAN [3 B. L. R., Ap., 61

KISHEN CHUNDER DOSS *v.* BURATEE SHEIKH [2 W. R., Act X, 36

202. ——— Suit for declaration of right *Suit for usufruct of property—Unsuccessful intervention.*—The mortgage of certain property having been purchased by *S*, he sold it to *G*, who foreclosed, got a decree for possession, and sold it to *W*. *W*'s intervention having failed in a suit for

ONUS OF PROOF—*continued*

24 INTERVENORS—*concluded*

arrears of rent by a party setting up a title intermediate between him and the raiyat on the ground of a miras pottah obtained from the mortgagor subsequently to the mortgage, he (*H*) sued to have his right declared to the rents payable by the raiyat *Held* that it was not only not necessary for the plaintiff to prove possession but the very ground he took was want of possession, his cause of action being that he was prevented from enjoying the usufruct *Held* also that it was for the defendant to show that the incumbrance did not injure the outturn of the property. GOBIND CHUNDER BANERJEE *v.* WISE [12 W R, 19

25 LANDLORD AND TENANT

203 **Allegation that lands are held under different title** —Where a raiyat holds lands of considerable extent under a zamindar, and alleges that one or two plots occupied by him are held under a different title, the onus is on him to prove his allegation RAM COOMAR ROY *v* BEJOY GOBIND BURAL . . 7 W R, 535

204 ——— **Allegation of independent title**—*Suit to confirm title* —In a suit by the lessee of the purchaser of the rights and interests of the first defendant to obtain possession of some portions of land alleged to fall within the share of the zamindari so purchased defendants contended that the plots which were the subject of suit, although falling within the ambit of the zamindari, did not in fact form a portion of it but were lakhiraj lands belonging to themselves by a title independent of the title to the zamindari The evidence showed the principal defendant to have been in receipt of the rents and profits of the land in suit, as well as of his share of the zamindari *Held* that the onus lay upon the defendants to show the alleged independent title, failing to do so, the *primâ facie* title made out by the plaintiff ought to prevail SHUMDAN ALI *v* MUTHOORNATH DUTT 14 W. R, 228

205 ——— **Rival tenants**—*Resignation of tenancy*—In a suit between two rival tenants claiming to hold under the same landlord, where one of them admitted the tenancy of the other, but pleaded resignation by him of his tenancy and a lease to himself, the onus of proof was held to rest upon him who made the allegation KISHEN CHUNDER SHAHA *v* HOOKOOM CHAND SHAHA [W. R, 1864, 47

206 **Allegation of particular tenure**—*Proof of title* —The onus in a suit in which the plaintiff seeks to obtain a declaration that the defendants hold a tenure under him lies on the plaintiff, who must prove strictly the title under which he seeks that declaration. ROYES MOLLAH *v* MUDHOOSOODUN MUNDUL . 9 W. R., 154

207. ——— *Transferability of tenure—Presumption* - There is no presumption that any tenure held is not a transferable tenure, and a landlord who sues for khas possession on the ground that a tenure sold was not transferable must establish his case as an ordinary plaintiff DOYA CHAND SHAHA *v.* ANUND CHUNDER SEN MOZUMDAR . . I. L R., 14 Calc, 382

ONUS OF PROOF—*continued*

25 LANDLORD AND TENANT—*continued.*

208 ——— *Transferability of tenures* —In a suit brought to recover possession of certain lands forming part of the patni estate of the plaintiffs and constituting the raiyati holding of one *M*, which lands were sold in execution of a money-decree against *M* and purchased by the defendant, the defendant set up that the tenure held by *M* was of a permanent and transferable nature *Held* that the onus of proving the transferability of this tenure was upon the defendant *Doya Chand Shaha* v *Anund Chunder Sen, I L R, 14 Calc, 382,* not followed KRIPAMOYI DABIA *v.* DURGA GOVIND SIRKAR I L R, 15 Calc, 89

209 ——— *Transfer of Property Act (IV of 1882), ss 106, 108 – Transferability of tenancy—Suit by zamindar to set aside a Court sale of his raiyat's interest* —A zamindari raiyat mortgaged the land comprised in his holding and the mortgagee, having sued and obtained a decree on his mortgage, attached the mortgagor's interest in the land and purchased it at the Court sale held in execution of his decree The zamindar, who had intervened unsuccessfully in execution, now sued to set aside the sale and to eject the decree-holder and the judgment debtor from the land Neither party adduced evidence *Held* that there was no presumption that the tenant was a tenant at-will, nor was there a presumption that the tenancy was not transferable—such presumptions being contrary to ss 106 and 108 of the Transfer of Property Act respectively The burden of proof therefore lay on the plaintiff and had not been discharged, and the suit must consequently be dismissed APPA RAU *v* SUBBANNA I L R, 13 Mad, 60

210 ——— *Non transferable tenure* —Where a plaintiff sets up a case of an exceptional mourasi hoola, alleging it to be not transferable, the plaintiff should be called on to prove the allegation before a defendant in possession, under an order of a Revenue Court, can be called on to prove title HURRO SOONDERY DEBIA *v* AMEENA BEGUM 1 Ind Jur, N S, 188 [5 W R, Act X, 72

211. ——— *Suit for possession under mokurari lease* —In a suit to recover possession of land under a mokurari lease granted to plaintiff by the zamindar (defendant who admitted its validity) from the other defendant who had been in possession twenty years, and who also claimed a mokurari interest —*Held* that the onus lay with the substantive defendant to show that his lease was mokurari RUGHOONATH DOBEY *v* PURESH RAM MAHATA . . . . . 10 W. R., 9

212 ——— *Khadimi tenure* —Where persons have long held as khadims under the superior holders or managers of endowed property, and claim to hold a permanent khadimi tenure from which they are not liable to be ejected

ONUS OF PROOF—*continued.*

25. LANDLORD AND TENANT—*continued.*

except for misconduct, the *onus probandi* is on them. CHAND MEAN *v.* KHONDKAR ASHRUTOLLAH [6 W. R., 89

213. ——— *Allegation that lands are sir—Sale in execution of decree.*—Where a person whose proprietary rights in a mehal have been sold in execution of a decree alleges that land held by him at the time of such sale was held as sír, the burden of proof lies on him. HARI DAS *v.* GHANSHAM NARAIN . I. L. R., 6 All., 286

214. ——— *Suit for possession of ayma land—Identification by plaintiff.*—Where a plaintiff establishes a *primâ facie* case of the identity of ayma land which he claims through his ancestor, who had been allowed by the Collector to retain it, it will rest with defendant to prove that the land is his own, or that it is not the ayma land which the plaintiff's ancestor once held. MOLLA ABDOOR RUB *v.* HURRYHUR MOOKERJEE [1 Ind. Jur., N. S., 50

215. ——— *Gorabundi tenure—Transferability, Proof of.*—The onus lies on a plaintiff claiming in virtue of a purchase of the tenure from a former holder to be entitled to possession of gorabandi lands, to prove that such lands are transferable. CHUTTERBHUJ BHARTI *v.* JANKI PROSAUD SINGH . . . 4 C. L. R., 293

216. ——— *Khoti tenure, Proof of—Suit for rent.*—In a suit by a kabuliatdar khot for rent from cultivators holding lands in a khoti village, the onus does not lie on the plaintiff to prove the land to be khoti; but the holder of land in a khoti estate must prove that he is exempted from paying rent according to the custom of the country MUHAMMAD YAKOUB *v.* MUHAMMAD ISMAIL . . . . . 9 Bom., 278

217. ——— *Suit for value of trees cut by tenant—Nature of tenure.*—There is no presumption that orchard lands in Behar are held on a bhaoli tenure, there being many instances of orchards there held on a nukdi tenure. The onus of proving the special nature of the tenure is on the zamindar suing for the value of trees cut down, and not on the tenant-defendant. DOOMUN SINGH *v.* SOOKUN LALL . . . . 2 W. R., 12

218. ——— *Orchard land—Possession of planter of trees.*—Although generally it may be taken that land whereon an orchard is planted belongs to the zamindar, and has been granted to a stranger to plant trees thereon, in which case it reverts to the zamindar after the trees have disappeared and the land has become arable, yet when it is asserted that the land belongs to the planter of the orchard, having been acquired by purchase, it is for the zamindar to prove that the land belongs to him and was given for plantation; and in the absence of such proof the holder or occupant may rely on his long possession. DHUNEE RAM *v* AMANUT HOSSEIN . . 2 Agra, Pt. II. 161

219. ——— Suit by landlord for possession of land in his estate—*Right to possession.*—When a landlord sues for possession of land within his estate, the onus is on him to prove that he is entitled to that possession. GUDADHUR BANERJEE *v.* KANYE DEKHOORIA . . . 8 W. R., 191

220. ——— Suit by talukhdar purchaser at sale—*Dispossession and disputed title.*—A talukhdar who had purchased at an execution-sale the under-tenure of one of his tenants, sued him to obtain possession of the land contained in the purchased holding, of some of which he said he had been dispossessed, and in regard to the remainder of which his title was disputed. *Held* that the deputation of an Ameen was improper, and that the onus lay on the plaintiff to prove his case. SHUSTEE RAM PAUL *v.* NOBO KANT ROY CHOWDHRY [14 W. R., 190

221. ——— Lease of land of particular nature—*Proof that it came under that designation.*—Where a landlord leased out some land to a tenant, reserving to himself only such portion of it as fell under the definition of nila zamin, *Held* that it was for the landlord, in a suit for the possession of such nila zamin, to bring evidence to prove what portion of the land leased out was nila; and that, in the absence of such evidence, the whole land must be taken as having been leased out to the tenant. REILY *v.* BAMA SOONDUREE DOSSEE [25 W. R., 398

222. ——— Suit for possession—*Dispute as to ground and nature of possession.*—In a suit for possession of a portion of land on the allegation that it had belonged to plaintiff as his ancestral property up to the date of his being ousted, when the defendant, admitting the alleged possession, contended that it had been not that of an owner, but only permissive possession as that of a tenant,—*Held* that the burden of proof lay on the defendant. BOISTUB CHURN SEIN *v.* TRAHEE RAM SEIN [15 W. R., 32

223. ——— Suit to recover share of holding after sale in execution of decree for rent—*Proof of status as tenant and recognition of division of tenure.*—In a suit to recover a share of a holding, the whole of which had been sold in execution of a decree for arrears of rent, the plaintiff, who claimed to hold a divided portion of the tenure, was held bound to prove either that such division had been recognized and ratified by the zamindar or that the latter received rent from him, *i.e.*, he would have to prove his status as tenant in respect of the share in question. HURHUR SINGH *v.* OOMA KOOER . . . . . 16 W. R., 93

224. ——— Exercise of right incidental to tenure—*Objection to right.*—When a party objects to the exercise by another of an ordinary legal right incidental to his tenure, it is for the objecting party to give some *primâ facie* evidence as to the grounds on which that objection is founded. GYARAM MUNDUL *v.* GYARAM NAIK [1 Ind. Jur., O. S., 22: Marsh., 23: 1 Hay, 65

ONUS OF PROOF—*continued*

25 LANDLORD AND TENANT—*continued*

225 ——————— *Right of occupancy—Permanent cultivators—Suit for ejectment* —The defendant's ancestors were the only cultivating tenants of the lands of a certain temple from the year 1819 and in a suit brought by the temple trustees against one of the defendants in 1858 it was found that the occupancy of the defendant's ancestors dated back at least to 1803. In 1833 the defendant's ancestor was recognized by the Collector who then managed the temple as an hereditary raiyat. In the paimaish account of 1827 defendant's ancestor was described as a cultivating arakudi ulavadai, a term which does not necessarily imply a right of occupancy. *Held* in a suit by the trustee of the temple to eject the defendants after notice to quit that the burden of proving that a right of occupancy was not an incident of defendants' tenure lay on the plaintiff. KRISHNASAMI PILLAI *v.* VARADARAJA AYYANGAR I. L. R., 5 Mad., 345

226 ——————— *Right of occupancy—Permanent cultivator—Paracudis* —The defendant's ancestors or predecessors in title were the cultivating tenants of the lands of a certain temple from a date not later than 1827, in which year they were so described in the paimaish accounts. In 1830 they executed a muchalka to the Collector who then managed the temple whereby they agreed among other things to pay certain dues. They were described in the muchalka as paracudis. In 1857 the plaintiff's predecessors took over the management of the temple from and executed a muchalka to the Collector whereby he agreed among other things not to eject the raiyats as long as they paid kist. In 1882 the dues (which were payable separately) having fallen into arrear, the manager of the temple sued to eject the defendants. *Held* that the burden of proving the permanent character of the tenure set up by the defendants lay on them. *Krishnasami v. Varadaraja I. L. R., 5 Mad. 345* discussed and distinguished. THIAGARAJA *v.* GIYANA SAMBANDHA PANDARA SANNADHI I. L. R., 11 Mad., 77

227 ——————— *Defendant admitting tenancy but pleading its permanent nature* —Where the defendant admitted that he was a tenant, the onus was upon him to show that his tenancy was such as he set up, namely a permanent tenancy at a rate which cannot be enhanced. KHETTER KRISTO MITTER *v.* DINENDRO NARAIN ROY [3 C. W. N., 202

228 ——————— *Suit for ejectment—Right of occupancy* —In an ejectment suit by a landlord against his tenant the plaintiff cannot succeed unless he shows that under the terms of the tenancy and in the circumstances that exist he has a

229 ——————— *Ejectment suit for Occupancy rights—Madras Rent Recovery Act (Madras Act VIII of 1865), s. 12* —A zamindarni having given to the defendant who was a cultivating

raiyats from time immemorial and it was found that their holding had lasted at least one hundred and fifty years. The defendant had executed a d... vered to the plaintiff a muchalka for one year and he had made no default in payment of rent. *Held* that the onus was on the plaintiff and as she had failed to prove that the defendant's tenancy had commenced under her or her ancestors, the suit should be dismissed. VENCATA MAHALAKSHMAMMA *v.* RAMA JOGI I. L. R., 16 Mad., 271

230 ——————— *Right of*

the tank is a fair and reasonable use of the land and one which will not be to the detriment of the zamindar. TARINI CHARAN BOSE *v.* DEBNARAYAN MISTRI [8 B. L. R., Ap., 69

231. ——— Proof of zamindari rights —*Right to garden planted with trees* —The owner of a bagh in an estate in which he is not possessed of any zamindari rights must, if he claim a higher right than that ordinarily possessed by a tenant planter or the successor of such a planter, produce

by the reservation the vendor reserved only the interest which a tenant planter would have possessed in the bagh. ALI BUKSH *v.* MUDUN GOPAL [3 Agra, 369

232 ——— Suit for assessment of

tenure is liable to the assessment sought, and the provisions of that law are not affected by Reg. XI of 182.. as regards the mode in which the condition on which and the burden of proof with which the zamindar may proceed to assess. PANIOTY *v.* JUGGUT CHUNDER DUTT 9 W. R., 379

Upholding on review, JUGGUT CHUNDER DUTT *v.* PANIOTY 8 W. R., 427

233 ——— Acknowledgment of tenancy—*Suit for kabuliat* —In a suit before the Collector for a kabuliat, the ground that the defendant had occupied and cultivated certain lands of the plaintiff, the defendant pleaded that he was co-parcener with the plaintiff of the land, but he admitted that he had given a kabuliat for some of the lands

ONUS OF PROOF—*continued.*

25. LANDLORD AND TENANT—*continued.*

he occupied. *Held* that, since by giving the kabuliat the defendant had acknowledged the plaintiff to be his landlord, the onus of proving the plea was upon the defendant. JUGGOBUNDOO MOZOOMDAR *v.* GOOROOPERSHAD ROY . . . Marsh., 54

GOORCO PERSAD ROY *v.* JUGGOBUNDOO MOZOOMDAR . . W. R., F. B., 15 : 1 Hay, 228

234. ———— **Suit by raiyat for pottah at fair and equitable rates.**—The proprietors of a certain holding having refused the terms of the Government, a farming settlement was made with the present defendant, who undertook to confirm and ratify all amulnamahs granted by the zamindars while the settlement proceedings had been pending. Plaintiff, being a raiyat without a right of occupancy, but one who had got an amulnamah, sued for a pottah at the rate fixed by the amulnamah. *Held* that the amulnamah formed the basis of a special contract between the parties, and took their case out of the purview of the ss. 5 and 8 of the Rent Law; and that by the terms of the amulnamah the defendant was bound to give plaintiff a pottah on fair and equitable rates ("upajukta"), which were to depend on the rates which he himself obtained from Government. *Held* that the onus of proving that the rate which he claimed was fair and equitable was upon the plaintiff. KISHEN PERSHAD SINGH *v.* MOHUN SINGH [15 W. R., 420

235. ———— **Suit for rent**—*Waste and lakhiraj land.*—In a suit for rent, when the raiyat pleads that part of the land is waste and lakhiraj, the onus is on the landlord to prove that such land has paid rent to him in previous years. MOTEE LALL ADUCK *v.* JUDOOPUTTEE DOSS 2 W. R., Act X, 44

GUMANI KAZI *v.* HARIHAR MOOKERJEE [B. L. R., Sup. Vol., 15 : W. R., F. B., 115 Marsh., 527

MIRTOONJOY CHUCKERBUTTY *v.* BURODA KANT ROY . . . . . . 6 W. R., Act X, 18

BISSESSUR CHUCKERBUTTY *v.* WOOMA CHURN ROY . . . . 7 W. R., 44

236. ———— *Plea of payment.*—In a suit for rent if the tenant pleads payment the *onus probandi* is on him. PUREEAG LALL *v.* RAM JEWAN LALL . . . . 1 W. R., 264

KOONJO BEHARY BANERJEE *v.* ROY MOTHOORANATH CHOWDHRY . . . . 1 W. R., 155

237. ———— *Intervenor—Plea of payment.*—In a suit for rent where defendant denies the relationship of landlord and tenant as subsisting between himself and the plaintiff, and states that he paid his rent to an intervenor, it is not enough that the intervention is set aside; it still remains for the Court to investigate the question whether the defendant is a raiyat of the plaintiff. JAGURDEE *v.* RADHA KISHORE . 13 W. R., 259

238. ———— *Eviction of tenant by title superior to lessor.*—Where a tenant is sued for rent, he can set up eviction by title paramount to that of his lessor as an answer, and, if evicted from part of the land, an apportionment of the rent may take place. The onus is on the lessor who claims to be entitled to an apportionment to show what is the fair rate of the lands out of which the tenant was not evicted. GOPANUND JHA *v.* LALLA GOBIND PERSHAD . . . 12 W. R., 109

239. ———— *Suit under special arrangement.*—In a suit for rent alleged to be due under a particular arrangement the existence of which is repudiated by defendant, it is for plaintiff to prove the arrangement. SHUMBHOO GEER GOSSAIN *v.* RAM JEWAN LALL . 8 W. R., 509

240. ———— *Rent of whole tenure—Suit by shareholder.*—In a suit for rent by a shareholder where the defendant contends that he is not bound to pay otherwise than by entirety to the person entitled to the whole rent, the onus is on the plaintiff to show that he is entitled to sue for a fractional portion. LALUN *v.* HEMRAJ SINGH [20 W. R., 76

241. ———— *Rate of rent, Proof of—Evidence that rent stated in lease has been realized.*—The mere fact that a tenant some time ago gave a kabuliyat for a limited period at a particular rate of rent is not sufficient in itself to throw upon the defendant the entire burden of proving what the present rent is, without any evidence on the part of the landlord that the rent specified in the kabuliyat had ever been realized from him. MOKUNDA CHANDRA SARMA *v.* ARPAN ALI SHEIKH [2 C. W. N., 47

242. ———— *Shifting of onus—Claim for rent—Written receipts, if necessary proofs of payment—Written receipts, if primary evidence.*—Written receipts for payments are important, but by no means necessary as proof; nor are they of the nature of primary evidence, the loss of which must be shown in order to let in secondary. On the evidence in the case it was held that, though the case is a most obscure and of an unsatisfactory character, and that, although the plaintiff had given good reasons for holding that such part of the defendant's case as related to the missing receipts was not worthy of belief, yet that the defendant did give evidence of payment of the rent claimed, sufficient to throw back again on the plaintiff the onus of proving that the rent was still due. Plaintiff's evidence was silent on the crucial point of payment, her Dewan kept out of the way of examination, and no sufficient grounds had been assigned for reversing the decrees of the High Court. RAMESWAR KOER *v.* BHARAT PERSHAD SAHI 4 C. W. N., 18

243. ———— *Evidence—Plea of payment.*—In a suit by a landlord against his tenant for arrears of rent due for a portion of the year 1283 (1876), the defendant pleaded payment and called as his witness the plaintiff's agent, who admitted the receipt of certain payments from the defendant's under-tenants during the time for which the arrears were demanded, but swore that they were payments made in respect of arrears due

ONUS OF PROOF—*continued*

25 LANDLORD AND TENANT—*continued.*

on account of previous years The lower Appellate Court reversing the decree of the Court of first instance gave the defendant credit for the payments so admitted *Held* that the lower Appellate Court was wrong, that the defendant having pleaded payment was bound to prove that the admitted payments were in respect of that portion of the year 1283 for which the arrears were claimed S 12 of the Rent Law applies to receipts given directly by the landlord to the tenant and not to receipts given to third persons SYEFUN v RUDDER SOHAY [I L R, 7 Calc, 582

244. ——— *Proof of determination of tenancy—Beng Act VIII of 1869,* s 20 The d ...

... the lease had expired No written notice of relinquishment was necessary S 20 Bengal Act VIII of 1869, did not apply TILAK PATAK v MAHABIR PANDAY 7 B L R, Ap, 11 · 15 W. R, 454

245 ——— Suit for arrears of rent—*Proof of rate of rent* —In a suit to recover arrears of ...

... rate of 9 annas of the crop proved that in the mouzah in question the raiyats paid rent at that rate *Held* that, under the particular circumstances the onus was on the defendants who alleged that the proper rate was 8 annas to prove their allegation LOCHUN CHOWDHRY v ANUP SINGH 8 C L R., 428

246. ——— *Alleged possessions of portions only of land* —In a suit to recover arrears of rent under a kabuliat the defendant who had paid rent for upwards of four or five years pleaded that he had obtained possession of portions only of the lands demised *Held* (reversing the decision of FIELD, J) that the onus was upon the defendant BANY MADHOB MOOKERJEE v SRIDHUR DEB GHUTTUCK 10 C L. R., 555

247. ——— Suit for ejectment and for arrears of rent—*Disputed rate of rent* —In a suit for arrears of rent and for ejectment in consequence of non-payment where defendant challenged the rate claimed as well as plaintiff's right to sue alone —*Held* that the onus lay on plaintiff to prove his claim to the rate of rent sued for and to show that he was sole proprietor ASHRUF v RAM KISHEN GHOSE 23 W. R., 289

248 ——— Suit for ejectment—*Ground for retaining possession Proof of* —In a suit for ejectment by landlord against tenant after proof of due service of notice, the onus is on the tenant to show any ground for retaining possession NOBO COOMAR GHOSE v OOZIR SHIKDAR [23 W. R., 238

249 ——— *Nature of tenure Evidence of* —In a suit in ejectment valued under R100 the defendants who were sued as yearly tenants replied that their tenure was a mirasi gujasta tenure and in proof of the ... duced evidence ... tiffs The lower ...

250 ——— *Suit by landlord to eject tenant on expiration of tenancy* —Where a landlord sues to eject a raiyat on the ground of his tenancy having expired the tenant is not called upon to state the character of his tenancy until the plaintiff has given *primâ facie* proof that it is of a terminable character, and that it has terminated *A* sued to eject *B* on the ground that a temporary settlement effected with him had expired *B* set up a gujasta title to the land The lower Courts disbelieved plaintiff but called on *B* to support the title he had set up and he failing to do so gave *A* a decree *Held* that *A's* suit should have been dismissed when it was found that the evidence he put forward was unworthy of credit BULLEE AHEER v NISHAN SINGH [3 C L R., 209

251 ——— *Suit to eject tenant holding over after expiry of lease* —In a suit to eject a tenant holding over after the expiry of a pottah which was merely for a number of years, the onus is on the landlord to show that the tenure was such that the express limit of years may be fairly applied to the possession and construed to give the right of re-entry ROY ODYTE NARAIN SINGH v UBHURUN ROY 4 W. R., Act X, 1

SHEEB DYAL PAULEET v DWARKANATH GOOKUL [2 W. R., Act X, 54

252 ——— *Right of occupancy* —Where a tenant holding under a terminable lease which does not provide for re-entry makes no ...

... it is for him to prove that right PUDDOMONEE DOSSIA v JHOLLA PALLY [7 W. R., 283

253 ——— *Ejectment—Right of occupancy* —In a suit by a zemindar ...

... as that the defendant did not hold under any lease from the plaintiff, that the kabuliat was no genuine and that the defendant by his holding had acquired a right of occupancy *Held* the onus was on the plaintiff to prove the kabuliat and not on the defendant to prove that he had acquired a right of occupancy Therefore, where

ONUS OF PROOF—*continued.*

25. LANDLORD AND TENANT—*continued.*

the plaintiff failed to prove the kabuliat, the suit was held to be rightly dismissed, though the defendant failed to show any right of occupancy. WALLAH ALLEE *v.* GOLAM GOUS

[10 B. L. R., Ap., 32: 19 W. R., 215

254. ———————— *Refusal to quit after notice.*—In a suit by a zamindar to obtain khas possession of land within his estate, if a defendant is a middleman, the right of plaintiff follows as a matter of course, unless defendant can make out his claim to exclude the zamindar; but if defendant is a raiyat, plaintiff must show some cause of action beyond the bare circumstance of defendant's refusal to quit after notice under X of 1859. He must show that the raiyat is of a class liable to eviction. LALLA JOYNATH SAHEE DEO *v.* LUTCHEN CHRISTIAN

[16 W. R., 158

See PRAHLAD SEN *v.* DURGAPRASAD TEWARI

[2 B. L. R., P. C., 111: 12 W. R., P. C., 6
12 Moore's I. A., 286

255. ———————— *Suit under Act X of 1859, s. 23, cl. 5.*—In a suit under cl. 5, s. 23, Act X of 1859, the question of illegal ejectment was the only question for adjudication. The onus in such a cause was upon the plaintiff. ASGUR *v.* GOLUOK CHUNDER CHOWDHRY

[8 W. R., 383

256. ———— Suit for possession by tenant—*Appropriation of crops by another tenant.*—In a suit to recover possession where a plaintiff had held over the term of his lease and raised a crop which was appropriated by defendant (an adjacent tenant), on the ground that the disputed land was his alluvion,—*Held* that the onus lay upon the defendants (tenant and zamindar) to show that the land held by the plaintiff was removed from the control of the owner of the estate by circumstances which brought it under the control of the defendant-tenant. HEMA PANDEY *v.* GUJADHUR ROY

[24 W. R., 108

257. ———— Suit to set aside order of Settlement officer—*Sonthal Pergunnahs Settlement Regulation (III of 1872), ss. 24, 25.*—In a suit instituted in January 1887 by a plaintiff to set aside a settlement made under Regulation III of 1872, and to recover khas possession of a mouzah, alleging that the defendant held the lands as chakran, and that the services for which he held them had ceased, the defendant pleaded that the tenure was dar-mokurari, that the lands had been settled as such in June 1877, and that the suit was consequently barred by the special limitation provided by s. 25 of the Regulation. It was contended that the onus of proving the tenure to the dar-mokurari, which had been thrown on the defendant, had been wrongly so thrown on him, as the suit was substantially one to set aside a decree. *Held* that the onus of proving the validity and propriety of the settlement proceedings upon which he relied had been properly thrown on the defendant. NADIAR CHAND SINGH *v.* CHUNDER SIKHUR SADHU . I. L. R., 15 Calc., 765

ONUS OF PROOF—*continued.*

25. LANDLORD AND TENANT—*concluded.*

258. ———— Suit for damages for illegal distraint.—In a suit for recovery of damages by a plaintiff on the ground that his landlords, the defendants, had distrained their paddy alleging higher jummas, the onus is on the plaintiff to prove the annual rent payable by him. CHUNDER KANT MUKERJI *v.* HEM LAL MONDAL

[1 C. W. N., 463

26. LEGITIMACY.

259. ———— Proof of legitimacy—*Proof of heirship depending upon illegitimacy of defendant—Suit for possession.*—The plaintiffs in a suit to eject the defendant from land of which he was in actual possession having to prove not only their relationship (which was not disputed), but their heirship, which depended upon the illegitimacy of the defendant, were held bound to give sufficient general evidence in support of their case, to throw upon defendant the onus of proving his legitimacy. MAHOMED GOUR ALI KHAN *v.* ASHRUFFOONISSA

[2 W. R., P. C., 13: 9 Moore's I. A., 492

MAHOMED GOUR ALI KHAN *v.* AHMED KHAN

[2 W. R., P. C., 13: 9 Moore's I. A., 504

27. LIMITATION AND ADVERSE POSSESSION.

260. ———— Plea of limitation.—When a defendant pleads limitation, the *onus probandi* is on the plaintiff. BROJENDRO COOMAR ROY CHOWDHRY *v.* RADHA GOBINDO SHAH . 1 W. R., 235

COLLECTOR OF RUNGPORE *v.* PROSUNNO COOMAR TAGORE . . . . . . 5 W. R., 115

PANDURANG GOVIND *v.* BALKRISHNA HARI

[6 Bom., A. C., 125

KUMOLA DASSEE *v.* AZMUR ALI . 7 W. R., 13

NOBOKISHORE DEY *v.* RAMKISHEN

[9 W. R., 131

BHILOO MUNDUL *v.* MOTEE LALL GHOSE MUNDUL

[9 W. R., 251

GOSSAIN DOSS KOONDOO *v.* SIROO KOOMAREE DEBIA . . 12 B. L. R., 219: 19 W. R., 192

GHOGOOLEE *v.* MUZHUR HOSSEIN

[24 W. R., 389

261. ———— Limitation—*Suit for possession—Dispossession—Cause of action.*—In a suit between two zamindars, the appellant sought to disturb the admitted possession for about eleven years of the defendant. The defendant insisted on a possession of much longer duration as a statutory bar to the suit. *Held* that the onus was on the appellant to prove that the cause of action accrued to him on a dispossession within twelve years before suit, and that he, or some other person through whom he claims, was in possession during that period. MITRASUR SINGH *v.* NUND LOLL SINGH . 1 W. R., P. C., 51

ONUS OF PROOF—*continued*

27 LIMITATION AND ADVERSE POSSESSION —*continued*

S C NITRASUR SINGH *v* NUND LALL SINGH [8 Moore s I. A., 189

SIDHEE NUZEER ALI KHAN *v* WOOMESH CHUNDER MITTER 2 W R, 75

MAHOMED HOSSAIN *v* SURAHTOONISSA KHANUM [2 W R, 89

KEDARNATH ACHARJEE *v* BHUGWAN CHUNDER NUNDEE 2 W R., 153

GOORODOSS ROY *v* HURONATH ROY [2 W R., 246

JUGODUMBA CHOWDHRAIN *v* RAM CHUNDER DEO [6 W R, 327

BOOLEE SINGH *v* HUROBUNS NARAIN SINGH [7 W R., 212

LALL SINGH *v* MODHOOSOODUN ROY [8 W R., 426

DINOBUNDHOO SUHAYE *v* FURLONG [9 W R, 155

BUSSEEROONISSA CHOWDHRAIN *v* LEELANUND SINGH 14 W R 135

AMEER ALI *v* INDERJEET KOOER 15 W R, 43

KALEE NARAIN BOSE *v* ANUND MOYEE GOOPTA [21 W R, 79

262. ———— Adverse possession—*Proof of loss of title by*—*Held* by the Privy Council (affirming the judgment of the High Court) that where the plaintiff has established his title to land the burden of proving that the plaintiff has lost that title by reason of the adverse possession of the defendant is upon the defendant RADHA GOBIND ROY *v* INGLIS . 7 C L R, 364

263 ———— *Joint ancestral property—Limitation*—*Held* that the admission of certain property being joint ancestral throws the burden of proving exclusive and adverse possession beyond limitation upon the sharer refusing to admit other heirs DABEE SUHAI *v* SHEO DASS RAI [1 Agra, 285

264 ———— *Limitation Act 1877 art 144*—Under art 144 of the Limitation Act (XV of 1877) it is not for the plaintiff to prove that he has been in possession within twelve years before suit but it is for the defendant to show that he has held adversely to the plaintiff for twelve years NYAMTULA *v* NANA VALAD FARIDSHA [I. L R., 13 Bom, 424

265 ———— *Suit for possession*—Where a defendant pleads partly title and partly purchase and asserts his own possession on [illegible]

BISSUMBHUR BISWAS W R., 1864, 107

KEDARNATH MOOKERJEE *v* MOHESH CHUNDER PAULIT 1 W R. 67

266 ———— *Suit for possession—Proof of adverse possession*—In a suit to recover possession where defendants plead limitation and plaintiff proves that the commencement of the possession of the party through whom defendants' claim was as tenant it is for those who set up the plea of limitation to show when the nature of that possession was changed and how it became adverse RAMDHUN SATRA *v* NOBIN CHUNDER CHOWDHRY [12 W R, 250

267 ———— *Suit for possession* [illegible]

RAJ *v* DEPUTY COLLECTOR OF BHULLOOAH [13 W R, P C, 23

268 ———— *Benami transaction—Limitation*—In a suit for immoveable property under a kobala more than twelve years old where defendant pleads that plaintiff was only a [illegible]

269 ———— *Suit for possession—Limitation*—In a suit for possession of land on the ground that it belonged to plaintiff's talukh where defendant pleaded limitation—*Held* that the burden lay with the plaintiff to prove that he had possession (*i.e.* enjoyed the land) within twelve years of the suit RAM LOCHUN CHOWDHRY *v* JOY DOORGA DOSSIA 11 W R., 283

270 ———— *Suit for possession*—The plaintiff s ancestors having been declared by a decree of the Peishwa s Government in 1722 to be entitled to the whole of the patilki watan of Panderai and the defendants having a watan patra from the Raja of Satara in 1742 in favour of their claim to a half share but being unable to show that their ancestors had any concern with the watan for a period of ninety six years subsequent thereto during which the plaintiff's ancestors were recognized as owners—*Held* that the onus was on the defendants to show sufficient adverse possession previous to suit as to entitle them to the property AMIRTRAV P KOKDI *v* MANAJI J JAGTAP 3 Bom., A C, 49

271. ———— *Suit to recover possession of land—Limitation*—A suit to recover possession of an unenclosed piece of ground must be brought within twelve years from the time the cause of action accrued and in deciding this the issue is not that the plaintiff must show that he exercised some right of ownership over the ground within the twelve years preceding the filing of the action, but

ONUS OF PROOF—*continued.*

27. LIMITATION AND ADVERSE POSSESSION
—*continued.*

that twelve years have not elapsed between the day the defendant interfered with the plaintiff's possession and the date on which the plaintiff filed his claim. SAGANGOWDA BIN BASANGOWDA *v.* BASAPA BIN CHENAPA . . . . . **9 Bom., 62**

272. ——————— *Limitation—Settlement.*—In a suit for possession, where defendant denies plaintiff's title and sets up a defence involving the plea of limitation, the question of limitation does not depend upon whether defendant was in possession, but upon whether plaintiff was in possession. Where defendant admitted that the permanent settlement was ordered to be made with the party in possession, and that it was made within twelve years prior to the suit with the party from whom plaintiff claimed,—*Held* that, until the contrary was shown, that party was rightly presumed to be in possession, and plaintiff's claim was not barred by limitation. MAHOMED KOBEER *v.* ABDOOL AZEEM [**24 W. R., 315**

273. ——————— *Suit for possession—Proof of title.*—In a suit to obtain possession, where defendant pleads limitation, plaintiff is bound not only to prove his title, but also to show affirmatively that his cause of action accrued within twelve years before the commencement of the suit; and he must succeed upon the strength of his own title, not upon the weakness of his opponent's. LUTCHOO KHAN *v.* FOLEY . **24 W. R., 273**

274. ——————— *Suit for possession—Limitation.*—In a suit for possession of land the defendants claimed to hold under a valid miras tenure so as to be entitled to the ground rent from the raiyats, and to pay the plaintiff who was the superior landlord merely the miras rent. *Held* that, the plaintiff being admitted to be landlord, the onus was upon the defendants to prove either that they had a valid miras tenure, or that they had held adversely to the plaintiffs as mirasdars for more than twelve years, and that the plaintiffs had notice of such adverse holding. *Prahlad Sen* v. *Budhu Singh, 2 B. L. R., P. C., 111,* cited and followed. OGRA KANT CHOWDHREE *v.* MOHESH CHUNDER SICKDAR [**4 C. L. R., 40**

275. ——————— *Disposition—Presumption—Onus probandi—Limitation—Joint owners, Adverse possession between.*—Under the former Limitation Act the cause of action, and under the present law the event from which limitation is declared to run, must have occurred within the prescribed period, and it lies on the plaintiff to show this. *Accordingly,* where the suit is for possession and the cause of action is dispossession, the plaintiff is bound to prove possession and dispossession within twelve years. Possession is not necessarily the same thing as actual user. When land has been shown to have been in a condition unfitting it for actual enjoyment in the usual modes, at such a time and under such circumstances that that state naturally would, and probably did, continue till within twelve years before suit, it may properly be presumed that it did so continue, and that the previous possession continued also until the contrary is proved. Such a presumption is in no sense a conclusive one. Its bearing upon each particular case must depend upon the circumstances of that case. Many acts which would be clearly adverse, and might amount to dispossession as between a stranger and the true owner of land, would, between joint owners, naturally bear a different construction. MAHOMED ALI KHAN *v.* ABDUL GUNNY [**I. L. R., 9 Calc., 744 : 12 C. L. R., 257**

276. ——————— *Conflicting evidence of possession—Presumption of possession from title—Possession and actual user—Character of land in dispute—Mode of enjoyment.*—It is only when the evidence of possession is strong on both sides and apparently equally balanced that the presumption that possession goes with title should prevail. The principle does not apply where the evidence of possession is equaly unworthy of reliance on both sides. *Dharm Sing* v. *Hurpershad Sing, I. L. R., 12 Calc., 38,* explained. Possession, however, is not necessarily the same as actual user. When therefore the plaintiff has to prove possession of land in dispute within the statutory period of limitation, if there is anything special in the character of the land, for example, when it is permanently or temporarily incapable of actual enjoyment in any one of the customary modes, a presumption in favour of continuance of possession, though in no sense a conclusive one, may arise. *Mahomed Ali Khan* v. *Abdul Gunny, I. L. R., 9 Calc., 744 : 12 C. L. R., 257,* referred to. THAKUR SINGH *v.* BHOGERAJ SINGH . . . **I. L. R., 27 Calc., 25**

277. ——————— *Suit for possession—Previous dispossession—Limitation—Evidence.*—In every suit for the recovery of land, on the allegation of previous dispossession by the defendant, the plaintiff must start his case by showing that, at some time within twelve years previous to the institution of the suit, he has been in possession of the land sued for. *Perhlad Sein* v. *Rajender Kishore Singh, 12 Moore's I. A., 337; Dawkins* v. *Lord Penrhyn, 4 App. Cases, 951;* and *Noyes* v. *Crawley, 10 Ch. D., 31-36,* cited. BHOOTHNATH CHATTERJEE *v.* KEDARNATH BANERJEE [**I. L. R., 9 Calc., 125**

278. ——————— *Suit for possession—Previous dispossession—Limitation.*—Where, in a suit for the recovery of land based on title, the plaintiff alleges that he has been in possession of the land and was dispossessed therefrom by the defendant within twelve years prior to the institution of the suit, mere proof of such possession will not be sufficient to entitle the plaintiff to a decree. *Wise* v. *Ameerunnissa Khatoon, L. R., 7 I. A., 73,* followed. *Kawa Manji* v. *Khowaz Nussio, 5 C. L. R., 278,* disapproved. ERTAZA HOSSEIN *v.* BANY MISTRY . **I. L. R., 9 Calc., 130 : 11 C. L. R., 393**

279. ——————— *Limitation Act, 1877, sch. II, art. 142—Burden of proof—*

ONUS OF PROOF—*continued*

27 LIMITATION AND ADVERSE POSSESSION —*continued*

Date of dispossession or discontinuance of possession —The claimants had shown that they formerly were proprietors of the land to which they alleged title, and from which they claimed to oust the defendants, but they had been dispossessed or their possession had been discontinued some years before this suit was brought by them and the land was occupied by the defendants who denied their title That being so the burden of proof was on the claimants to prove their possession at some time within the twelve years

burden of proof on to the defence to show that the defendants were entitled to retain possession MOHIMA CHUNDER MOZUMDAR v MOHESH CHUNDER NEOGI [I L R, 16 Calc, 473 L. R., 16 I. A, 23

280 —————— *Limitation*

time to time returned and spent a few days with the defendant on the land in suit The defendant pleaded limitation *Held that the Limitation Act, sch* II, art 144 applied to the suit and the burden of proving adverse possession lay on the defendant ALIMA v KUTTI . . I L R, 14 Mad., 96

281 —————— *Limitation Act (XV of 1877) arts 142 and 144* —In cases falling under art 142 of the Limitation Act the plaintiff must at the outset show possession within twelve years and cannot rest merely on a proof of title, while in cases falling under art 144 the plaintiff may rest content with proof of title only in the first instance and the burden lies on the defendants to show that they have had a possession inconsistent with the title of the plaintiff for more than twelve

Act and that it was ... he or those under whom he claimed, had been in possession within twelve years before suit *Rao* ... *ndar* ... *473* ... 458

282 —————— *Limitation Act (XV of 1877), art 142—Sale while vendor is out of possession — Adverse possession* —In a suit brought by a vendee to recover possession of immoveable property which was not in the possession of his vendor at the time of the sale, the defence having raised the point of adverse possession for more than twelve years —*Held* that the onus lay upon the plaintiff to show ... defendant's adve... vendor had been ... before the date ... Limitation Act KASHINATH SITARAM OZE v SHRIDHAR MAHADEV PATANKAR I L R, 16 Bom, 343

283 —————— *Suit for possession of immoveable property—Question of title —Limitation Act, s 28* —Where a suit for the recovery of possession of immoveable property is resisted by a plea of adverse possession for more than twelve years the question of limitation becomes a question of title and it lies upon the plaintiff in the first instance to give satisfactory *primâ facie* evidence of his possession within twelve years of the suit *Mohima Chunder Mozoomdar* v *Mohesh Chunder Neogi, I L R, 16 Calc 473* and *Parmanand Misr* v *Sahib Ali I L R 11 All, 438* referred to. JAFAR HUSAIN v MASHUQ ALI [I. L. R, 14 All, 193

284 —————— *Suit for possession of immoveable property* —In a suit for possession of immoveable property it is for the plaintiff to show by some *prima facie* evidence that he has a subsisting title not extinguished by the operation of limitation before the defendant can be called upon

... *Bibi Weekly Notes, All, 1884 p 171*, referred to. INAYAT HUSEN v ALI HUSEN [I. L. R, 20 All, 182

285 —————— *Suit for possession—Limitation Act (XV of 1877), art 142—Evidence and proof of possession* —A suit for the proprietary possession of land was defended on the ground of limitation resting on the defendant's possession, displacing the plaintiff's case that her predecessor in title had possessed the land within twelve years before the suit This defendant had a possession which was admitted to have extended back for seven years before the suit The documentary evidence ... for more than

... sisted of a series of documents such as were usually given to and received by the possessor of lands, and they extended throughout the period in dispute, going

ONUS OF PROOF—*continued.*

27. LIMITATION AND ADVERSE POSSESSION —*continued.*

back far behind the twelve years which would bar. It was not necessary to consider whether the burthen of proof was shifted merely by the seven years' admitted possession, as the additional evidence raised the inference that the same possession had continued for more than twelve years. *Held* that the burthen of rebutting this inference had not been discharged by evidence given by the plaintiff, while the evidence for the defendant had amply sustained the burthen originally laid upon him to show his twelve years' possession. INNASIMUTTU UDAYAN *v.* UPAKARATH UDAYAN [I. L. R., 23 Mad., 10

286. ———— *Ejectment, Suit for—Limitation.*—In an action of ejectment the plaintiff need not fail merely because he cannot prove that he has been in possession of the land claimed within twelve years; he must show that his cause of action (that is, the taking possession of the land by another person) has accrued within that period. PANDURANG GOVIND *v.* BALKRISHNA HARI [6 Bom., A. C., 125

287. ———— *Suit for possession—Ejectment—Evidence—Previous possession.*—Where, in a suit for possession of land, the plaintiff proves merely that he has been in possession of the disputed land at some time within twelve years previous to the filing of the plaint, such evidence is not sufficient to throw upon the defendant the burden of proving his title to the land. *Wise* v. *Amirunnissa Khatoon, L. R., 7 I. A., 73,* followed; and *Gour Paroy* v. *Wooma Soonduree Debia, 12 W. R., 472,* cited. DEBI CHURN BOIDO *v.* ISSUR CHUNDER MANJEE [I. L. R., 9 Calc., 39 : 11 C. L. R., 342

288. ———— *Ejectment, Suit for—Proof of possession—Dispossession.*—In an ejectment suit, where the plaintiff claims land from which he alleges that he has been dispossessed, the general rule is that the burden is upon the plaintiff to show possession and dispossession within twelve years, or, at least, that the cause of action arose within twelve years, and this rule is not intended to be interfered with by the Privy Council in *Radha Gobind Roy* v. *Inglis, 7 C. L. R., 364.* MORO DESAI *v.* RAMCHANDRA DESAI . I. L. R., 6 Bom., 508

289. ———— *Right of Crown to waste lands—Title suit by Crown for declaration of title and possession.*—Assuming that the Crown has the right to oust any person who, without sanction, occupies waste land which has not been appropriated for any public purpose, it cannot, by a suit brought for a declaration of title or for ejectment, the date at which the cause of action arose not being stated in the plaint, compel a defendant to prove possession for sixty years. As a general rule, a plaintiff must not only show he has a title, but that he has a subsisting title, which he has not lost by the prescriptive section of the Limitation Act. The probable explanation of the ruling in *Radha Gobind Roy's case, 7 C. L. R., 364,* is that, when a plaintiff proves title and possession, it is to be presumed that his possession continues till the defendant proves that the possession was interrupted, but that, where the plaintiff can prove title only, and not possession, he must prove that the adverse possession of the defendant, or the acts of which he complains as impugning his title, occurred within the period prescribed by the Limitation Act. SECRETARY OF STATE FOR INDIA *v.* VIRA RAYAN . . I. L. R., 9 Mad., 175

290. ———— *Waste land subsequently made cultivable—Presumption—Constructive possession.*—The doctrine of constructive possession applies only in favour of a rightful owner, and must not, as a rule, be extended in favour of a wrong-doer, whose possession must be confined to land of which he is actually in possession. In a suit for the possession of lands formerly uncultivable, but subsequently brought under cultivation, the District Judge had allowed the plea of limitation to prevail against the plaintiff upon a finding—based, not upon evidence of actual possession by the defendants, but upon an inference from part of the evidence—that the defendants had been in constructive possession for over twelve years prior to the suit. *Held* that, so far as the judgment and decree of the District Judge related to certain plots described as patit or uncultivable lands, they must be set aside, and the case remanded to the District Judge to determine (*a*) how far the presumption in favour of the plaintiff as to the continuance of the uncultivable state of the lands till within twelve years of suit applied; and (*b*) how far that presumption had been rebutted by evidence of actual possession on the part of the defendants. MOHINI MOHAN ROY *v.* PROMODA NATH ROY [I. L. R., 24 Calc., 256 1 C. W. N., 304

291. ———— *Dispossession—Ejectment—Evidence—Proof of title.*—In June 1878 the plaintiff sued the defendant for the recovery of possession of certain land. At the trial it was proved that he had been continuously in peaceable possession of the land until the month of May 1878, when he was forcibly and illegally dispossessed by the defendant. *Held* that the evidence was sufficient to call upon the defendant to show his title to the land. MOHABEER PERSHAD SINGH *v.* MOHABEER SINGH [I. L. R., 7 Calc., 591: 9 C. L. R., 164

292. ———— *Suit for possession after wrongful dispossession—Proof of title.*—In a suit for possession, it was found that the plaintiff had been in possession within twelve years from the institution of the suit, but he had been wrongfully dispossessed by the defendant. The plaintiff was unable to prove possession previous to being ousted for a longer period than eleven years. *Held* that, the ouster by the defendant having been wrongful, the onus was not thereby shifted to the plaintiff, and that under the circumstances the defendants were bound to prove their title. *See Mohabeer Pershad Singh* v. *Mohabeer Singh, I. L. R., 7*

ONUS OF PROOF—continued

27 LIMITATION AND ADVERSE POSSESSION
—*continued*

Calc, 591 9 C L R, 164 BROJO SUNDER GOSSAMI *v* KOILASH CHUNDER KUR 11 C L R, 133

293 ———————— *Suit for posses-*

possession within sixty years. BROMANUND GOSSAIN *v* GOVERNMENT . . 5 W R, 136

294 ———————— *Limitation —Boundaries*—No proof of anterior title in the claimant such as would be involved in the decision of a question of boundaries in his favour can relieve him of the burden of proving that he was in possession within twelve years prior to suit, or shift it upon his adversaries so as to compel them to prove the time and manner of his dispossession IARA SINGH *v* CHAIDA MULL . . . 2 Agra, 177

295. ———————— *Limitation— Suit by reversioner to set aside alienation by widow*—In a suit for possession by the purchaser of the right of a reversioner to the estate of a widow, extreme limita widow's such cir- but the plea of limitation, to prove, not not only that the widow died on the date alleged but that she actually held possession up to the time of her death KALEE NATH *v* JOY DOORGA DOSSEE . 11 W. R, 173

296 ———————— *Suit for possession—Limitation—Chur lands*—In a suit to recover possession of land under cultivation, when the defendant pleads adverse possession, it is, under ordinary circumstances, for the plaintiff to show *primâ facie* that the cause of action upon which he is suing is not barred by limitation, and not for the defendant to prove his adverse possession in the first ssion of h have ifferent, posses- suit is l under he suit, but previously jungly or unculturable, the *onus probandi* still lies on the plaintiff; but on his proving that the chur was formed, or the land first became culturable, within twelve years before he instituted his suit, the onus is shifted to the defendant, who must establish his adverse possession for more than twelve years MAHOMED IBRAHIM *v* MORRISON [I. L. R., 5 Calc., 36

297. ———————— *Suit for possession of land after submission—Limitation*—Where the suit was for possession of certain land, on the allegation that it was land belonging to plaintiff's village but submerged at the time of settlement, if the plaintiff could show the identity of the land submerged with the land which has since been left dry, the onus is on the defendant to show that some other person had been in adverse possession for twelve years before the plaintiff preferred his claim, and that such adverse possession commenced from a time when plaintiff was in a position to dispute it HUR SAHAL *v* MAHOMED DAIM KHAN . 2 Agra, 64

298 ———————— *Accreted lands —Re-survey of lands*—In a suit in which plaintiff claimed some land as an accretion to his estate, but in which defendant claimed the said land as forming part of his estate according to the survey of 1846, and an ameen reported that, though an erroneous survey in 1865 included the said land in plaintiff's estate, yet, in the earlier survey it had been thaked as defendant's who indeed had obtained a decree for it against the Government,—*Held* that before plain- including the said land in plaintiff's estate not being sufficient proof of the facts to be found MOWLA KOOMAREE *v* MUTTY SINGH 25 W R., 129

299 ———————— *Suit for possession of alluvial land—Evidence of possession in absence of landmarks*—The plaintiff sued to recover a tract of chur land as parcel of his mouzah of J, the defendant alleging the said land to be a parcel of his mouzah of G About the year 1830, a large tract of land was diluviated by the River Chutol within the mouzahs belonging respectively to the plaintiff and defendant and after re formation in 1837 a proceeding was taken by the plaintiff before the Magistrate under which he was ordered to be put in possession of a considerable tract of such newly-formed land, the Magistrate laying down the boundaries After nearly twelve years (*i e*, in 1849), the defendant's father brought a civil suit to set aside the Magistrate's decision, and the ultimate finding was that the plaintiff had been in possession of the land described in the Magistrate's order from and since the date of that order *Held* that that decree must be taken to have established that the plaintiff was in possession of the land described in the Magistrate's order, and had continued in such possession, the question in the present suit being whether the lands now claimed are identical with those so described *Held* also that the onus of proving that issue lay upon the plaintiff, because the foundation of his suit was that, having been in possession, he was dispossessed as a consequence of certain measurements made by Government officers *Held* further that plaintiff had failed to sustain the burden of proof He relied principally on the boundaries given by the Magistrate and certain maps prepared then and later as compared with the Government map of 1853; but their Lordships were unable to

ONUS OF PROOF—*continued.*

27. LIMITATION AND ADVERSE POSSESSION —*continued.*

back far behind the twelve years which would bar. It was not necessary to consider whether the burthen of proof was shifted merely by the seven years' admitted possession, as the additional evidence raised the inference that the same possession had continued for more than twelve years. *Held* that the burthen of rebutting this inference had not been discharged by evidence given by the plaintiff, while the evidence for the defendant had amply sustained the burthen originally laid upon him to show his twelve years' possession. INNASIMUTHU UDAYAN *v.* UPAKARATH UDAYAN [I. L. R., 23 Mad., 10

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288. ——— *Ejectment, Suit for—Proof of possession—Dispossession.*—In an ejectment suit, where the plaintiff claims land from which he alleges that he has been dispossessed, the general rule is that the burden is upon the plaintiff to show possession and dispossession within twelve years, or, at least, that the cause of action arose within twelve years, and this rule is not intended to be interfered with by the Privy Council in *Radha Gobind Roy* v. *Inglis, 7 C. L. R., 364.* MORO DESAI *v.* RAMCHANDRA DESAI . I. L. R., 6 Bom., 508

289. ——— *Right of Crown to waste lands—Title suit by Crown for declaration of title and possession.*—Assuming that the Crown has the right to oust any person who, without sanction, occupies waste land which has not been appropriated for any public purpose, it cannot, by a suit brought for a declaration of title or for ejectment, the date at which the cause of action arose not being stated in the plaint, compel a defendant to prove possession for sixty years. As a general rule, a plaintiff must not only show he has a title, but that he has a subsisting title, which he has not lost by the prescriptive section of the Limitation Act. The probable explanation of the ruling in *Radha Gobind Roy's case, 7 C. L. R., 364,* is that, when a plaintiff proves title and possession, it is to be presumed that his possession continues till the defendant proves that the possession was interrupted, but that, where the plaintiff can prove title only, and not possession, he must prove that the adverse possession of the defendant, or the acts of which he complains as impugning his title, occurred within the period prescribed by the Limitation Act. SECRETARY OF STATE FOR INDIA *v.* VIRA RAYAN . . I. L. R., 9 Mad., 175

290. ——— *Waste land subsequently made cultivable—Presumption—Constructive possession.*—The doctrine of constructive possession applies only in favour of a rightful owner, and must not, as a rule, be extended in favour of a wrong-doer, whose possession must be confined to land of which he is actually in possession. In a suit for the possession of lands formerly uncultivable, but subsequently brought under cultivation, the District Judge had allowed the plea of limitation to prevail against the plaintiff upon a finding—based, not upon evidence of actual possession by the defendants, but upon an inference from part of the evidence—that the defendants had been in constructive possession for over twelve years prior to the suit. *Held* that, so far as the judgment and decree of the District Judge related to certain plots described as patit or uncultivable lands, they must be set aside, and the case remanded to the District Judge to determine (*a*) how far the presumption in favour of the plaintiff as to the continuance of the uncultivable state of the lands till within twelve years of suit applied; and (*b*) how far that presumption had been rebutted by evidence of actual possession on the part of the defendants. MOHINI MOHAN ROY *v.* PROMODA NATH ROY [I. L. R., 24 Calc., 256 1 C. W. N., 304

291. ——— *Dispossession—Ejectment—Evidence—Proof of title.*—In June 1878 the plaintiff sued the defendant for the recovery of possession of certain land. At the trial it was proved that he had been continuously in peaceable possession of the land until the month of May 1878, when he was forcibly and illegally dispossessed by the defendant. *Held* that the evidence was sufficient to call upon the defendant to show his title to the land. MOHABEER PERSHAD SINGH *v.* MOHABEER SINGH [I. L. R., 7 Calc., 591: 9 C. L. R., 164

292. ——— *Suit for possession after wrongful dispossession—Proof of title.*—In a suit for possession, it was found that the plaintiff had been in possession within twelve years from the institution of the suit, but he had been wrongfully dispossessed by the defendant. The plaintiff was unable to prove possession previous to being ousted for a longer period than eleven years. *Held* that, the ouster by the defendant having been wrongful, the onus was not thereby shifted to the plaintiff, and that under the circumstances the defendants were bound to prove their title. *See Mohabeer Pershad Singh* v. *Mohabeer Singh, I. L. R., 7*

ONUS OF PROOF—*continued*

27 LIMITATION AND ADVERSE POSSESSION —*continued*

Calc, 591 9 C L R 164 BROJO SUNDER GOSSAMI *v* KOILASH CHUNDER KUR 11 C L R, 133

293 ———— *Suit for posses-*

possession within sixty years. BROMANUND GOSSAIN *v* GOVERNMENT . . 5 W R., 136

294 ———— *Limitation —Boundaries* —No proof of anterior title in the claimant such as would be involved in the decision of a question of boundaries in his favour can relieve him of the burden of proving that he was in possession within twelve years prior to suit, or shift it upon his adversaries so as to compel them to prove the time and manner of his dispossession TARA SINGH *v* CHAIDA MULL . . . 2 Agra, 177

295 ———— *Limitation— Suit by reversioner to set aside alienation by widow* —In a suit for possession by the purchaser of the right of a reversioner to the estate of a widow, which was instituted within one day of the extreme time of twelve years allowed by the law of limitation reckoning from the alleged date of the widow's death,—*Held* that it was necessary, under such circumstances for the plaintiff in order to rebut the plea of limitation, to prove not not only that the widow died on the date alleged, but that she actually held possession up to the time of her death KALEE NATH *v* JOY DOORGA DOSSEE . 11 W. R, 173

296 ———— *Suit for possession—Limitation—Chur lands* —In a suit to recover possession of land under cultivation, when the defendant pleads adverse possession, it is under ordinary circumstances, for the plaintiff to show *primâ facie* that the cause of action upon which he

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but previously jungly or unculturable, the *onus probandi* still lies on the plaintiff, but on his proving that the chur was formed or the land first became culturable, within twelve years before he instituted his suit, the onus is shifted to the defendant, who must establish his adverse possession for more than twelve years MAHOMED IBRAHIM *v* MORRISON [I. L. R., 5 Calc, 36

297 ———— *Suit for possession of land after submission—Limitation* —Where the suit was for possession of certain land, on the allegation that it was land belonging to plaintiff's village but submerged at the time of settlement if the plaintiff could show the identity of the land submerged with the land which has since been left dry, the onus is on the defendant to show that some other person had been in adverse possession for twelve years before the plaintiff preferred his claim and that such adverse possession commenced from a time when plaintiff was in a position to dispute it HUR SAHAI *v* MAHOMED DAIM KHAN . 2 Agra, 64

298 ———— *Accreted lands —Re-survey of lands* —In a suit in which plaintiff

and an ameen reported that, though an erroneous survey in 1865 included the said land in plaintiff's estate yet, in the earlier survey it had been thaked as defendant's who indeed had obtained a decree for it against the Government,—*Held* that, before plaintiff could be entitled to a decree for the land in suit, he must establish facts which, according to the law

KOOMAREE *v* MUTTY SINGH 25 W. R., 129

299 ———— *Suit for possession of alluvial land—Evidence of possession in absence of landmarks* —The plaintiff sued to recover a tract of chur land as parcel of his mouzah of J, the defendant alleging the said land to be a parcel of his mouzah of G About the year 1830, a large tract of land was diluviated by the River Chutol within the mouzahs belonging respectively to the plaintiff and defendant and after re formation in 1837 a proceeding was taken by the plaintiff before the Magistrate under which he was ordered to be put in possession of a considerable tract of such newly-formed land, the Magistrate laying down the boundaries After nearly twelve years (*i e*, in 1849), the defendant's father brought a civil suit to set aside the Magistrate's decision, and the ultimate finding was that the plaintiff had been in possession of the land described in the Magistrate's order from and since the date of that order *Held* that that decree must be taken to have established that the plaintiff was in possession of the land described in the Magistrate's order, and had continued in such possession, the question in the present suit being whether the lands now claimed are identical with those so described *Held* also that the onus of proving that issue lay upon the plaintiff, because the foundation of his suit was that having been in possession he was dispossessed as a consequence of certain measurements made by Government officers *Held* further that plaintiff had failed to sustain the burden of proof He relied principally on the boundaries given by the Magistrate and certain maps prepared then and later as compared with the Government map of 1853, but their Lordships were unable to

ONUS OF PROOF—*continued.*

27. LIMITATION AND ADVERSE POSSESSION —*continued.*

place firm reliance upon any inference drawn from these maps. Their Lordships were also of opinion that in questions of this kind, where the natural boundaries and landmarks have disappeared, evidence of possession was very important and satisfactory, and that there was no reason to distrust the witnesses of the respondent proving such possession GRIJA KANT LAHORY CHOWDHRY *v.* HURISH CHUNDER CHOWDHRY . . . 19 W. R., P. C., 114

300. ———————— *Right to alluvial land—Change in course of river—Boundaries.—Disputed settlement.*—At the permanent settlement the River Gunduck divided mouzah Sohagpore (zillah Tirhoot) from the village of Dumri (zillah Sarun). In 1837 the river got into its southern channel, and a quantity of chur land to the north was resumed by Government and settled with the zamindars of Sohagpore. In 1846 it was again settled with the same zamindars, who remained in possession until 1848, when the river having returned to its northern channel the deara land was claimed by proprietors on the southern or Sarun side of the river: the consequence was an Act IV of 1840 suit which was decided in favour of the zamindars of Sohagpore. In 1856, on the expiry of the last temporary settlement, the question arose with whom Government should engage for the revenue, and it was finally decided by the Board of Revenue that a settlement should be made with the zamindars of Dumri, who accordingly obtained possession. The Board's decision proceeded on two principles,—*viz.*, that a usage existed that the main channel of the Gunduck should be the boundary of the zamindaries, and that therefore the interest of the zamindars of Sohagpore had been of a limited, temporary, and conditional character. These zamindars then brought a suit to impeach this settlement and to recover possession. After decision, appeal, and remand, it was finally decided by the High Court that the land in dispute was identical with that formerly settled with the maliks of Sohagpore, who (it was assumed) had a permanent proprietary interest therein. *Held* that the proper issues to be tried were: first, whether the land had been settled in 1837 with the maliks of Sohagpore as proprietors of alluviums which had gradually accreted to their estate, or upon what other grounds such settlement was made, the onus of proving gradual accretion being on the plaintiffs; and, secondly, whether there was at the permanent settlement, and has been since, a clear and definite usage such as supposed by the Board of Revenue, the burden of proving the affirmative of this being on the defendant RAJENDUR PERTAB SAHEE *v.* LALLJEE SAHOO

[20 W. R., P. C., 427

301. ———————— *Alluvial land after diluvion—Re-formation of chur land—Limitation.*—In a suit for possession of chur lands as re-formations on the original site of plantiff's or his vendor's lands, or accretions thereto, where limitation is pleaded by defendant in adverse possession, the onus lies on plaintiff to prove that, before disappearance or diluvion, the land in dispute was in the possession of his vendor. GOKOOL KRISTO SEN *v.* DAVID . . . . . 23 W. R., 443

The evidence to be given and the onus of proof in cases of re-formed chur lands was also discussed in AUKHIL CHUNDER CHOWDHRY *v.* DELAWAR HOSSEIN . . . . . 6 C. L. R., 93

302. ———————— *Re-formation on old site of lands after diluvion—Limitation.*—Where, in a suit for possession of lands which have re-formed upon the old site after diluviation, the defendant relies upon a statutory title of twelve years' possession, the plaintiff, in order to succeed, must, according to the rule laid down in the case of *Nitrasur Singh* v. *Nund Loll Singh, 8 Moore's I. A., 199,* prove satisfactorily that the defendant has not been in possession for the period of twelve years next preceding the commencement of his suit. And where the evidence is not sufficient to support an affirmative finding that the whole of the lands claimed have re-formed within twelve years preceding the institution of the suit, it is incumbent on the plaintiff to show specifically the portion, if any, which has not so re-formed. *Per* JACKSON, *J.*—I am unable myself to see on what principle or by what means the Court could of itself undertake to divide the portion of the land which may have re-formed within twelve years from the larger part which evidently re-formed more than twelve years ago, and had been in the adverse possession of the defendants. RUNJIT SINGH *v.* SCHOENE, KILBURN & Co.

[4 C. L. R., 390

303. ———————— *Diluvion—Possession on re-formation—Subsequent diluvion—Possession, Suit for.*—*Per* GARTH, *C.J.*—Where a person can show that he has been in possession of certain lands prior to such lands becoming diluviated, his possession must be considered as continuing during the time of diluvion, until such time as he becomes dispossessed by some other person; and in such a case, the onus lies upon the dispossessor to show that he has acquired a title under the law of limitation which has put an end to the rights of the original possessor. *Nitrasur Singh* v. *Nund Loll Singh, 8 Moore's I. A., 199,* and *Radha Gobind Roy* v. *Inglis, 7 C. L. R., 364,* distinguished. KALLY CHURN SAHOO *v.* SECRETARY OF STATE FOR INDIA . I. L. R., 6 Calc., 725: 8 C. L. R., 90

304. ———————— *Suit for possession of land—Presumption of possession and ownership.*—If, in a suit for possession of land which was covered with water more than twelve years before the institution of the suit, the plaintiff proves that he exercised acts of ownership, as by letting out the julkur to tenants, that is *primâ facie* evidence of possession and ownership; and unless the defendant can make out a twelve years' statutory title by adverse possession, the plaintiff's possession must be presumed to have continued, and it is not necessary

ONUS OF PROOF—*continued*

27. LIMITATION AND ADVERSE POSSESSION —*continued*.

for him to show a possession by acts of ownership within the twelve years MOHINY MOHUN DAS *v* KRISHNO KISHORE DUTT

[I. L. R., 9 Calc., 802: 12 C. L. R., 337

305 ———————— *Alluvion and diluvion—Title—Limitation—Acts of ownership* —In a suit for declaration of title to, and recovery of possession of, alluvial lands which had been diluviated more than twelve years before the institution of the suit, the plaintiffs proved their title and possession up to the time of diluviation, and alleged that the lands had re-formed within twelve years, without alleging or proving possession during that period The defendants, on the other hand, alleged that the re formation had taken place more than twelve years before suit, and that they had acquired a title to the lands by adverse possession for that period. *Held* that in such a case the submergence of the lands after diluvion ought to be presumed until the contrary was shown, and that the onus of proving re-formation before twelve years and adverse possession was shifted to the defendants *Per* WILSON, *J* —As a general rule where a plaintiff claims land from which he alleges he has been dispossessed the burden is upon him to show possession and dispossession within twelve years Proof of possession within twelve years does not necessarily mean proof of acts of ownership within that time. The nature of the proof of possession must depend on the nature of the case There are many cases in which the party on whom the burden of proof in the first instance lies may shift the burden to the other side by proving facts giving rise to a presumption in his favour In the case of lands gradually diluviated and gradually re-formed, if the diluviation has been more than twelve years before suit, the claimant, unless he can show possession since the re formation, must at least show that he was in possession down to the date of the diluviation. Where the true owner is in possession at the time of diluviation, his possession is presumed to [illegible]

possession have been proved to be in a certain person up to a certain point of time,—when there has [illegible]

presumed to continue until the property has again become susceptible of actual visible possession. Proof of possession is presumptive proof of ownership, because men generally own the property which they [illegible]

ONUS OF PROOF—*continued*.

27 LIMITATION AND ADVERSE POSSESSION —*continued*.

[illegible]

owner. Such a presumption then takes the place of evidence to show the plaintiff's possession, within twelve years before suit, of a property in which, from the nature of the thing, evidence of actual possession is impossible MANO MOHUN GHOSE *v* MOTHURA MOHUN ROY

[I L R, 7 Calc., 225: 8 C L R, 126

306. ———————— *Diluviation—Subordinate tenure—Suit for recovery of possession of land—Re-formation on the site of plaintiff's villages* —In a suit brought by the plaintiffs on the 10th December 1888, for recovery of possession of three plots of land, on the allegation that the lands in dispute were re formations on the site of the villages of K and M which were let out in patni and darpatni to third parties in 1868, and that the rights of the patnidar and the darpatnidar were re-acquired by them in the years 1878, 1880 1883, and 1892, the defence was that the lands were not re-formation, but accretion to the defendant's village of C *Held* that, as the plaintiff's title to and possession of the villages of, H and M, down to the time of their diluviation, was not denied and as it was found that the disputed plots of land were part of the said villages, it was not incumbent on the plaintiffs to prove possession of the lands in dispute previous to the diluviation, but the onus lay on the defendants to prove adverse possession for more than twelve years prior to the institution of the suit and the suit was not barred by limitation *Woomesh Chunder Goopto v Raj Narain Roy, 10 W. R, 15*, and *Davis v. Abdul Hamed, 8 W R, 65*, referred to GUNGA KUMAR MITTER *v* ASUTOSH GOSSAMI

[I. L. R., 23 Calc, 863

307.———————— *Accretion—Right of riparian proprietors—Title to alluvial land contested between villages on opposite banks—Prescription* —The plaintiffs were the proprietors of a village on the southern bank, who disputed with those of a village on the northern bank, the ownership of alluvial land formed by the Ganges The current, after having encroached upon the southern bank, went away from that side of the river towards the northern, leaving the tract of alluvial land now in dispute This appeared on its previous site to the south of the main stream It was then carried away by diluvion, and again appeared after that. This land was claimed by the plaintiffs, not as part of their old land, but on the strength of their having [illegible]

before they brought this suit The evidence did not support their claim, the burden of proof being on them It was shown that after the second recession of the river towards the north, and after the re-appearance of the alluvial land on the south of the

ONUS OF PROOF—*continued.*

27. LIMITATION AND ADVERSE POSSESSION —*continued.*

current, the land had been taken by the Government into their possession, and that the latter had made over the greater part of it to the defendants who had since held this part. There had not been shown to have been any actual possession held of the remainder by the plaintiffs, who had thus failed as to the whole to prove the continued possession necessary to their acquiring title. UDIT NARAIN SINGH *v.* GOLABCHAND SAHU . I. L. R., 27 Calc., 221 [L. R., 26 I. A., 236

308. ——— *Limitation Act (XV of 1877), sch. II, arts. 142, 144—Boundaries, Dispute as to—Ownership of land reclaimed from a bhil contested between proprietors of contiguous estates—Prior possession of land by one of two claimants — Presumption as to continuance of possession of land by original owner, limitation being pleaded by party in possession.*— In suits relating to disputed boundaries where the decision of the lower Court as to the ownership involves questions of the correctness of surveys, maps, recorded description, and other such evidence, the appellant should do more than show points requiring explanation. He should be prepared to show in what respect the decision has been wrong in regard to the evidence, and what other course would be right. The question was as to the ownership of land reclaimed from a bhil within the confines of one or other of two adjoining revenue mehals, the one belonging to the plaintiff, the other to the defendants, and involved the identification of the land in suit with some that had been covered with water, but of which the plaintiff's possession, with title, had been affirmed in proceedings of the revenue survey in 1857. In consequence of the nature and condition of the land, there was no evidence of any act of possession done by either party during the first two years of the twelve immediately preceding the date of the institution of the suit, and during the last ten years the defendants had been in possession. The latter, having tried and failed to establish adverse possession in themselves, contended that, even if the plaintiff's possession had been shown to have existed in 1857, he could not succeed without his showing that his possession remained till later than the 9th April 1869, the suit having been filed on 9th April 1881, or unless he proved some act of dispossession by the defendants within that period. *Held* that the presumption was in favour of the plaintiff's possession, which had been with apparent title, having in fact continued over the two years in question, as to which continuance there was no evidence to the contrary. If the burden was on the plaintiff to show possession down to within twelve years of suit, it had been discharged. RAJKUMAR ROY *v.* GOBIND CHUNDER ROY [I. L. R., 19 Calc., 660 L. R., 19 I. A., 140

309. ——— *Suit for possession of lands forming bed of river — Fishery rights —Presumption —Possession.*—In a suit to recover possession of certain lands in the bed of a river which had changed its course, and to get rid of the effect of a Deputy Magistrate's order under s. 318, Criminal Procedure Code, 1861, it was found that plaintiffs had been in possession when the lands were surveyed some years previously as part of their village, and had continued in possession up to the year in which the criminal proceeding was held. *Held* that the presumption raised by the plaintiff's continued, and undisturbed possession was not rebutted by defendant's allegation that he was entitled to the julkur of the river. HOGG *v.* DENONATH KOONDOO . . . . . 11 W. R., 566

310. ——— *Omission to give purchaser possession until long after sale—Suit to recover possession.*—Where the right, title, and interest of a party had been sold in execution, but possession was delivered to the purchaser more than fifteen years after the sale, such irregularity was held not to entitle the party first mentioned to a decree in a suit to recover the property unless he could prove possession for a period of more than twelve years before he was dispossessed. ATTOTRAM DOSS *v.* BALUNKEE DOSS . . 14 W. R., 357

311. ——— *Suit for confirmation of title—Possession.*—In a suit by a Hindu widow for confirmation of her title to certain land in right of her husband, the defendant, who had a possessory award of the property given to her under s. 15, Act XIV of 1859, pleaded that the plaintiff was never in possession. *Held* that the onus was on the plaintiff to show that she was in possession within the period of limitation. SHANTO MONEE GOOPTAH *v.* SUTTO BHAMA GOOPTAH 7 W. R., 34

312. ——— *Suit to establish proprietary right.*—Where plaintiff sues to establish proprietary right as against a mokuraridar, it is not necessary for him to prove that he has been in actual possession within twelve years. PROTAP NARAIN MOOKERJEE *v.* KARTICK CHUNDER MOOKERJEE . . . . 10 W. R., 192

313. ——— Limitation— *Suit on bond—Instalment-bond—Indorsement of payment of instalments.*—Where a defendant sets up the defence of limitation, he must plead it and show that the claim is barred. If, when the plaintiff has proved his case, the facts show that the cause of action accrued at a date earlier than the period of limitation, and the plea of limitation has been set up by the defendant, the latter will be entitled to take advantage of the plaintiff's evidence that the claim is barred, and to have judgment given in his favour. The obligee of a bond, by which the obligor covenanted to pay the sum of R3,800 by annual instalments of R200 and in which it was also agreed that payments of the instalments should be indorsed on the bond, brought a suit against the obligor alleging default in payment, and claiming to recover the amount of the bond. He gave credit for payment of the instalments for seven years, and alleged that his cause of action arose upon default in payment of the eighth instalment. The

ONUS OF PROOF—*continued*

27 LIMITATION AND ADVERSE POSSESSION —*continued*

bond showed on its face indorsements of the payments for which credit was given The obligor alleged that no instalments were paid after the third year, that therefore the debt became due at an earlier date than that stated by the plaintiff and that the claim was barred by limitation *Held* that inasmuch as the defendant adduced no evidence to show that the later instalments were not paid and inasmuch as the evidence produced by the plaintiff did not show that the debt accrued at a date earlier than the limitation period, the plea of limitation failed RADHA PRASAD SINGH v BHAJAN RAI I L R, 7 All, 677

314 ——— *Suit for possession by member of family admittedly not joint—Partition*—The plaintiff sued for possession of certain property, alleging that it had belonged to a joint family, of which he had been a member and had been allotted to him on partition The partition was not proved and the suit was dismissed on the ground of limitation On second appeal it was contended that, if the partition was held not to be proved, the family must be held to be joint, and as the possession of one member could not be adverse to another, the decree dismissing the suit on the ground of limitation was erroneous *Held* that as the family was admittedly not joint the plaintiff was bound to remove the bar of limitation by showing some sort of possession by himself within twelve years before his suit could be entertained and, as he had not done so, his suit was properly dismissed TULSHI PERSHAD v. RAJA MISSER I L R, 14 Calc, 610

315. ——— *Limitation Act (XV of 1877) sch II, arts 127 and 144—Suit for possession of land alleging a previous partition*—

[illegible]

partition four or five years before suit and of which he had actually been in separate possession The lower Court upon these allegations rejected the plaintiff's claim, holding that the suit was not one for partition and did not fall within art 127 of the Limitation Act (XV of 1877) but that art 144 applied, and that the plaintiff had failed to show that the defendant's adverse possession had begun within twelve years preceding the suit On appeal to the High Court —*Held* reversing the decree and sending back the case, that under art 144 it was for the defendant to prove adverse possession for twelve years before suit HANMANTA KOLAJI v MAHADEV KONDAJI [I. L. R, 18 Bom, 513

316 ——— *Suit for redemption of usufructuary mortgage—Plaint, Form of—Proof of title—Act I of 1872 (Evidence Act) s 118*—There is a clear distinction as to the onus of proof between cases where a plaintiff sues for possession of land by redemption of mortgage and cases where the defence to a suit for possession of land is twelve years' adverse possession by the defendant. In each case the plaintiff must plead his title, and if that title is in issue he must make it out by at least *primâ facie* evidence before the defendant can be put to proof of his defence Where the defence is twelve years' adverse possession the defendant must plead and make out the title he alleges and thus show that the title of the plaintiff which otherwise had been proved or admitted, was lost In a suit for possession of land by redemption of mortgage, the very nature of which presupposes that the possession of the defendant or his predecessor was lawful, the plaintiff must in his plaint show the title upon which he relies, and therefore a title subsisting at the date of suit. Unless he gives *primâ facie* evidence to show that his suit is within time, he fails to prove his title or subsisting right to the property *Philipps* v *Philipps, L R, 4 Q B D, 127, Dawkins* v *Lord Penrhyn L R, 4 Ap Cas, 51 Radha Gobind Roy Sahib* v *Inglis 7 C L R, 364, Rao Karan Singh* v *Bakar Ali Khan, L R, 9 I A, 99, Raja Kissen Dutt Panday* v *Narendar Bahadur Singh, L. R, 3 I A, 85, Ram Chandra Apaji* v *Balaji Bhaurav, I L R, 9 Bom, 137,* and other cases referred to PARMANAND MISR v SAHIB ALI [I L R, 11 All., 438

ONUS OF PROOF—*continued*

27 LIMITATION AND ADVERSE POSSESSION —*concluded*

317 ——— *Possession of usufructuary mortgagees* —The possession of a usufructuary mortgagee being the possession of all the persons who have the right of redemption that is of all the persons entitled to the estate, it is only when after redemption possession is taken by some of the persons so entitled that their possession can become adverse as against the others INAYAT HUSEN v ALI HUSEN I. L. R., 20 All., 182

28 MESNE PROFITS.

318 ——— Suit for mesne profits—*Possession by wrong-doer*—In suits for mesne profits when the defendants have been in possession of the property as wrong doers it lies upon them to

[illegible] Calc, 043

29 MINORITY

319 ——— Plea of minority —Where a defendant pleads minority, the onus is on him to prove his plea NILMONEE CHOWDHRY v ZUHEERUNISSA KHANUM . . . 8 W R., 371

CHEET NARAIN SINGH v BUNWAREE SINGH [23 W. R 395

30 MONEY LENT

320 ——— Failure to prove an alleged transaction of lending money —Upon the evidence the decision of the High Court was affirmed as

ONUS OF PROOF—*continued.*

30. MONEY LENT—*concluded.*

to a question of fact, *viz.*, whether the defendant's deceased father had, or had not, in his lifetime, in consideration of a payment to his order by the plaintiff, promised repayment. The High Court, reversing the decree of the first Court, had found that there had been no sufficient proof of the alleged transaction. This was the conclusion also on this appeal; and, although it was possible that the money might (as it was indicated in the judgment) have been wrongly obtained from the plaintiff by persons about him, it was not shown to have been received by the alleged borrower. LACHMI PRASAD *v.* NARENDRO KISHORE SINGH . . I. L. R., 14 All., 169 [L. R., 19 I. A., 9

31. MORTGAGE.

321. ——— **Suit for redemption of mortgage**—*Alleged sale.*—In a suit for redemption of property which, the plaintiff alleges to be mortgaged, but which the defendant contends was sold absolutely, the onus is on the plaintiff to prove the mortgage; and the existence of a mortgage cannot be presumed from the failure of the defendant to establish the alleged sale. BALAJI NARJI *v.* BABU DEOJI [5 Bom., A. C., 159

322. ——— *Evidence Act, I of 1872, s. 110.*—The plaintiff sued to redeem certain land, alleging that it had been mortgaged by his father to the defendant in 1854-55. The defendant denied the mortgage, and alleged that he purchased it under a deed of sale from the plaintiff's father in 1849, and had ever since been in his possession as owner. The deed of conveyance was not forthcoming, nor was the alleged mortgage-deed. The Court of first instance rejected the plaintiff's claim on the ground that the mortgage was not proved. The lower Appellate Court reversed the decree of the Court of first instance. The defendant appealed. *Held* that the defendant's possession was *primâ facie* evidence of a complete title, and that the plaintiff, who alleged that the defendant was merely a mortgagee, was bound to prove his own right as mortgagor, clearly and indefeasibly. Mere statements that the property had been mortgaged, which failed to establish any particular mortgage, did not shift the burden of proof, or require the mortgagee to show what were the terms of such mortgage, or his right to retain possession under it. RAMCHANDRA APAJI *v.* BALAJI BHAURAV [I. L. R., 9 Bom., 137

323. ——— *Lost mortgage-deed.*—In a suit for redemption, the mortgage-deed, dated 21st July 1840, having been lost, the Judicial Commissioner held that the onus lay, not upon the mortgagor to prove that the term did not expire before 13th of February 1856, but upon the mortgagee to prove that it did. *Held* by the Privy Council that the burden of proof was *primâ facie* on the mortgagor, regard being had, as respects the quantum of evidence required, to the opportunities which each party might naturally be supposed to have of giving evidence. KISHEN DUTT RAM PANDEY *v.* NARENDAR BAHADOOR SINGH . . L. R., 3 I. A., 85

ONUS OF PROOF—*continued.*

31. MORTGAGE—*continued.*

324. ——— *Beng. Reg. XVII of 1806—Promulgation of statute.*—The plaintiff sued, on the 31st of December 1861, to redeem a mortgage of lands in Sarun, dated the 30th of November 1801. The mortgage-money was payable on the 28th September 1806. If not paid, the property was to vest absolutely in the mortgagee without foreclosure. The defendant admitted that he had not foreclosed, but stated that Regulation XVII of 1806 was promulgated in Sarun on the 7th January 1807, and consequently that the money became due before the Regulation was promulgated. *Held* the onus was on the plaintiff to prove that the Regulation was promulgated before 28th September 1806. SARIFUNNISSA *v.* INAYET HOSSEIN [B. L. R., Sup. Vol., 415 : 5 W. R., 88

325. ——— *Accounts.*—In taking an account on a mortgage in a suit for redemption, where the mortgagee had been in possession, it lies upon the mortgagee to prove what is due from the mortgagor in respect of principal and interest. GANGA MULIK *v.* BAYAJI I. L. R., 6 Bom., 669

326. ——— *Profits.*—In a suit for redemption, on the ground that the debt has been satisfied with interest, the onus is on the plaintiff. A mortgagee is not an assurer of the continuation of the same rate of profits as his mortgagor was able to raise. *Hence an estimate of the rental preceding the* mortgagor's possession is not sufficient proof of the profits in his time. SHAH MAKHANLAL *v.* SRIKRISHNA SINGH [2 B. L. R., P. C., 44 : 11 W. R., P. C., 19 12 Moore's I. A., 157

327. ——— *Evidence Act, I of 1872, s. 110.*—The plaintiffs averring that their ancestor had mortgaged three villages to the ancestors of the defendants in 1842 for R2,?00, putting the mortgagees into possession, sued to recover possession of 15 biswas of each village, asserting that the mortgage-debt had been redeemed from the usufruct. The defendants, admitting the proprietary title of the ancestor of the plaintiffs to the villages, alleged as to 10 biswas of each village that they were sold to their ancestors in 1842 by him for R1,250, and as to the other 10 biswas of each village, that they were subsequently mortgaged to their ancestors by him for R14,000, borrowed by him from them for the purpose of defending a suit arising out of the previous sale, which sum had not been satisfied from the usufruct. *Held* (STUART, *C.J.*, dissenting) that the burden of proving the mortgage of the 10 biswas of each village of which the defendants alleged the sale lay on the plaintiffs. *Per* STUART, *C.J.*, *contra.* RATAN KUAR *v.* JIWAN SINGH . . I. L. R., 1 All., 194

328. ——— *Possession.*—Where a suit was brought to redeem a mortgage, and the defendants pleaded possession under a sale,—*Held*, under the circumstances, there having been long undisputed possession, that the onus of proving that the possession was less than a proprietary possession, and was referable to a mortgage, lay on the

ONUS OF PROOF—*continued.*

31 MORTGAGE—*continued*

person who claimed to redeem it RUGHOO NATH RAI v CHUNDOO LALL 2 Agra, Pt II, 195

329. ——— *Joint mortgage —Redemption by one mortgagor—Suit for other mortgagor for his share* —*K* and *J* jointly mortgaged 36 sihams or shares of an estate to *C*, giving him possession *C* transferred his rights as mortgagee to *T* and *M* In execution of a decree for money against *K* held by *M* *K's* rights and interests in the mortgaged property were sold and were purchased by *P*, whose heirs paid the entire mortgage-debt *R* an heir of *J* sued the heirs of *P* to recover from them possession of *J's* sihams in the mortgaged property, on payment of a proportionate amount of the mortgage money paid by *P* The plaintiff alleged that the mortgage to *C* had been made forty years before suit The defendants contended that a much longer period had expired since the date of the mortgage that forty one years had elapsed since *C* transferred his rights as mortgagee that they had redeemed the property twenty one years ago and had been since its redemption in proprietary and adverse possession of the sihams in suit and that the suit was barred by limitation Neither party was aware of the date of the mortgage and neither adduced any proof on the

subsistence of that mortgage at the date of suit, but that assuming that notice was given to the defendants by the plaintiff to produce the mortgage deed and that they failed to do so, very slight evidence would have been sufficient to satisfy the obligation which lay on the plaintiff *Kishen Dutt Ram Pandey v Narendar Bahadoor Singh L R, 3 I A, 85* referred to NURA BIBI v JAGAT NARAIN [I. L R, 8 All, 295

330 ——— *Sale of land in execution of decree—Suit by third party to recover* —In a suit to redeem certain land demised on kanam in 1850 by *A* to the predecessor of *B* *C*, who was

possession from 1869 to 1875, and that in 1876 the land had been sold in execution of a decree against *C* (to which *A* was not a party) and purchased by *D*, who re-sold to *C* in 1879 The lower Court held that *C's* possession must be taken to have been derived from *B* till the contrary was proved *Held* that the burden of proving that his possession was not derived from *B* lay upon *C* NILAKANDAN v THANDAMMA [I L R, 9 Mad, 460

331. ——— Usufructuary mortgage—*Mortgagee in possession—Suit for balance of mortgage money* —A plaintiff in possession under an usufructuary mortgage and suing for the balance due is bound to prove that he has not realized the amount due under the conditions of the lease from the usufruct CHUTTUR DHAREE SINGH v SUREER HOSSEIN 1 W. R., 28

332 ——— *Suit by mortgagee for possession under usufructuary mortgage*

principal sum and forcibly took possession of the property The mortgagee sued to recover possession and obtained a decree with wasilat *Held* that the plaintiff might have sued under Act XIV of 1859, s 15, but that suing as he did the onus was on him to produce the accounts and show that something was due to him as interest PRANKISHOREE v CHUNDEE CHURN BISWAS 19 W R, 429

333 ——— *Suit by mortgagee for possession and to set aside mokurari lease* —In a suit by mortgagees under a zur i peshgi mortgage not only for possession but also for setting aside a mokurari lease which was alleged to have been granted by the mortgagor prior to the mortgage, and under which defendants had been in possession for some time in accordance with a Magistrate's order —*Held* that the onus was on the plaintiffs to give some evidence to impeach the validity of the mokurari, but this having been done, and a strong *prima facie* case made out the onus was shifted and it became incumbent on the defendants to show that the mokurari was executed before the zur-i-peshgi and that it was granted *bona fide* for a real consideration and intended to be co-operative as between the mortgagors and the lessee SHAMNARAIN v ADMINISTRATOR GENERAL OF BENGAL [23 W. R., P C, 111

334. ——— *Suit by mortgagee under usufructuary mortgage* —In a suit in which the plaintiff prayed for the sale of property which had been mortgaged to him as security for a

and interest of his loan the burden was on him to show that there was anything remaining due to him and that the onus also was on him to prove that the ijara gave him the right to sell the property upon some contingency MUJEEDUNNISSA v DILDAR HOSSEIN 20 W. R, 178

335 ——— Suit for possession after foreclosure—*Civil Procedure Code, 1882 ss 239, 240—Suit on mortgage—Attachment* —A suit on a mortgage foreclosed under Beng Reg XVII of 1806 s 8 comprising property attached before the date of the mortgage under s 81 and the following sections of Act VIII of 1859 was brought against the purchaser of the attached property which had been sold under the decree obtained by the attaching creditor The defence was that the mortgage falling within the provisions of s. 240 of the Act was void as

ONUS OF PROOF—*continued.*

31. MORTGAGE—*concluded.*

against the attaching creditor and those claiming under him. For the mortgagee it was contended that the attachment could not prevail, it not having been proved affirmatively that the requirements of s. 239 relating to the intimation of the attachment had been complied with. *Held* that this objection to the validity of the attachment could not be raised for the first time on this appeal, even if it was not rather for the mortgagee, seeking to deprive the attaching creditor of his possession, to prove the non-observance of the formalities in question. RAMKRISHNA DASS SURROWJI *v.* SURFURNISSA BEGUM

[I. L. R., 6 Calc., 129 : L. R., 7 I. A., 157

32. NOTICE.

336. ——— **Liability under Act**—*Road Cess Act (Beng. Act IX of 1880), ss. 52, 53—Evidence Act, s. 114—Presumption.*—Where under an Act certain things are required to be done before any liability attaches to any person in respect of any right or obligation, it is for the person who alleges that that liability has been incurred to prove that the things prescribed in the Act have been actually done. *Held* that the notice provided by s. 52 of the Road Cess Act did not come within the presumption of s. 114, cl. (*e*), of the Evidence Act, and must be proved ASHANULLAH KHAN BAHADUR *v.* TRILOCHAN BAGCHI . . . I. L. R., 13 Calc., 197

337. ——— **Service of notice**—*Execution of decree—Presumption.*—In the case of execution of decree of twelve years' standing, the defendant is not bound to prove service of notice, but the Court may presume that notice has been regularly served, unless the party alleging irregularity can produce evidence to the contrary. KASEE KANT *v.* GOPAL KISTO MOITRO . W. R., 1864, 314

33. PARTITION.

338. ——— **Suit for partition**—*Plea of prior separation.*—In a suit for partition of joint family property, in which the defendant pleads that a partition has already taken place, the onus is on the defendant to prove the alleged partition. GOOROO PERSHAD MOOKERJEE *v.* KALEE PERSHAD MOOKERJEE . . . . 5 W. R., 121

339. ——— **Private partition**—*Private arrangement—Subsequent partition by Collector.*—*A* and *B* were joint owners of a mouzah. *B* leased his share in putni to *C*. By arrangement between *A* and *C* a partition of the lands was made, and each party collected the rents of the lands allotted to him. Forty years afterwards, a butwara of the mouzah was made by the Collector between *A* and *B*, whereby lands held by *C* under the previous arrangement were allotted to *A*. *C* was no party to the butwara proceedings. In a suit brought by *A* against *C* for possession of the lands so allotted, the plaintiff alleged that the previous division of the lands between *A* and *C* was a temporary one, made after the commencement of the butwara proceedings. The lower

ONUS OF PROOF—*continued.*

33. PARTITION—*concluded.*

Appellate Court found that the plaintiff's allegations had not been proved, and dismissed the suit. *Held* (TOTTENHAM, *J*, dissenting) that the decree of the lower Court was correct, as it lay on the plaintiff to show that the private partition had come to an end. OBHOY CHURN SIRKAR *v.* HURI NATH ROY

[I. L. R., 8 Calc., 72 : 10 C. L. R., 81

340. ——— **Suit for possession on allegation of partition.**—In a suit to obtain possession of certain lands, on the ground that they had been assigned to plaintiffs by a partition made by the Collector,—*Held*, in the matter of certain of the plots which plaintiffs alleged to be included in particular daghs in the butwara chittahs, that as defendants denied that they were so included, it was on the plaintiffs to prove their allegation. *Held, in respect* to a dagh in which plaintiffs were admitted to be entitled to a certain quantity of land, it was their business to prove that the particular lands which they claimed had been assigned to them by the butwara proceedings. BHUGGOBUTTY GOOPTA *v.* SARODA SOONDUREE DEBEA . . . 11 W. R., 337

341. ——— **Suit for possession after partition**—*Interference with possession after Collector's award.*—In a suit for possession with mesne profits, on the ground that the lands claimed were allotted to plaintiff's share by a butwara under Bengal Regulation XIX of 1814, where defendant, admitting the allegation, urged that plaintiff had given up possession as soon as the butwara was completed,—*Held* that it was for plaintiff to prove that defendant had interfered with the possession awarded to him by the Collector. MOBARUK ALI *v.* IMDAD ALI . . . . 16 W. R., 200

342. ——— **Suit to have property excluded from partition**—*Nature of possession.*—In two suits in which the prayer was substantially to have certain property which had been included in a butwara before the Collector excluded from such butwara, it was held that, as plaintiff's possession was admitted and defendant had failed to prove his plea that such possession was in the quality of tenant under him, plaintiff was entitled to a decree. BIPIN BEHAREE LUKKUN *v.* GHASOO . 11 W. R., 16

343. ——— **Suit to stay partition by Collector**—*Specific Relief Act (I of 1877), s. 42—Declaration of specific rights.*—A person bringing a suit under s. 42 of the Specific Relief Act to stay a partition directed by the Collector under Bengal Act VII of 1876, on the ground that a private partition has already been come to, must prove not only that there has been a private partition, but also that under that partition he is entitled to, and was in possession of, in severalty, some specific portion of the property again sought to be partitioned by the Collector; and such person is entitled to no declaration affecting the rights of other shares in the parent estate. *Khoobun* v. *Wooma Churn Singh, 3 C. L. R., 453*, distinguished. KALUP NATH SINGH *v.* LALA RAMDEIN LAL . I. L. R., 16 Calc., 117

ONUS OF PROOF—*continued*

34 POSSESSION AND PROOF OF TITLE

344 ——— Suit for possession—*Weakness of defendant's case—Title, Proof of*—In a suit for possession of land, where plaintiff s title and previous possess on are both denied, it is not proper for a Court to start with the case put forward by the defendant the onus of proof being primarily on plaintiff WALKER v ATMA RAM MUNDUR [14 W. R., 478

345 ——— *Person out of possession—Evidence of title* —Possession is evidence of title, and is primarily exclusive It is for him who impugns this exclusive title to show that the possession arose in some way which has preserved his own right In every case the person who has been out of possession for more than twelve years must make out some *primâ facie* title and some

[I L R, 11 Bom, 216

See also TATYA v ANAJI [I L R, 11 Bom, 220 note

and VITHOBA v NARAYAN [I L R, 11 Bom, 221 note

346 ——— *Proof of title*—A decree holder sued to establish that certain property was the property of *W*, his judgment debtor such property being claimed by *A* as his He proved that for five years and more *W* had been in possession of such property as ostensible owner *Held* that this being so it rested with *A* to prove his title MATHURA DAS v MITCHELL [I L R, 4 All, 206

347 ——— *Evidence of title—Dispossession Proof of*—Possess on is evidence of title and if the plaintiff proves that he had possession, and that his possession has been forcibly disturbed he makes out a *primâ facie* title for the defendant to rebut MAHOMED BUX v ABDUL KUREEM *alias* ABOO 20 W R, 458

348 ——— *Person in possession without title.*—In the case of the owner of land seeking to recover possession on the allegation that the party in possession has no right to continue in it and showing a *primâ facie* title to possession he can claim a decree unless the party in possession has a tenure entitling him to retain possess on RAM MONEE v ALEEMOODEEN 20 W R, 374

RAJKISHEN MOOKERJEE v PEAREE MOHUN MOOKERJEE 20 W R., 421

JOYKISHTO MOOKERJEE v HUREEHUR MOOKERJEE 12 W. R, 365

KOONJ BEHAREE RAI v BUKSHEE LUCHMUN DOSS 19 W R., 188

HUREE MOHUN PODDAR v GUFFEROOLAH MULLICK 22 W R., 417

KALEE KISHEN ROY v BROJENDRO COOMAR ROY CHOWDHRY 24 W. R., 266

ONUS OF PROOF—*continued.*

34 POSSESSION AND PROOF OF TITLE —*continued*

BATAI AHIR v BHUGGOBUTTY KOER [11 C L R., 476

349 ———

350 ——— *Dispossession —Proof of title* —In a suit to recover possess on on the allegation of a previous possession and forcible

prima facie title then it will be the duty of the Judge to call upon the plaintiffs to establish their title GOUR PAROY v WOOMA SOONDUREE DEBIA [12 W R., 472

DAITARI MOHANTI v JUGO BUNDHOO MOHANTI [23 W R., 293

351 *Dispossession*—Proper procedure pointed out in a suit for recovery of possession of certain lands on an allegation of illegal dispossession where defendant sets up a superior title as proprietor against the allegat on of a similar title on the part of plaintiff If defendant in such

DABJEE SAHOO v TUMEEZOODDEEN [10 W R, 102

RADHA BULLUB GOSSAIN v KISHEN GOBIND GOSSAIN 9 W R, 71

352 ——— *Ejectment—Proof of title* —Where *A* was illegally dispossessed by *B* of land for which *A* obtained a decree in a suit with *C*, and *A* brought a suit to recover possess on —*Held* that the dispossession being proved the

NATH v RAM SUNDUR SURMA 7 W. R., 174

353 ——— *Proof of title—Forged evidence* —Suit by *A* to recover immoveable property in the possess on of *B* and his predecessors whose title had been unchallenged for forty four years on the ground that the estate was mortgaged only by *A*'s ancestors and that *B* and those claiming under him were only usufructuary mortgagees in possess on. *Held* that the *onus probandi* was on *A*, who could only succeed by the strength

ONUS OF PROOF—*continued.*

34. POSSESSION AND PROOF OF TITLE —*continued.*

354. ——— *Title—Suit after ejectment.*—The plaintiff, a lessee in perpetuity of a piece of land from the inamdar of the village in which it was situated, sued the defendant, who had dispossessesd him more than six months before the date of suit, to eject him from the land. The defendant set up a lease from the same inamdar, but it was held to have been granted without any authority. Both the leases required to be registered under Act XX of 1866, but were not registered. *Held* that the plaintiff, although suing more than six months after the date of dispossession and without resorting to a possessory suit (Act XIV of 1859, s. 15; Act I of 1877, s. 9), was entitled to rely on the possession previous to his dispossession as against a person who had no title; the onus being on defendant to prove his title. KRISHNARAV YASHVANT *v.* VASUDEV APAJI . . I. L. R., 8 Bom., 371

355. ——— *Suit to establish title and for possession after decree under s. 15, Act XIV of 1859.*—In a suit to establish title and recover possession from a person who has obtained possession under s. 15, Act XIV of 1859, the defendant need not prove his title, and his possession cannot be disturbed, unless the plaintiff gives proof of a better title; the onus being on the plaintiff to prove everything. MAENOODDEEN *v.* GREESH CHUNDER ROY CHOWDHRY . 7 W. R., 230

356. ——— In a suit against a landlord to recover possession of land of which plaintiff alleged himself to have been illegally dispossessed,—*Held* that, if plaintiff sought to recover possession without reference to any right or title, but simply on the ground of having been illegally ejected, his remedy would have been under s. 15, Act XIV of 1859. Not having availed himself of this remedy, he was bound to show that he had title to re-enter, and that the landlord had ejected him without any right to do so. NUND KISHORE LALL *v.* SHEO DYAL OOPADHYA . . . . . 11 W. R., 168

RAM MOHUN DOSS *v.* JHUPPRO DOSS [14 W. R., 41

CROWDY *v.* RAM BHUROSE CHOWDHRY [23 W. R., 383

a suit brought under s. 27, Bengal Act VIII of 1869.

357. ——— *Suit by heirs of last full owner of property—Proof of title.*—Where a defendant in possession of certain property resists a suit for possession thereof, brought by parties who have proved themselves to be the nearest heirs of the last full owner, the onus is on the defendant to prove his title. *Tariny Churn Chowdhry* v. *Saroda Soonduree Dassee, 3 B. L. R., A. C., 145,* and *Thakoor Deen Tewary* v. *Ali Hossein Khan, 13 B. L. R., 427,* cited and followed. RAMPROTAB MISSER *v.* ABHILACK MISSER [3 C. L. R., 170

358. ——— *Written statement—Admission.*—In a suit by *A* against *B* for recovery of ancestral jamai lands, of which he alleged that he had been dispossessed by *B*, *B* stated in his written statement that *A*'s ancestor having relinquished the land, the zamindar had leased the same to him, *B*, and he had been in possession since. He also stated how *A*'s ancestor relinquished, and that he, *B*, had thereupon obtained a pottah. He denied that he had dispossessed *A*. *Held* that, *B* having admitted the possession of *A*'s ancestor, it lay upon *B* to prove his title. BAIKANTHANATH KUMAR *v.* CHUNDRA MOHUN CHOWDHRY [1 B. L. R., A. C., 133: 10 W. R., 190

359. ——— *Allegation of ownership as mortgagee only.*—Where a person is alleged to be in possession, not as owner of the full proprietary right, but as mortgagee, the burden of proof of such qualified ownership lies on the party asserting it. Such a case falls within the scope of s. 110, Act I of 1872. SHEORUTTONGIR *v.* DOORGA [6 N. W., 36

360. ——— *Land purchased benami by plaintiff for defendant—Evidence Act (I of 1872), s. 110.*—The plaintiff sought to recover possession of certain lands, alleging that he had been dispossessed. The defendants, who were in possession, alleged that at an auction sale the plaintiff had bought the lands benami for the defendants. *Held* that the burden of proving a *primâ facie* case that the land belonged to the plaintiff was on him. HARI RAM *v.* RAJ COOMAR OPADHYA [I. L. R., 8 Calc., 759

361. ——— *Title.*—In a suit to recover possession of certain property, on proof that the plaintiff had been dispossessed by a benamidar, in whose favour a conveyance had been executed by the plaintiff's father,—*Held* that the presumption arising from the defendant's recent and unexplained possession being rebutted by the plaintiff's prior continuous and peaceful possession, the defendant must show affirmatively that his title was a valid one, and could not raise the defence that the plaintiff was prevented from showing it to be invalid. MAHESH CHANDRA BANERJEE *v.* BARADA DEBI [2 B. L. R., A. C., 274: 11 W. R., 185

362. ——— *Obstruction to execution of decree by a claimant—Civil Procedure Code (Act VIII of 1859), s. 229 (Acts X of 1877 and XIV of 1882, s. 331).*—In a suit under s. 229 of Act VIII of 1859 (s. 331 of Acts X of 1877 and XIV of 1882), the onus is on the plaintiff to establish a *primâ facie* case of possession, and it is then incumbent on the claimant to answer that case, and show, if possible, a better title. RAKHAL CHURN MUNDUL *v.* WATSON & CO. . . I. L. R., 10 Calc., 50

363. ——— *Resistance to execution by third party—Suit for possession—Civil Procedure Code (Act XIV of 1882), s. 331.*—The plaintiff had obtained a decree for possession of certain land against his tenant *B*. On proceeding to execute his decree, he was obstructed by the defendants. He therefore filed a claim against them for possession under s. 331 of the Civil Procedure Code

ONUS OF PROOF—*continued*

34 POSSESSION AND PROOF OF TITLE—*continued*

(Act XIV of 1882), which was duly registered as a suit The lower Court found as a fact that the plaintiff through his tenant *B* had been in possession of the land The defendants pleaded that the land had belonged not to the plaintiff, but to one *J*, on whose death they were entitled to it *Held* that in a proceeding under s. 331 of the Civil Procedure Code, where possession is shown to have been with the plaintiff, the defendants are not, without showing title in themselves, at liberty to impeach the plaintiff's title, or to set up a *jus tertii* The onus of proving a better title than the plaintiff's rests with them, and they may prove their title as a defence BAPUJIRAO *v* FATTESING SHAHAJI BHOSLE

[I. L. R., 22 Bom., 967

364 —————— *Proof of title—Unregistered deed of sale—Oral evidence inadmissible*—On the 18th January 1876 plaintiff became a purchaser at a Court's sale of the right title, and interest of *G* and *N* in a shop, and, having been

January 1865, and that he had been in possession since that day The deed of sale was not admitted in evidence for want of registration but it was found that defendant had been in possession as owner since 5th January 1865 *Held* that, as the defendant admitted that he had derived his title from *G* (of whose interest in the shop the plaintiff was assignee), the burden of proof lay upon the defendant, and that he had failed to prove his purchase, inasmuch as his unregistered deed of sale could not be received in evidence, and oral evidence was inadmissible in place of the deed SAMBHUBHAI KARSANDAS *v* SHIVLALDAS SADASHIVDAS I. L R, 4 Bom, 89

365 —————— *Suit to have*

366. —————— *Proceedings to obtain possession in execution of decree*—Where a judgment creditor admits having obtained possession of a portion of the land without opposition from the judgment-debtor, the onus lies on him to show that he was unable nevertheless, to obtain possession of the remainder AMJATT ALI *v*. AZHUR ALI . . . . . . 21 W. R., 241

367. —————— *Khas mehals in 24 Pergunnahs—Relation between owners and the Government—Right to possession—Ejectment*

of the Government are to the rent, but do not include a right to the possession of the lands, though such a right might arise by forfeiture or extinction of the ownership, and the onus is on the Government to prove its claim to the possession of the lands GUNGA GOBIND MUNDUL *v* COLLECTOR OF 24-PERGUNNAHS

[7 W. R, P. C, 21: 11 Moore's I. A., 345

368 —————— *Suit to establish title—Bom Reg XVII of 1827, s 7, cls 1 and 2—Bom Act I of 1865—Miras land*—On the 28th August 1857 the plaintiff passed a kabuliat to Government and took possession of certain miras land, abandoned by the mirasdar for four or five years previous to that date The plaintiff continued in possession of his land, and paid the Government assessment from 1864 till 1872 In an action brought by the plaintiff to recover possession of the land, he alleged in the plaint that he had taken the defendants as partners in the cultivation of the land, and had been dispossessed by them Both the lower Courts rejected the claim The lower Appellate Court based its decision on the ground that, as the plaintiff failed to prove the fact of his alleged partnership with the defendants, he could not succeed, notwithstanding that Court found in the plaintiff's favour the other facts stated above *Held* on special appeal that, as the suit was one to establish title and recover possession, the Judge should on the facts found and having regard to Regulation XVII of 1827, s 7, cls 1 and 2 and Bombay Act I of 1865, have called upon the defendants to prove their claim to hold possession as against the plaintiff's right of occupation TRIMBAK RANU *v* NANA BHAVANI

[12 Bom., 144

369 —————— *Title*—In a suit to recover possession of land and wasilat under a ganti jumma, which had originally belonged to the

was transferred to the plaintiffs, although the fact was one peculiarly within their knowledge GIRDHAR HARI *v* KALIKANT ROI CHOWDHRY

[3 B L. R., A. C., 161: 11 W. R., 501

370 —————— *Evidence—Jaghir tenure—Auladad grant.*—By a sanad dated March 1834, the plaintiff's ancestor granted to *B*, the defendant's ancestor a jaghir of a certain mouzah. *B* died in 1872 and plaintiff subsequently brought a suit to recover possession of the mouzah, alleging that the grant to *B* was an ordinary service jaghir The plaintiff filed a kabuliat which had been executed by

ONUS OF PROOF—*continued.*

34. POSSESSION AND PROOF OF TITLE —*continued.*

B, the terms of which supported the plaintiff's allegation as to the nature of the grant. The defendant alleged that the grant was auladad, but failed to produce the sanad or account for its non-production. *Held* that the plaintiff was entitled to a decree. *Juggernath Sahee* v. *Ahlad Kowur, 19 W. R., 140,* distinguished. THAKUR DOYAL *v.* RAM NARAIN SINGH . . I. L. R., 8 Calc., 375

371. ———— *Suit for lands granted as jaghir tenure—Non-production of documentary evidence.*—In a suit to recover possession of certain lands upon the ground that they were granted as a jaghir tenure by the plaintiff's ancestor to one *P* and his lineal descendants, and that such descendants had failed,—*Held* that it was necessary for the plaintiff to prove the grant alleged in his plaint, without which no cause of action would have been shown; and as the tenure was created in the proper and usual manner,—*i.e.,* by pottah and kabuliat,—the latter would be in the possession of the plaintiff's ancestors. As this was not produced, no secondary evidence given of it, and no foundation laid for giving such evidence, it was unnecessary to go further into the plaintiff's case. JUGGERNATH SAHEE *v.* ALHAD KOWUR . . 19 W. R., 140

372. ———— *Proof of title.*—The plaintiff sued for possession under the allegation that the property in dispute was under the management of the defendant. The defendant having denied management, and set up a title by purchase, and his possession for more than thirty years having been proved,—*Held* that the onus of showing a possession for his benefit was rightly thrown on the plaintiff. KIRAT SINGH *v.* RAM DOSS [W. R., F. B., 8

373. ———— *Adverse or permissive occupancy—Proof of title.*—A donee, under a deed of gift, brought a suit to recover a piece of land which he alleged his donors had given for a temporary purchase to the defendant in possession six years before; and the Munsif found that it was so, and allowed the claim. But the District Judge, on appeal, considering that the plaintiff had failed to prove his donors' title to the land, reversed the Munsif's decree. *Held* that the Judge was in error in requiring the plaintiff to establish the title of the donors, without enquiring whether the defendant had obtained possession merely by their permission; and that the suit must be remanded for a finding by the District Judge on that point. SAKALCHAND SAVAICHAND *c.* DAYABHAI ICHHACHAND [4 Bom., A. C., 70

374. ———— *Shifting of burden of proof—Land taken by Government as forest reserve—Madras Forest Act (Mad. Act V of 1882).*—Portions of certain land, which had been taken up by Government as forest reserve, were claimed by one who had admittedly been in possession and enjoyment of them for thirty years. The Government failed to establish any subsisting title of its own. *Held* that the burden of proof had been shifted on to the Government and had not been discharged, and accordingly that the claim should be allowed. SECRETARY OF STATE FOR INDIA *v.* KOTA BAPANAMMA GARU . I. L. R., 19 Mad., 165

375. ———— *Suit for land attached under s. 3 of Act IV of 1840.*—In a suit for possession of land attached by the Magistrate under s. 3 of Act IV of 1840, the *onus probandi* is on the plaintiff. MOHESHUR SINGH *v.* RAMAPUT SINGH [W. R., F. B., 7: 1 Ind. Jur., O. S., 35

376. ———— *Suit by zamindar against trespasser.*—An award under Act IV of 1840 does not relieve a party of the obligation to prove his right and title, when sued by the zamindar as a trespasser. BYDONAUTH SORBHON *v.* KENOORAM HOLDAR . . . . 1 W. R., 211

377. ———— *Possession under order of Criminal Court—Suit to eject on ground of title.*—*A*, being in possession of lands as purchaser under deeds of sale from *K*, the person last seised, was forcibly ousted from possession by *C* and *D*, who set up a title to the lands under an alleged deed of gift from B. *A* made a complaint to the Criminal Court, and under an order of that Court was again put into possession; *C* and *D* being directed to institute a suit in the Civil Court to establish their claim, which they accordingly did, relying upon their title, and impeaching the deeds of sale. In such circumstances,—*Held* by the Judicial Committee, reversing the decree of the Court at Calcutta (without prejudice, however, to any question which might arise between *A* and any other party claiming under *B*), that it was incumbent on *C* and *D* to prove some title to the lands claimed before they could put *A* to proof of his title. RAM RUTTON RAE *v.* FURROOKOONNISSA BEGUM . 4 Moore's I. A., 233

378. ———— *Ejectment by order of Magistrate under s. 319, Code of Criminal Procedure, 1861—Suit to recover possession.*—The plaintiffs were in possession of certain land when the Magistrate, acting under s. 319 of the Criminal Procedure Code, 1861, placed the defendant in possession until the rights of the parties should be determined by a competent Civil Court. *Held*, in a suit to recover possession of the property instituted more than six months after the plaintiffs were dispossessed, that they could not recover without showing their title, the onus being on them to prove it. ASHUMANDE AGATH KUNHI PATHUMAH *v.* MAKACHINDE AGATH MAKACHI . . . . 4 Mad., 478

RAJESSUREE DEBIA *v.* BRINDABUTTY DEBIA [7 W. R., 212

LUCHMUN PERSHAD *v.* MAHARANEE OF BURDWAN . . . . . . 17 W. R., 181

379. ———— *Suit after order of Criminal Court under s. 530, Act X of 1872.*—In a suit for possession and for establishment of title aganst parties in possession under an award of the criminal authorities under Act X of 1872, s. 530

ONUS OF PROOF—*continued*

34 POSSESSION AND PROOF OF TITLE —*continued*

the *onus probandi* is on the plaintiffs HURI RAM v BHIKAREE ROY . . 25 W. R., 20

As also under s 318 of the Code of Criminal Procedure of 1861. HURRO SOONDUREE v SONATON DOSS . . . . . . 25 W. R, 464

380. ———— *Suit after order under the Land Registration Act (Beng Act VII of 1876)*—Where a person who, by an order of the Collector passed under the provisions of the Land Registration Act (Bengal Act VII of 1876), has been declared to be out of possession of certain land, brings a suit for the recovery of p ssession, it lies on him in the first instance to make out a *primâ facie* case MUDDUN MOHUN PODDAR v BHAGGOMANTO PODDAR . I. L R, 8 Calc, 923

381. ———— *Suit for produce of trees—Title, Proof of*—In a suit to prevent the defendants from obstructing the plaintiff in his enjoyment of fruits of certain trees, which he claimed as heir of a person who purchased that right, the defendants denied the existence of the right, and alleged possession and enjoyment in themselves

LALDAS RAMDAS v KASHIRAM 4 Bom, A. C, 60

382 ———— *Civil Procedure Code, 1859, s 230, Suit under—Title, Proof of*—S 230, Act VIII of 1859, only gave an applicant the right, without instituting a separate suit, of contesting the

but did not e

of proving his

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383 ———— *Claim—Dispossession—Act VIII of 1859, s 230*—One shareholder, being dispossessed by the other of a certain julkur in execution of his decree, brought a suit under s 230, Act VIII of 1859, alleging that the julkur had been a part of their joint mehal, and that, on partition thereof, the julkur was left ijmali The

ABDUL GANI . . 3 B. L. R, Ap, 90

S C WOODOY TARA CHOWDHRAIN v ABDOOL GUNNY . . . . . . 12 W. R., 16

384. ———— *Title by possession—Attachment and sale under a decree of property claimed by a third person—Suit by a third*

was sold in execution and bought by *P*, the defen-

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had

been in possession of the shop and had proved his title The defendant appealed to the High Court. *Held* that, the plaintiff having proved his possession at the date of the execution sale, it lay upon the defendant (*P*), who claimed the property, to prove a title in himself or in the judgment-debtor *A*, and that, he having failed to do this, the plaintiff was entitled to a decree declaratory of his right to the property as against the defendant Where a dispossessed party proceeds, under s 230 of Act VIII of 1859, to vindicate the possession of which he has been deprived, although he may give evidence of his title, he is not bound to do so, but may rest his right to recover on his possession, and cast upon the decree holder the burden of proving his title, i e, his right to dispossess the applicant *Per* WEST, J—A person in possession of property which is sold in execution as that of another is not called upon, when suing to establish his title, to prove his

itself affords a ground for an assertion of full proprietorship for the purpose of the suit, except so far

seeks to disturb it, and therefore, where a person in possession of property which has been sold in execution as being the property of another sues to establish his title to such property, the burden of proof lies, not upon him, but upon the person who claims as purchaser at the execution sale PEMRAJ BHAVANIRAM v NARAYAN SHIVARAM

[I. L R., 6 Bom, 215

385. ———— **Suit for confirmation of possession**—*Proof of title*—In a suit for confirmation of possession of certain lands sold in execution of a decree as lakhiraj, the onus was held to lie on the plaintiff to prove his title, notwithstanding the defendant's admission that the lands in question were within the boundaries of the plaintiff's zamindari PURSEEDH NARAIN SINGH v BISSESSUR DYAL SINGH [7 W. R, 148

386. ———— Where a party, who asserts that he is in possession without adducing any evidence in support of his title, sues for confirmation of title as against a *bonâ fide* purchaser for valuable consideration, without notice from the

[14 W. R., 65

ONUS OF PROOF—*continued.*

34. POSSESSION AND PROOF OF TITLE —*concluded.*

387. ——————— *Right to begin —Adoption, Proof of—Proof of loss, and admission of secondary evidence, of a document alleged to have been executed—Evidence Act (I of 1872), s. 65.*—A suit for possession by right of inheritance was brought by a claimant, alleging himself to be the heir, against the alleged adopted son of the last male owner, denying that an adoption purporting to be made by the widow had been duly authorized by the deceased. The Court of first instance called upon the defendant to prove his title as a son by adoption, notwithstanding that the plaintiff was out of possession, and could not have succeeded, in the event of the defendant's failure to prove it, without first proving his own title as collateral heir by descent: thus in effect, proposing to make the establishment of the plaintiff's title depend upon the failure or success of the defendant in proving the adoption. The High Court pointed out the error of this proceeding, and the Judicial Committee affirmed its judgment, concurring also in its finding that the adoption had been proved. It was found also that the loss of the anumati-patra had been established, so that secondary evidence of it was receivable. KALI KISHORE DUTT GUPTA MOZUMDAR *v.* BHUSAN CHUNDER *alias* BEPIN CHUNDER DUTT GUPTA . . . **I. L. R., 18 Calc., 201** **[L. R., 17 I. A., 159**

388. ——————— *Presumption of ownership—Possession—Suit for ejectment—Evidence Act (I of 1872), s. 110.*—It is usually for the plaintiff who seeks ejectment to prove his title. But where he proves himself to have peaceably enjoyed possession for a considerable time, the person who has recently dispossessed him has to meet the presumption of law that the plaintiff's possession indicates his ownership. In a suit for possession of immoveable property and other reliefs, it was proved that the plaintiff and his predecessors in title had been in undisturbed possession for thirty or forty years previous to his dispossession by the defendant. The defendant alleged, but failed to prove, that the plaintiff had paid him rent as tenant-at-will of the premises. The lower Appellate Court, upon the finding that the plaintiff's possession was that of a licensee, modified the first Court's decree, which had allowed the claim in full. *Held* (by MAHMOOD, *J.*) with reference to s. 110 of the Evidence Act that, although in the first instance the burden of proving his title was on the plaintiff, it was shifted by his proving long undisturbed possession; that the defendant's failure to prove the alleged payment of rent went far to prove that the plaintiff's possession was adverse; and that the Court below, in acting upon the theory that such possession was that of a licensee, had wrongly set up for the defendant a defence which he had not set up for himself. LACHHO *v.* HAR SAHAI . . . . **I. L. R., 12 All., 46**

35. PRE-EMPTION.

389. ——— — **Suit for pre-emption—** *Proof of antedating of a deed.*—In a suit by *A* to enforce a right of pre-emption, in which the purchase to *B* was admitted, but it was alleged that *B's* deed of purchase had been antedated, the onus lay on *A* to prove that *B's* deed had been antedated. KUMUR ALI *v.* AZMUT ALI . . . **8 W. R., 383**

ONUS OF PROOF—*continued.*

35. PRE-EMPTION—*continued.*

390. ——————— *Suit on ground of vicinage—Ownership.*—In a suit to establish a right of pre-emption on the ground of ownership of contiguous land, no amount of mis-statement on the part of the defendant as to the ownership of such land can relieve plaintiff of the onus of proving his ownership. BEHAREE RAM *v.* SHOOBHUDRA **[9 W. R., 455**

391. ——————— *Recital in deed of sale as to price.*—In a suit to establish a right of pre-emption to property which had been sold, in which plaintiff alleged that the actual value was different from that which was recited in the deed of sale between the defendants, the vendor, and the vendee,—*Held* that it was for plaintiff to give some evidence in support of the allegation that the amount stated as the price by the defendant was wrong. GOLAM AYHYA *v.* JOY MUNGUL SINGH . **13 W. R., 435**

MAHOMED MORUL HOSSEIN *v.* HYDER BUKSH **[W. R., 1864, 304**

392. ——————— *Purchase money—Evidence Act (I of 1872), s. 106.*—In a suit to enforce the right of pre-emption, in which the plaintiff impugns the correctness of the price stated in the instrument of sale, although the burden of proof *primâ facie* is on him to show that the property has in fact been sold below the stated price, yet very slight evidence is ordinarily sufficient to establish his case; and when such case is established, it rests upon the defendants, the vendor and vendee, to prove, by cogent evidence that the stated price is the correct one. The principle laid down by the Privy Council in *Kishen Dutt Ram Panday* v. *Narendar Bahadoor Singh, L. R., 3 I. A., 85,* applied. *Mahomed Noorul Hossein* v. *Hyder Buksh, W. R., 1864, 304,* and *Golum Ayhya* v. *Joy Mungul Singh, 13 W. R., 435,* referred to. BHAGWAN SINGH *v.* MAHABIR SINGH **[I. L. R., 5 All., 184**

393. ——————— *Dispute as to price—Assessment of amount—Bhagwan Singh* v. *Mahabir Singh, I. L. R., 5 All., 184,* followed as to the rule of *onus probandi,* where the plaintiff in a suit to enforce a right of pre-emption impugns the correctness of the price stated in the instrument of sale. In determining the amount of the price which a pre-emptor has to pay, the Court is not called upon to assess the amount which would be a fair and reasonable price for the property, but to ascertain what amount actually changed hands as consideration for the sale. TAWKKUL RAI *v.* LACHMAN RAI **[I. L. R., 6 All., 344**

394. ——————— *Purchase-money —Evidence of consideration.*—In suits for pre-emption where the amount of the consideration for the sale is in dispute, the rule as to the burden of proof is that, in the first instance, the plaintiff who alleges the

ONUS OF PROOF—*continued*

35 PRE EMPTION—*concluded*

price stated in the deed of sale to be fictitious must give some *prima facie* evidence leading to the presumption that the price so stated was not the true price Having done that, it then lies upon the vendor and vendee to give such an explanation by

admission that the price was fictitious or else ... showing that the market value of the property was so much less than the alleged price as would lead any reasonable man to come to the conclusion that the alleged price was not the real price Where the

contract was fictitious *Bhagwan Singh* v *Mahabir Singh I L R 5 All, 184* followed SHEOPARGASH DUBE v DHANRAJ DUBE I. L R, 9 All., 225

36 PRINCIPAL AND AGENT

395 ——— Evidence as to liability of agent to account —In 1884 a deed of release exonerating an agent from liability to account was executed by his principal stating that there had been a settlement between them In 1885 the agent signed an ikrarnama addressed to the principal stating that there had not been a settlement of

contended that the onus was on the defendant to explain his execution of the ikrarnama *Held* that, inasmuch as it had been found by two Courts concurrently that the release of 1884 was valid and

37 PROFITS, SUITS FOR

396 ——— Suit by recorded co-sharer for profits—*Claim for profits not collected in*

ONUS OF PROOF—*continued*

37 PROFITS, SUITS FOR—*concluded*

consequence of defendant's negligence or misconduct —Jamabandi—Act XII of 1887 (N W P Rent Act), ss 93 (h) 209—Act I of 1872 (Evidence Act), s 106 —In a suit under s 93 (*h*) of the N W P Rent Act (XII of 1881) by a recorded co-sharer against a lambardar for his recorded share of the profits of a mehal in which the plaintiff seeks to make the defendant liable under s 209, not only for the profits which the latter has actually collected but for those which through gross negligence or misconduct he has omitted to collect the burden of proving such negligence or misconduct rests in the first instance on the plaintiff No general rule can be laid down as to the quantum of evidence which the plaintiff in such a case must give in order to shift the burden of proof on to the defendant The mere production by the plaintiff of the jamabandi or rent roll is not sufficient to cast upon the defendant the necessity of proving that there was no negligence or misconduct in him S 106 of the Evidence Act (I of 1872) does not apply to such a case So *held* by the Full Bench, MAHMOOD *J* dissenting *Held* by MAHMOOD, *J*, *contra* that the production of the jamabandi by the plaintiff in a case where he claims his share of the profits according to the jamabandi and the lambardar-defendant pleads that the actual collections fell short of the jamabandi established a *primâ facie* presumption in favour of the plaintiff so as to throw upon the defendant with reference to s 106 of the Evidence Act the necessity of proving circumstances which rendered it impossible for him to collect the *profits according to the jamabandi* MUHAMMAD INAYAT HUSAIN v MUHAMMAD KARAMAT ULLAH [I L. R., 12 All., 301

38 RECOGNIZANCE TO KEEP PEACE

397 ——— Likelihood of breach of peace—*Party obtaining summons* —The onus lies

12 W. R, Cr, 60

39 RELINQUISHMENT OF PORTION OF CLAIM

398 ——— Objection of former suit

include the portion which he now claimed, and in respect of which he then had a cause of action, the objection being one of fact the burden of proof was held to lie with the objector SKINNER & Co v. SHAMA SOONDUREE 19 W. R., 429

40 RESUMPTION AND ASSESSMENT

399 ——— Suit for resumption—*Suit under Beng Reg XIX of 1793 s 10* —In suits in a Civil Court for resumption under Regulation XIX

ONUS OF PROOF—*continued.*

40. RESUMPTION AND ASSESSMENT —*continued.*

of 1793, s. 10, the onus was upon the plaintiff to prove a *primâ facie* case. The decisions in *Sonatun Ghose* v. *Abdool Farar, B. L. R., Sup. Vol., 109,* and *Heera Monee Debi* v. *Koonj Behary Holdar, B. L. R., Sup. Vol., Ap., 8,* upheld. The mere fact of the lands falling within the ambit of his estate does not show that the lands are mâl or rent-paying. HARIHAR MUKHOPADHYA *v.* MADHAB CHANDRA BABU. NABAKRISHNA MOOKERJEE *v.* KAILAS CHANDRA BHUTTACHARJEE

[8 B. L. R., 566 : 20 W. R., 459
14 Moore's I. A., 152

BISHNATH CHOWDHRY *v.* RADHA CHURN GANGOOLY . . . . . 20 W. R., 465

400. ——— *Rent-free tenure —Beng. Reg. XIX of 1793, s. 10—Reg. II of 1819, s. 30.*—In a suit brought in the Civil Court before Act XIV of 1859 came into operation to enforce a right under s. 10, Regulation XIX of 1793,—that is, to resume lands alleged to be held by the defendant under an invalid lakhiraj grant.—*Held* that the suit was not barred by s. 28, Act X of 1859. The onus was on the plaintiff to prove that the case fell within s. 10, Regulation XIX of 1793,—*i.e.,* that the grant was made subsequent to December 1st, 1790. PARBATI CHARAN MOOKERJEE *v.* RAJKRISHNA MOOKERJEE . . B. L. R., Sup. Vol., 162

S. C. SONATUN GHOSE *v.* ABDUL TURRUB
[2 W. R., 105

Contra, OMESH CHUNDER ROY *v.* DUKHINA SOONDERY DEBIA . . . W. R., F. B., 95

ELIAS *v.* TITHARAM ROY . . 1 W. R., 164

401. ——— *Invalid lakhiraj tenure.*—In a suit to resume and assess lands under 100 bighas held as rent-free on an invalid title, if the defendant files his sanad showing the area to be above 100 bighas, it is for the plaintiff who alleges the *primâ facie* good title of the defendant to be bad to prove it to be so. BEER CHUNDER JOOBRAJ *v.* SHIBJOY THAKOOR . . . W. R., 1864, 8

402. ——— *Auction-purchaser.*—Certain lands which had been let out in patni were, on default by the patnidar in payment of rent, sold by auction under Bengal Regulation VIII of 1819, and purchased by *M,* who granted them in patni to the plaintiff. In a suit for resumption on the allegation that the defendants were in possession of a portion of the lands as invalid lakhiraj by withholding payment of the mâl rent thereof from after 1793, the defence was that the lands in dispute were valid rent-free lands existing as such from before 1790. *Held* that, on the grounds of the decision of the Privy Council in *Harihar Mukopadhya* v. *Madab Chandra Babu, 8 B. L. R., 566,* the principle that the onus is on the plaintiff to show that the lands are mâl applies to cases where the plaintiff, as in the present case, is the representative of an auction-purchaser. AREFUNNESSA *v.* PEARY MOHUN MOOKERJEE

[I. L. R., 1 Calc., 378 : 25 W. R., 209

403. ——— *Proof of rent-free grant before permanent settlement.*—In the year 1862 the plaintiff brought a resumption suit against *A* in respect of the lands in dispute in this case, upon the ground that she was holding them by an invalid lakhiraj title, and obtained a decree. After some years the plaintiff brought the present suit against *B,* who derived her title through *A;* to have the rent assessed. *B* pleaded, by way of bar to the jurisdiction, that the lakhiraj grant, under which *A* claimed, was made previously to 1790. *Held* that the onus of proving this plea was upon *B.* HEERA LALL PORAMANIC *v.* BARIKUNNISSA BIBEE

[I. L. R., 3 Calc., 501 : 1 C. L. R., 596

404. ——— *Lakhiraj and mâl lands.*—In a suit by a zamindar to resume land which has been held as lakhiraj, if the lakhirajdar claims under a grant of date prior to the 1st of December 1790, the onus is on him to prove it. If the lakhirajdar claims under a grant subsequent to that date, the zamindar is not entitled to a decree until he has shown in the first instance that the land claimed is part of his zamindari and at one time was mâl land. And in the latter case, the lakhirajdar is not put to proof of his title until the zamindar has established the fact of the land having once, at some time subsequent to 1st December 1790, been rent-paying land. MAHOMED AKHIR *v.* REILY

[24 W. R., 447

405. ——— *Declaration of lakhiraj title—Assessment of rent.*—In a suit instituted in 1877, *A* prayed for a declaration that he had a lakhiraj title to certain lands, the defendant stated that; the lands, for a declaration of a title to which *A* now sued, formed part of certain lands which had been the subject of resumption proceedings, which were terminated in 1863 by a decree declaring that the lands which were the subject of that suit, including the lands now claimed by *A,* were not lakhiraj. It being found as a fact that *A* had neither been a party to, nor been represented in, the resumption proceedings; that he had been in quiet and undisturbed possession of the lands which he now claimed for more than twelve years before the institution of his suit; and that proceedings had been taken by the defendant calculated to disturb such possession,—*Held* that, although the onus of proof lay on the plaintiff, it was not necessary for him to prove that the lands claimed by him to be held as lakhiraj had been held rent-free from before the date of the permanent settlement; but it was sufficient for him to prove that the defendant was, at the time of the institution of the suit, debarred by lapse of time from instituting a suit for the resumption or assessment of rent upon the land. ABHOY CHURN PAL *v.* KAILY PERSHAD CHATTERJEE . I. L. R., 5 Calc., 949

S. C. OBHOY CHURN PAL *v.* KALI PROSAD CHATTERJEE . . . . 6 C. L. R., 260

406. ——— *Lakhiraj grant.*—If a person claiming under a badshai-lakhiraj grant made before the 1st of December 1790

ONUS OF PROOF—*continued.*

40 RESUMPTION AND ASSESSMENT —*continued.*

can show that he has held the land as lakhiraj since the 1st of December 1790, this will be a conclusive bar to a suit for resumption, whether brought by the Government, or by a purchaser at a revenue sale, or by any other person,—that is, in order to prove a grant anterior to the 1st of December 1790, it is sufficient to give evidence of possession dating back to the 1st of December 1790 *Sristeedhur Sawunt* v *Romanath Rokhit, 6 W. R., 58,* cited. A person seeking to resume lakhiraj land must give

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Babu, 8 B L R, 566, referred to KOYLASHBASHINY DOSSEE v. GOCOOLMONI DOSSEE

[I. L. R, 8 Calc, 230: 10 C. L. R., 41

407. —— *Rent free lands —Landlord and tenant*—In suits for the resumption of lands alleged by the defendant to be lakhiraj, the burden of proof is in the first instance on the plaintiff to show that the lands are mâl The fact that the defendant is a tenant of the plaintiff's is a matter to be taken into consideration by the Court in determining whether, on the facts of the case, the

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408. —— *Rent free lands —Landlord and tenant.*—In a suit for resumption of lands where the defendants allege that the lands are lakhiraj, the onus is on the plaintiff, in the first instance, to show that the lands are mâl, and if he fails to make out a *primâ facie* case, the suit should be dismissed. *Bacharam Mundul* v *Peary Mohun Banerjee, I. L R, 9 Calc, 813,* followed *Neway Bundopadhya* v *Kali Proseno Ghose,*

[illegible]

409 —— *Suit for rent*

[illegible]

years after the suit was brought, when a second Ameen was deputed to the spot to make a local enquiry GOONOMONEE DOSSEE v BURRODAKANT ROY

[18 W. R., 191

ONUS OF PROOF—*continued.*

40 RESUMPTION AND ASSESSMENT —*continued.*

410. —— *Alleged lakhiraj lands.*—The Full Bench decision—*Parbati Charan Mookerjee* v *Rajkrishna Mookerjee, B L R, Sup Vol, 162,* ruling that before a plaintiff can resume lakhiraj lands he must first prove that he has collected mâl rents, and defendant need not first prove his lakhiraj title—was held not to be applicable to *the present case, in which it was proved the plaintiff* collected mâl rents from the time the land was capable of bearing any RAMSOONDUR CHUCKERBUTTY v RAMESSUR ACHARJEE 8 W. R., 454

411. —— *Beng Regs XIX of 1793 and XIV of 1825—Evidence of exemption from resumption—Semble*—The exclusion of lands as lakhiraj from the decennial and permanent settlements is of no weight, *per se,* as evidence of exemp-

[illegible]

lies on a claimant to lakhiraj to establish his title to exemption,—not by inference, but by positive proof of a grant to hold as lakhiraj, or by a proprietary right, prior to the grant of the Dewanny (12th August 1765); and that the possession was *bonâ fide* taken under it, or an enjoyment of lands as such, and descendible to heirs at or since that time DHEERAJ RAJA MAHATAB CHUND BAHADOOR v GOVERNMENT OF BENGAL . . 4 Moore's I. A, 466

412. —— *Suit by lakhirajdar*—One lakhirajdar cannot maintain a suit for resumption against another, and force the defendant to prove his title The onus is on the plaintiff KAEM KHAN v. SAHEBA JAN 7 W. R., 362

413. —— *Invalid lakhiraj*—The Government, when acting as agent of a zamindar, can only sue to resume invalid lakhiraj lands under 100 bighas, the onus of proof of its being mâl when so claimed is on the zamindar RAM LOCHUN SIRCAR v DENONATH PAUL 2 W. R., 279

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alienated by a dependent lakhirajdar subsequent to the permanent settlement, rests on the plaintiff. BEHAREE LALL ROY v. KALEE DOSS CHUNDER

[8 W. R., 451

415 —— *Suit by auction-purchaser at sale for arrears of revenue to assess rent on lakhiraj land—Limitation Act, 1859, s 1, cl 14*—In a suit by an auction-purchaser to assess rent on land claimed as valid lakhiraj, the onus is on the raiyat to prove that the land has been held as lakhiraj from the year 1790 SHAM LALL GHOSE v. SEKUNDER KHAN . . . 3 W. R., 182

FORBES v MEAN JAN . . 3 W. R., 69

HEERA MONEE DEBIA v LOKENATH MUNDUL

[2 W. R., 135

ONUS OF PROOF—*continued.*

40. RESUMPTION AND ASSESSMENT —*continued.*

NOBO LAL KHAN *v.* ADHEERANEE NARAIN KOONWAREE . . . . . . 5 W. R., 191

416. ———— ———— — *Lakhiraj land —Beng. Reg. XLI of 1795, s. 10.*—Where certain land apparently lakhiraj was represented in village papers as part of mâl land, and included within the boundary of the revenue-paying mehal,—*Held*, on the zamindar's suit for assessment of the land, that the onus of showing that the case is within s. 10, Regulation XLI of 1795, lay on the zamindar. The inclusion of the land in the boundary is not conclusive evidence, nor is it binding when the boundary has not been made judicially. The landlord proving it to be so, the plaintiff claiming rent-free possession would be required to prove his rent-free possession (peaceably and not tainted with fraud) for sixty years before he can get a decree. MAHABEER PERSHAD *v.* OOMRAO SINGH . . . . . . 1 Agra, 167

417. ———— *Rent-free land —Benares.*—In a suit for rent of land in the province of Benares which was rent-free and recorded as such at the revision of settlement in 1840-41 and 1842, the zamindar must show that, if it was lakhiraj in 1197 Fasli, there has been a legal resumption and assessment by judicial award: or if mâl in 1197 Fusli, he must prove legal resumption and actual levy of rents. The burden of proving this by direct and specific evidence lies on the zamindar. MOTEE LALL *v.* JANKI ROY . . . . 3 Agra, 364

418. ———— — — *Suit to have certain lands declared mâl.*—Where it is admitted that the defendants hold certain lands within the plaintiff's zamindari, some at least of which are rent-paying, the defendants, if desirous of proving that any of these lands are rent-free, are bound to give some *primâ facie* evidence of the fact, before they can call upon the plaintiff, the zamindar, to prove that the whole or any part of the lands are mâl. AKBUR ALI *v.* BHYEA LAL JHA

[I. L. R., 6 Calc., 666: 7 C. L. R., 497

419. ———— Suit for rent-paying land —*Suit by auction-purchaser for land alleged by him to be mâl.*—In a suit by an auction-purchaser for the khas possession of land alleged to be mâl land fraudulently alienated by the former zamindar as lakhiraj, the burden of proving that it is mâl is on the plaintiff. ANDREW *v.* LYON . . . . 2 Hay, 362

420. ———— Suit for land alleged to be lakhiraj—*Proof of receipt of rent.*—In a suit to recover possession of land within plaintiff's estate, in which defendant sets up a rent-free title, all that plaintiff is required to show is that either he or his predecessor had received rent for the land at some time subsequent to the perpetual settlement, in which case the onus of proving title falls on the defendant. RAM NARAIN SINGH DEO *v.* BISTOO THAKOOR

[15 W. R., 299

421. ———— Suit for possession of resumed lands—*Application for and refusal of settlement.*—Where, in a suit for possession of resumed lands, the plaintiff contends that the laws under which the lands in dispute were resumed (Bengal Regulations II of 1819 and III of 1828) contemplate assessment and not ejectment, the plaintiff must prove that he had formerly applied for and been refused a settlement of the lands. ABDOOL GUNNY *v.* COMMISSIONER OF THE SUNDERBUNS . 2 W. R., 239

422. ———— Suit for land as lakhiraj—*Dispute as to land being mâl or lakhiraj.*—In a suit in which plaintiff claimed four plots of land as belonging to his patni, and defendant alleged that they formed part of the resumed land of a jote for which he had obtained a decree in a resumption suit, and of which he had ever since been in possession, the parties went to trial on the issue whether the land was mâl as beyond the limits of the decree, or lakhiraj as included in the chittahs, according to which possession was given to the defendant in execution. On a consideration of what the latter had received under the decree, the first Court held that he was not entitled to retain the disputed land. The Appellate Court did not look beyond the plaintiff's chittahs. *Held* that the circumstances justified the first Court in deviating somewhat from the usual rule of law as regards the *onus probandi*, and that the course taken by it was most consonant with justice. DOSSEE *v.* RAM NIDHEE KOONDOO . . 15 W. R., 183

423. ———— Suit to declare land liable to assessment—*Suit for ejectment by purchaser at sale for arrears of revenue on the ground that land is mâl—Homestead land.*—The purchaser of an estate at a sale for arrears of revenue, after withdrawing a suit for arrears of rent, sued to eject the defendant from a piece of land on which his homestead was, *i.e.*, to declare the land liable to assessment and to obtain khas possession. *Held* that the onus lay with the plaintiff to prove that the land was mâl, and that he and his predecessors had received rent for it. BISSAMBHUR BANERJEE *v.* KOYLASH CHUNDER BOSE . . . 23 W. R., 388

424. ———— Suit for declaration of lakhiraj title—*Possession, Proof of—Title, Proof of.*—Where a plaintiff comes into Court to prove a lakhiraj title, no proof of possession for years (unless it be carried beyond 1790) as apparent lakhiraj can excuse him from proving his title. RAM JEEBUN CHUCKERBUTTY *v.* PERSHAD SHAR 7 W. R., 458

425. ———— Suit for possession of lakhiraj land—*Beng. Reg. XIX of 1793, s. 10.*—Suit to recover possession of land from which the plaintiff had been ousted by the defendant under s. 10, Regulation XIX of 1793, on the ground that it was an invalid lakhiraj created after 1st December 1790. *Held* that the zamindar, having no right to oust the lakhirajdar, unless the lakhiraj was created after 1st December 1790, must prove that the lakhiraj was created subsequently to that date, and that it was not for the lakhirajdar to prove that the

ONUS OF PROOF—*continued.*

40 RESUMPTION AND ASSESSMENT —*continued.*

lakhiraj was created prior to that date. MUN MOHINEE DOSSEE v JOYKISSEN MOOKERJEE [W. R., F B, 174

PREM SHEWUK DOSS v. ISHREE PERSHAD [2 W. R., 303

TAREENEEPERSAD GHOSE v KALLEECHURN GHOSE [Marsh, 215: 2 Hay, 90

426. ———— *Purchaser at sale in execution of a decree*—The onus of proving that a tenure is lakhiraj is not obviated by the circumstance that the person alleging that it is brought the tenure as lakhiraj at a sale in execution of a decree LALLA SHEEBLALL v GHOLAM NUBBEE [Marsh, 255. 2 Hay, 23

427. ———— *Validity of lakhiraj tenure*—In a suit to recover the possession land from which the plaintiff claiming to be a lakhirajdar has been forcibly evicted by the land holder, the plaintiff is not entitled to a decree for possession unless he can show a *primâ facie* case of lakhiraj tenure *Semble*—If he show such *primâ facie* case, the Court will give a decree for possession, and leave the zamindar to dispute the existence or validity of the alleged lakhiraj tenure in a resumption suit SREENATH LALL v JUNMEYJOY MULLICK [Marsh., 550: 2 Hay, 649

428 ———— *Long possession of purchaser*—In a suit to recover possession of lands which plaintiffs alleged to be lakhiraj and of which they had been dispossessed by the defendants (zamin [illegible]

[illegible] created subsequent to 1790 MUNSARAM DOSS KURMOKAR v GRIDHAREE RAM DOSS 10 W. R., 278

429. ———— *Proof of collection of rents*—In a suit for possession of alleged lakhiraj land, if the alleged lakhirajdar proves posses [illegible]

SHEO SUHAYE GEER v. MAHADEO SUHAYE [6 W. R., 294

430. ———— *Proof of pre-* [illegible]

431. ———— *Suit by raiyat after dispossession for invalid lakhiraj land*—A

ONUS OF PROOF—*continued*

40 RESUMPTION AND ASSESSMENT —*continued.*

[illegible]

recovery of the land on the ground of anterior possession was not sustainable, and the raiyat must prove his title as against the zamindar, his anterior possession under the invalid lakhiraj, the decision as to which he did not sue to set aside within the proper time, being the possession of a mere trespasser, and not that of an occupant raiyat WOOMA SOONDUREE THAKOORANEE v KISHOREE MOHUN BANERJEE [8 W R., 238

432 ———— Suit for declaration of land as lakhiraj—*Decree for rent, Evidence of*—Where plaintiffs sued for declaration that certain lands were lakhiraj, on the ground that defendant had obtained a decree in the Collector's Court against them for rent,—*Held* that the onus lay upon the plaintiffs to show that they were holding the land as true lakhiraj, and that the Collector's decree was wrong. HURENDUR KISHORE v KEDARNATH MITTER [10 W. R., 188

433. ———— In a suit for confirmation of possession and declaration of lakhiraj right against purchasers at a sale for arrears of Government revenue, it is necessary for the plaintiff to prove affirmatively that the land has been held rent-free from the time of the permanent settlement. RAM CHURN LALL v HATEE MAHTOON 13 W R., 247

434 ———— *Proof of possession for twelve years*—In order to lands being released from the assessment of Government revenue, they must be shown to be lakhiraj lands which were in existence at the time of the perpetual settlement, it is not sufficient to prove lakhiraj possession for twelve years ESHAN CHUNDER SHAHA v HATIMOOZZUMAH KHONDKUR 13 W. R., 334

435 ———— Suit for confirmation of possession of lakhiraj—*Proof of title*—In a suit for confirmation of possession of mokurari and lakhiraj land for a declaration that the plaintiff has a lakhiraj and mokurari title, the onus is on him HUREE NARAIN ROY v DOORGA CHURN DEGHOORIA [17 W. R., 449

See KHELATCHUNDER GHOSE v POORNO CHUNDER ROY . . . 2 W. R., 258

436. ———— Evidence of land being lakhiraj—*Production of rent-free sanad*—The production of a lakhiraj sanad is not necessary to prove that land is held rent-free The fact may be legally established by long and uninterrupted possession without payment of rent, raising the presumption that the land had been held rent-free from the decennial settlement. DHUNPUT SINGH v RUSSOMOYEE CHOWDHRAIN . . . . 10 W. R., 461

437. ———— *Suit for rent.*—If no rent has ever been paid for land, this is *primâ facie* strong proof of a *de facto* exemption protected

ONUS OF PROOF—*continued.*

40. RESUMPTION AND ASSESSMENT —*concluded.*

by limitation. The party claiming the rent must satisfy the Court that the remedy is not affected by lapse of time, and that the land was held for some service due and rendered to the zamindar, or otherwise by the zamindar's permission. If the holding were merely permissive, it could not prejudice the zamindar's right. ALI BUX *v.* ROOP KOONR [2 N. W., 106

41. SALE OF GOODS.

438. ———— **Sale of goods by sample**—*Proof of inequality of sample.*—In a sale of goods by sample, the onus is on the party alleging that the goods are not equal to sample. ISHERA YARN MILLS COMPANY *v.* ABDOOL KURREEM [Bourke, O. C., 276

42. SALE FOR ARREARS OF REVENUE.

439. ———— **Suit by purchaser**—*Incumbrances—Title—Possession.*—In a suit by an auction-purchaser of a permanently-settled estate to recover certain julkurs, of which the defendants had been admittedly in possession for nearly fifty years, and which they claimed as incidents to a tenure which existed before the date of the permanent settlement, it was held that the onus was on the plaintiff to prove his title affirmatively. FORBES *v.* MEER MAHOMED HOSSEIN 12 B. L. R., P. C., 210 : 20 W. R., 44

440. ———— *Suit for rents and profits of uncultivated land brought into cultivation.*—Suit by purchaser of a mootah at a sale for arrears of revenue for the rents and profits of a hamlet, consisting of lands which, when uncultivated, were given by the then zamindar to the defendant (respondent). The plaintiff alleged that the lands were included in the assets upon which the permanent assessment was fixed, but being unable to prove his allegation, his suit was dismissed. VENCATA NILADRY ROW *v.* VUTCHAVOY VENCATAPUTTY RAJ [5 W. R., P. C., 80

441. ———— **Incumbrance**—*Act XI of 1859, s. 54.*—Where the surrounding circumstances suggest the creation of a *bonâ fide* incumbrance executed in contemplation of an impending sale for arrears of revenue which would be protected by s. 54 of Act XI of 1859, it is for the party setting up such incumbrance to establish its *bonâ fide* character. MONOHUR MOOKERJEE *v.* JOYKISHEN MOOKERJEE [5 W. R., 1

442. ———— **Claim to protection from ejectment by auction-purchaser**—*Act XI of 1859, s. 37.*—Where a raiyat claims protection from ejectment by an auction-purchaser under the proviso to s. 37, Act XI of 1859, the onus is on the raiyat to prove the character of his holding. DOMUN LOLL *v.* PUDMUN SINGH . W. R., 1864, Act X, 129

443. ———— **Revenue sale law**—*Act XI of 1859, s. 37—Purchaser of estate sold at auction, Rights of.*—The onus of proving that under-tenures in a talukh sold at a revenue sale under Act XI of 1859 fall under any of the exceptions to s. 37 of that Act is on the person alleging the under-tenures to be within such exceptions. RASH BEHARI BOSU *v.* HARA MONI DEBYA . I. L. R., 15 Calc., 555

444. ———— *Act XI of 1859, s. 37—Incumbrance, Annulment of—Burden of proof—Tenure held since permanent settlement.*—In a suit for ejectment by a purchaser at a revenue sale, the defence was that the defendants held the land as a subordinate talukh, which had been in existence and in their possession and that of their predecessors since the time of the permanent settlement. It was found as a fact that the tenure was in existence in the year 1798-99. The plaintiff's suit was dismissed, and he now contended that the facts found could not protect the tenure in the absence of proof that the tenure was in existence at the date of the permanent settlement. *Held* that, although in the first instance the burden of proof is upon the defendants, the fact that defendants were in possession for such a length of time was sufficient to discharge the onus and establish that the tenure was protected. That in a case like this no hard-and-fast rule can be laid down as to when the burden of proof shifts from one side to the other, and that each case must be governed by its merits. NITYANUND ROY *v.* BANSHI CHANDRA BHUNJAN [3 C. W. N., 341

43. SALE FOR ARREARS OF RENT.

445. ———— **Ejectment, Suit for**—*Avoidance of under-tenure — Incumbrance — Beng. Act VIII of 1869, ss. 59, 60, 66.*—In a suit by the purchaser of an under-tenure, under ss. 59 and 60 of the Rent Act (Bengal Act VIII of 1869), to obtain possession of lands held by the defendant, on the ground that the holdings are incumbrances which have accrued thereon by an authorized act of the previous holder of the under-tenure, it lies upon the plaintiff to show that the defendant's holdings are such incumbrances as the plaintiff is entitled to avoid under s. 66 of the Rent Act. GOBIND NATH SHAHA CHOWDHURI *v.* REILY . . . I. L. R., 13 Calc., 1

446. ———— **Suit to set aside patni sale**—*Irregularity—Non-service of notice — Proof of service—Evidence Act, s. 106.*—In a suit against a zamindar to set aside the sale of a patni tenure under Regulation VIII of 1819 on the ground of non-service of notice, the onus of proving service lies on the defendant according to the spirit of s. 106 of the Evidence Act. DOORGA CHURN SURMA CHOWDHRY *v.* NAJIMOODDEEN . . . 21 W. R., 397

44. SALE IN EXECUTION OF DECREE.

447. ———— **Suit to set aside sale**—*Irregularity.*—When a judgment-debtor sues to set aside a sale in execution of a decree on the ground of irregularity, the onus of proving the irregularity is on him. NUFUSA *v.* MAHOMED AKBAR GAZEE [2 W. R., 74

ONUS OF PROOF—*continued.*

44 SALE IN EXECUTION OF DECREE —*continued.*

MOHESH NARAIN SINGH *v* KISHNANUND MISSER [Marsh, 592 2 Ind Jur, O S, 1 5 W. R, P. C, 7: 9 Moore's I. A, 324

448 ——— *Fraud, Proof of—Irregularity* —In a suit to set aside an execution sale on the ground of fraud, the *onus probandi* rests on the plaintiff to prove his allegation, mere irregularity in the issue of processes will not of itself prove fraud, even where the auction bids were so small as to excite suspicion KUBEERUN *v* SUFEEHUN . . . . . . 24 W. R., 388

449. ——— *Proof of irregularity—Non affixing of notices previous to sale* —Several years after the purchase by the defendant of immoveable property at a sale in execution of a decree, the judgment debtor sued this purchaser for the lands on the ground, amongst others that the notices required by Bengal Regulation XX of 1795, s 12, had not been affixed previous to the sale *Held* that the onus of proving the default in affixing the notices lay upon the plaintiff, the judgment debtor MOHESH NARAIN SINGH *v* KISHNANUND MISSER [Marsh, 592: 2 Ind. Jur., O. S, 1 5 W.R, P C, 7: 9 Moore's I. A, 324

450. ——— *Allegation of fraud—Knowledge of fraud* —In a suit to set aside a sale in execution of decree on the ground of fraud, where the plaintiff alleges the fraud only came to his knowledge at a certain time,—*Held* that the burden of proving such knowledge on the part of the plaintiffs, prior to the time stated by them, lay on the defendants NATHA SINGH *v* JODHA SINGH [I. L R, 6 All., 406

451. ——— *Bona fides* — In execution of a decree, the judgment debtor's right title, and interest in a certain property were attached The plaintiff thereupon preferred a claim under con

DEBI *v* MADAN MOHAN SINGH [2 B L R., A. C, 326

452. ——— *Purchase by granddaughter from grandmother—Stranger purchasing bona fide—Proof of bona fides* —When a granddaughter purchases from a grandmother, and attempts to oust a stranger who purchased *bona fide* and without notice, full and satisfactory proof of the *bona fides* of the transaction is necessary, even though no motive for fraud is proved. IMDAD HOSSEIN *v* ALIKOONNISSA DABEE DUTT MISSER *v* ALIKOONNISSA . . . W. R., F B, 77

453 ——— *Proof of want of bona fides—Suspicion* —In a suit to have a purchase made at an execution sale set aside on the ground

ONUS OF PROOF—*continued*

44 SALE IN EXECUTION OF DECREE —*concluded*

to produce a deed executed by a judgment debtor the plaintiff must free his case of such suspicions as may arise from his own position with reference to the vendor, and from any such circumstance as the improbability of such a purchase having been made. ROOP RAM DASS *v* SASEERAM NATH KURMOKUR [23 W. R, 141

See GOLUCKNATH GHOSE *v* SREENATH BOSE [24 W. R, 209

454. *Suit for confirmation of sale—Suit to set aside order cancelling sale—Sale for inadequate price, Allegation of—*

sold for an inadequate price, it lies on the defendant to show that there has been a material irregularity in publishing or conducting the sale BANDI BIBI *v* KALKA . . I. L.R., 9 All, 602

45 SERVICE OF SUMMONS

455. ——— Application to set aside

JHUTOO KOER *v* LULITA KOER. 22 W. R., 423

46 TRUST, REVOCATION OF

456 ——— Religious endowment—

alienations of the property and to have the trusts of the dedication-deeds declared. The holders of the

they could not set up the law of limitation in answer to the plaintiff's suit JUGGUTMOHEENEE DOSSEE *v* SOKHEEMONEE DOSSEE [10 B. L. R., 19: 17 W. R., 41 14 Moore's I. A., 289

ONUS OF PROOF—*continued.*

47. VALUATION OF SUIT.

457. ———— **Assertion by defendant that suit is overvalued.**—When the defendant asserts that a suit is overvalued, the onus of proving the truth of his assertion lies on him. UMA SANKAR ROY CHOWDHRY *v.* MANSUR ALI KHAN

[5 B. L. R., Ap., 6 : 13 W. R., 327

48. WITNESS.

458. ———— **Refusal to come into Court as witness**—*Presumption.*—In a suit to recover possession of land claimed by virtue of a sanad from a rajah, in which plaintiff gave *primâ facie* evidence of the authenticity of the sanad and subpœnaed the rajah to prove it, it was held that the lower Court did very right in considering the plaintiff's testimony to be strengthened by defendant's (rajah's) refusal to come into Court with his own story; and that the onus lay on the rajah to rebut the plaintiff's evidence, or to prove minority or other personal disqualification. RADHA KISTO SING DEO *v.* GUDADHUR BANERJEE

[8 W. R., 453

49. WRONGFUL CONVERSION.

459. ———— **Suit for wrongful conversion of timber**—*Failure to prove actual or constructive possession.*—In a suit under the Civil Procedure Code, in which the plaintiffs allege that the defendants wrongfully and forcibly took away and were detaining timber which had been in the plaintiffs' constructive possession, and to which they are entitled, and the relief asked for is the restitution of the timber with costs of suit, if it be proved that the defendants had forcibly and wrongfully taken property in the plaintiffs' actual or constructive possession, it would then be for the defendants to show that they were entitled to the timber. In the present case, the plaintiffs having failed to show their possession of the timber or the forcible or wrongful dispossession or conversion of the goods, and the defendants having made good their title to the timber,—*Held* that the judgment should have been for the defendants. SNADDEN *v.* TODD, FINDLAY & CO.

[7 W. R., 286

50. MISCELLANEOUS CASES.

460. ———— **Suit by purchaser of tora garas huk**—*Evidence of alienability.*—Suit by the purchaser of a certain annual payment by Government, called tora garas huk, sold in satisfaction of a decree. *Held* that the onus was on the Government to prove that there was something in the nature of this payment which made it incapable of alienation, and that the Government had failed to give such proof. SHUMBHOO LALL GIRDHUR LALL *v.* COLLECTOR OF SURAT

[4 W. R., P. C., 55 : 8 Moore's I. A., 1

461. ———— **Suit for closing new road and opening old one**—*Title*—*Trespass.*—In a suit for closing a new road opened by the defendants through the land of the plaintiff, and for opening an old road which had been closed by the defendants,—*Held* that the only question which can be tried in the suit is, whether the defendants have trespassed on the land of the plaintiff by opening a road. The onus is upon the plaintiff to prove that the land belongs to him. HIRA CHAND BANERJEE *v.* SHAMA CHARAN CHATTERJEE

[3 B. L. R., A. C., 351 : 12 W. R., 275

462. ———— **Admission of assets by heir of deceased judgment-debtor**—*Proof of extent of property.*—When an heir of a deceased judgment-debtor admits possession of some of the latter's property, the onus is on the heir, and not on the decree-holder, to prove the extent of that property. MATUNGINEE DEBEA *v.* GUGUN CHUNDER BHOOY . . . . 2 W. R., Mis., 41

463. ———— **Suit for share of income-tax**—*Manager, Possession as.*—Suit for share of income-tax by a co-sharer who, the lower Court found, was the defendant's manager. *Held* that the mere production of a deed showing that the defendant had in it nominated other persons to collect the rents of her share, without proof of cessation of possession, did not shift the onus from the plaintiff of proving that he had ceased to hold possession of the defendant's share as her manager, or that the defendant, and not the plaintiff, had actually collected the rents. RAMNATH GHOSE *v.* AMRIT MOYEE DOSSEE

[5 W. R., 168

464. ———— **Suit for disturbance of kazi in his office**—*Proof of legality of his appointment as kazi.*—Where it was shown that the plaintiffs had acted as kazi of Bombay for more than twenty years, it was held, in an action against the defendant for disturbing the plaintiff in his office and thereby depriving him of his fees, that the onus was on the defendant to show that the plaintiff had been illegally appointed; and on the defendant failing to show that, that the plaintiff was entitled to succeed. MUHAMMAD YUSSUB *v.* SAYAD AHMED

[1 Bom., Ap., 10

465. ———— **Suit for share of joint property under family arrangement**—*Proof of cause of action.*—A plaintiff suing for a share of joint property which she claimed under a family arrangement said to have been reduced to writing as an ikrarnamah, and upon the happening of the necessary conditions, it was held that the rules with regard to the onus of proof which are applicable to a suit for a share of joint family property were not directly applicable, and the plaintiff was bound to give some *primâ facie* proof of her cause of action. RAM CHUNDER MITTER *v.* KISTOO KAMINEE DOSSEE

[10 W. R., 194

466. ———— **Suit for share of zerait land under ticca pottah granted by co-sharers**—*Effect of decision without jurisdiction.*—Where, under a ticca pottah granted to him by several shareholders, plaintiff claimed the share of rent said to be due to him by the defendant (another

ONUS OF PROOF—*concluded*

50 MISCELLANEOUS CASES—*concluded*

f a certain tituted the the defen is less than burden of proving the extent of his share lay on the plaintiff In such a case even a raiyat resisting the claim of a shareholder to rent would be entitled, if he had good reason to do so, to make the plaintiff prove the amount of his share, and the only onus on an intervenor would be to prove *bonâ fide* possession. A with- force 'ISSER CHOWDY . . 19 W. R., 285

OPINIONS OF JUDGES

——— Memoranda of—

See JUDGMENT—CIVIL CASES—WHAT AMOUNTS TO

[B L R., Sup. Vol., 774

OPIUM.

——— Illegal possession of—

See ACT XIII OF 1867, s 20

[8 B. L. R, Ap , 7

——— Illegal sale of—

See ACT XXI OF 1856, s 38

[16 W. R., Cr , 69

1 ——— Bom. Reg XXI of 1827, s. 4

—*Keeping smuggled opium—Sentence on conviction* —Where more than one person is convicted under s 4, Regulation XXI of 1827 (Bombay), of keeping smuggled opium, each of the convicts is liable to the whole penalty therein imposed, *viz*, the forfeiture of double the value of the opium and double the amount of the duty leviable thereon REG. v VAKHATCHAND . 1 Bom., 50

But this was overruled by the following case, which approved of the case of *Reg* v. *Rajgur Veneegur, 3 Moore's Four Rep , 673,* and held that, where several persons knowingly harbour, keep, or conceal a parcel of smuggled opium, one penalty of double

GHENAR . . . . . 7 Bom., Cr., 39

2. ——— Act XXI of 1856, s 53—

Possession by servant —Where opium was found in

therefore her possession of the opium or that of the servant could not be considered the possession of the accused. QUEEN v GUNESH MAYA

[20 W. R., Cr., 54

OPIUM ACT (I OF 1878)

——— Breach of license under—*Beng Act IV of 1866, ss 36, 37, 39, 40—Beng. Act II of 1876—Bengal Excise Act, I II of 1878—Liability of master for servant's breach of license* —*A*, who held a certificate under Act VII of 1878 (the Excise Act) from the Deputy Commissioner of Police that he was entitled to a license from the Collector to sell muddut upon the conditions set forth therein, obtained such a license from the Collector under Act

Deputy Commissioner. *A* was charged under s 40 of Act IV of 1866 [as amended by Bengal Act II of 1876] with a breach of the conditions, not of the license, but of the certificate, the act complained of having been committed by *A*'s servant *Held* that the sale of muddut is regulated by Act I of 1878, and therefore no license from the Commissioner of Police for the sale of muddut was requisite under ss 36 and 37 of Act IV of 1866 *Held* further that s 39 of Act IV of 1866 applied to the case, and that under that section a license from the Deputy Commissioner of Police was necessary for the sale of mud-

certificate from the Deputy Commissioner *See In re Bhoobun Chunder Shaw, 11 C L R., 464* DAVIS v KOYLASH CHUNDER GHOSE

[13 C. L R , 336

——— s 3—*License to possess opium—Transport of opium* —A person having a license for the

offence of transporting opium without a license *Held* the conviction was right QUEEN EMPRESS v RAMANUJAM . I L. R., 13 Mad., 191

——— s. 4.

See CONTRACT ACT, s 23—ILLEGAL CONTRACTS—GENERALLY

[I. L. R., 19 Bom., 626

——— ss. 5 and 9—*Licensed vendor, Lia-*

consistent with the Act regulating the sale of opium Under this section, rules were issued by the Government of Bengal with the previous sanction of the Governor General in Council on the 21st February 1898, rule 15 (1) of which declares that a person to whom a license has been granted may sell opium by retail in accordance with the conditions specified in the license The conditions of the license for retail sale of opium are contained in Form No. 1 made under rule 15 Under art. 13 of this form, the

OPIUM ACT (I OF 1878)—*concluded.*

holder of the license is to keep a daily correct account showing the quantity of opium received and sold, and other details. Art. 18 sets out that on infringement of any of the conditions contained in the form or imposed by the Opium Act the license may be cancelled. The petitioner, a licensed vendor of opium, was convicted of having kept incorrect accounts in contravention of the rules made under s. 5 of the Opium Act, and having thereby committed an offence punishable under s. 9 of that Act. He was sentenced to pay a fine of R200, and in default of payment to undergo rigorous imprisonment for four months. *Held* that the conviction and sentence must be set aside, there being nothing in any of the rules made under s. 5 of the Act which would make the preparation of an incorrect account punishable under s. 9. UMESH CHUNDER GHOSE *v.* QUEEN-EMPRESS

[I. L. R., 26 Calc., 571
3 C. W. N., 365

——— s. 9.

See MAGISTRATE—GENERAL JURISDICTION . . I. L. R., 15 All., 192

See MAGISTRATE—SPECIAL ACTS—OPIUM ACT . . I. L. R., 19 All., 465

1. ——— *Liability of master for act of servant.*—Contrary to the conditions of his master's opium license, the servant sold a preparation of opium between sunset and sunrise. The master was not present, and there was no evidence to show that he had directly or otherwise authorities the illegal sale. *Held* that the master was not liable to a penalty under s. 9 of Act I of 1878. IN THE MATTER OF BHOOBUN CHUNDER SHAW

[11 C. L. R., 464

2. ——— *Act XIII of 1857—Wrongful entrance and illegal search, Liability of police officer for—Code of Criminal Procedure (1882), ss. 155, 156, and 165—Non-cognizable offence.*—An offence under s. 9 of the Opium Act (I of 1878), and not coming under s. 14 of that Act, is a non-cognizable offence, and is therefore one for which, by s. 4 of the Criminal Procedure Code, a police officer cannot arrest without warrant; and he has therefore, under s. 155 of the Code, no authority to investigate such an offence without the order of a Magistrate; nor under s. 165 can he make a search in respect of it. The power of arrest without warrant referred to in cl. (*g*) of s. 4 of the Criminal Procedure Code is an unqualified power, and not a conditional power, as in s. 24 of Act XIII of 1857, which only gives the right to a police officer to arrest without warrant in case the accused does not furnish the security required by that section. Where a police officer therefore, in respect of an offence under s. 9 of the Opium Act not coming under s. 14 of the Act, made a search in the house of the accused without an order of a Magistrate,—*Held* that his action could not be justified, either under s. 24 of Act XIII of 1857 or under the Code of Criminal Procedure, and that he was liable in an action for damages for the illegal search. BAHABAL SHAH *v.* TARAK NATH CHOWDHRY . . . I. L. R., 24 Calc., 691

ORAL EVIDENCE.

See CASES UNDER EVIDENCE—PAROL EVIDENCE.

See CASES UNDER WITNESS.

ORDER AND DISPOSITION.

See CASES UNDER INSOLVENCY—ORDER AND DISPOSITION.

ORDER IN EXECUTION OF DECREE.

See CASES UNDER APPEAL—EXECUTION OF DECREES.

See CASES UNDER RES JUDICATA—ORDERS IN EXECUTION OF DECREE.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[B. L. R., Sup. Vol., Ap., 1
[1 Ind. Jur., O. S., 50, 68
6 Bom., A. C., 205
4 Mad., 32
I. L. R., 1 Mad., 401
I. L. R., 11 Calc., 169

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS . 12 B. L. R., 261
[I. L. R., 2 All., 112
8 W. R., 112
12 W. R., 86

ORDER "MADE ON APPEAL."

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . 13 B. L. R., 103
[1 B. L. R., F. B., 1

ORDER OF MAGISTRATE IN RESPECT OF NUISANCE.

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURT.
[6 B. L. R., 643

See CASES UNDER JURISDICTION OF CIVIL COURT—MAGISTRATE'S ORDERS, INTERFERENCE WITH.

See CASES UNDER NUISANCE.

ORDER OF MAGISTRATE IN RESPECT OF POSSESSION.

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO.

ORDERS.

See CASES UNDER APPEAL—DECREES.

See CASES UNDER APPEAL—ORDERS.

See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

ORDERS—*continued*

See CASES UNDER LETTERS PATENT, HIGH COURT, CL. 15

See CASES UNDER LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10

See CASES UNDER SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622

ORIGINAL SIDE OF HIGH COURT.

———— Criminal—

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, S. 15—CRIMINAL CASES [7 B. L. R., 244 note, 250 note

———— Powers of Judge sitting on—

See CERTIFICATE OF ADMINISTRATION—CANCELMENT OR RECALL OF CERTIFICATE . 5 B. L. R., Ap., 21

———— Right to plead in—

See RULES OF HIGH COURT, MADRAS [I. L. R., 1 Mad., 24

OUDH CIVIL COURTS ACT (XIII OF 1879).

———— s. 27.

See DIVORCE ACT, S. 3 [I. L. R., 4 All., 306

See HIGH COURT, JURISDICTION OF—N.-W. P.—CIVIL [I. L. R., 18 All., 375

OUDH COURTS ACT (XIV OF 1891)

———— s. 8.

See HIGH COURT, JURISDICTION OF—N.-W. P.—CIVIL [I. L. R., 18 All., 375

OUDH ESTATES ACT (I OF 1869)

See HINDU LAW—PARTITION—RIGHT TO PARTITION—GENERALLY [I. L. R., 16 Calc., 397

See WILL—CONSTRUCTION [I. L. R., 10 Calc., 482

1. ———— **Limitation**—*Suit for redemption of mortgage.*—Under Act I of 1869, a suit for redemption is not barred where the instrument of mortgage fixes a term within which the mortgage might be redeemed, and such term did not expire before 13th February 1856. KISHEN DUTT RAM PANDAY *v.* NARENDAR BAHADOOR SINGH [L. R., 3 I. A., 85

OUDH ESTATES ACT (I OF 1869)—*continued*

2. ———— **Interest of registered talukhdar**—*Trustee.*—An Oudh talukh standing in the name of *J S* as kabuliatdar, having been confiscated [illegible]

J S by persons alleging themselves to be joint in family and estate with him, to have their interest in the talukh declared, held by the Commissioner of Seetapore in Oudh, confirming the decision of the settlement officer, that under Act I of 1869, the defendant was protected by his sanad against any [illegible]

agreed, or become bound, to hold the villages comprised in the summary settlement and sanad, or the rents and profits thereof, in trust for the plaintiffs. HARDEO BUX *v.* JAWAHIR SINGH [I. L. R., 3 Calc., 522: L. R., 4 I. A., 178

Held by the Privy Council after remand that Act I of 1869, which was passed before the suit was [illegible]

his hands remained thereafter subject to the trust, and there can be no difference in this respect between an express trust and a trust implied or presumed from a fair and reasonable interpretation of the acts and declarations of the defendant. HARDEO BUX *v.* JAWAHIR SINGH . . L. R., 6 I. A., 161

3. ———— **Interest of registered talukhdar**—*Trust—Joint estate.*—A talukhdari estate, though entered in the name of one member of a joint family in the lists prepared in conformity with the Oudh Estates Act (I of 1869), may be subject to a trust, [illegible] the talukh[illegible] state. *Harde*[illegible] *alc.*, *522* I[illegible] AHIR SINGH . . . [illegible] 14 Calc., 493 [L. R., 14 I. A., 37

4. ———— **Effect of sanad to confer proprietary right on a talukhdar, not being a trustee**—*Claim to under-proprietary right against talukhdar, distinguished and not concluded by a decree for the former right in his favour.*—Unless a talukhdar who holds such a sanad as is referred to in the Oudh Estates Act (I of 1869) has agreed in some way, or has otherw[illegible] [illegible] Government, in [illegible]

OUDH ESTATES ACT (I OF 1869) —*continued.*

112, and *Hardeo Baksh* v. *Jowahir Singh, L. R., 6 I. A., 161,* were decided, is not applicable to make the talukhdar hold subject to a charge for the benefit of such other person. The talukhdar in whom no such trust is vested is entitled to the proprietary right in the lands forming the talukhdari estate comprised in the sanad. A claim against the talukhdar for the proprietary right included lands in which the claimant alleged himself to have purchased under proprietary rights which were not claimed. A decree maintaining the talukhdar's proprietary right was made without prejudice to a claim for the under-proprietary rights. HAIDAR ALI KHAN *v.* NAWAB ALI KHAN . . . **I. L. R., 17 Calc., 311**
[L. R., 16 I. A., 183

5. ———— **Talukhdars—Title obtained by talukhdar under his sanad**—*Effect of confiscation of 1858 upon previous gift—Attempt to establish trust for claimants as to part of talukhdari estate—Claim to sub-proprietary right distinguished.*—The sanad granting a talukhdar's estate confers *primâ facie* an absolute title upon the grantee. A gift of villages by a talukhdar to collateral relations, if effectively made in 1850, and whether absolute or only for the maintenance of the donees out of the rents and profits, was rendered, by the effect of the confiscation of 1858, inoperative after that event to establish an interest as against the talukhdar holding under a sanad comprising the villages. Where a claim was based upon the principle that the conduct of a sanad-holding talukhdar and of his predecessor had been sufficient to establish against him a liability to make good, out of his talukh, interests, as to which ground was supposed to have been given for his relations to claim,—*Held* that such a claim was not established merely by the claimants having been left in possession of villages, and having paid to the talukhdar only the proportion of the revenue assessed upon them, during the whole time of the troubles in Oudh, and afterwards. *Held* also that the question of the claimants having an under-proprietary right in such villages was entirely irrelevant to a claim for a declaration that they had proprietary right therein, on which latter title they sought to found a right to have their names entered in the settlement record; and *held* that, although there are cases in which the claimant of a proprietary right may be allowed to maintain on the same facts, that he is an under-proprietor, this claim was not one of them. RAM SINGH *v.* DEPUTY COMMISSIONER OF BARA BANKI
[I. L. R., 17 Calc., 444
L. R., 17 I. A., 54

6. ———— **Estate of a sanad-holding talukhdar**—*Lineal primogeniture by custom—Award of a body of talukhdar within s. 33 of Oudh Estates' Act—Withdrawal of a voluntary admission.*—The title to a talukhdari estate devolving upon a single heir by a custom of lineal primogeniture was contested. The plaintiff claimed to succeed his deceased brother as talukhdar. The defendant, who was his paternal uncle, was in possession. Before the annexation of the province, the kabuliat had been taken in the name of the plaintiff's brother as talukhdar, who afterwards had been settled with, at both the summary settlements. By primogeniture, whether lineal or by proximity of degree (of which latter kind there was no evidence as to its being the customary one) he was the heir. To him a sanad had been granted, and the talukhdari had been entered in list II under the Act of 1869. On the other hand, it was urged that the above was consistent with the existence of a trust for the benefit of the titular talukhdar's uncles, of whom the defendant was the survivor, they having assented to the recognition of a nominal title in their nephew. *Held* that in intention as well as in form the grant of the talukhdari had been made absolutely to the sanad-holding talukhdar. In regard to the state of things before annexation, it might have been questioned whether or not the property was being held benami at that time. But after the Oudh Estates' Act, 1869, had become law, the title shown by the plaintiff must prevail, and he must recover the estate, unless a trust for the defendant should have been established. There had been no consideration given, and there was nothing to create a trust. There had been no transfer, no estoppel, and no bar by time. In 1868 an award had been made by a body of talukhdars as arbitrators within s. 33 of the Act, between members of the family other than the present disputants. This as well as a wajib-ul-urz of one of the villages of the talukh was admissible as evidence of what was the custom in regard to its devolution. In 1879 the plaintiff had, on his brother's death, while admitting "the custom prevailing in my family of gaddinashini," joined in a petition that the defendant's name should be entered dakhil kharij in the revenue records. *Held* that there might be a withdrawal of any gratuitous admission, unless there should be some obligation not to withdraw it; that there was no such obligation here; and that there had been no proof of any title upon which the admission could rest. MUHAMMAD IMAM ALI KHAN *v.* HUSAIN KHAN . . **I. L. R., 26 Calc., 81**
[L. R., 25 I. A., 161
2 C. W. N., 737

7. ———— **A talukhdar settled with on terms imposing a trust on him**—*Settlement of estate—Second summary settlement, 1858—Effect of the confiscation—Rights of the Government.*—A sanad-holding talukhdar, whose name has been entered in lists I and II, made in conformity with the Oudh Estates Act, 1869, holds the talukh subject to such trusts as have been validly created. At annexation, four descendants of a Mahomedan proprietor were entitled in equal shares to the ancestral estate, which in 1858, at the second summary settlement, was settled with the only one of the four who presented himself to the Settlement officer. The settlement with him, as talukhdar, which was then made, was, however, made upon terms providing that the absent co-sharers on their return should obtain their shares. This accorded with his application expressing his willingness. *Held* that the question whether the talukhdar had become a trustee for the

OUDH ESTATES ACT (I OF 1869) —*continued*

as to the co sharer's return or admission to share had been deemed necessary by the Chief Commissioner,

[I L. R, 26 Calc, 870
L R, 26 I. A., 229
4 C. W. N., 65

8 ———— Title under sanad from Government ... the Gov ... mation

9. ———— Mortgage—*Birt zamindari—Settlement—Under proprietary rights—Sub-settlement—Malikana—Act XXVI of 1866*—An estate in Oudh, which had been confiscated under Lord

thereupon dispossessed, and *B* put into possession Failing in other attempts to recover possession *G S* brought a claim, in which he asserted proprietary right as mortgagee, and prayed that the regular settlement might be made with him The claim was dismissed by the Settlement officer as being for a direct settlement of a superior proprietary right, and as such barred by the Oudh Estates Act (I of 1869) On appeal to the Commissioner, the claim was modified into one for a sub-settlement of an under

absolute, the full proprietary title, and to ...

conveyed by the mortgage was not in strictness sub-proprietary, a sub-settlement might not have been supported. *Quære*—Whether, under Act XXVI of

OUDH ESTATES ACT (I OF 1869) —*continued*

1866 *B* as talukhdar was entitled to malikana. GOUR SUNKER *v* MAHARAJA OF BULRAMPORE

[I. L. R, 4 Calc, 839
L R., 6 I. A., 1

1. ———— s 2 and ss 13, 20, 22 (6)—*Will of talukhdar—Registration of will—Succession to talukhdari—Son of deceased elder brother preferred to younger brother*—A written statement

ment was described by the talukhdar in a letter to the authorities in 1877 as "the will which has been submitted to the Lucknow district through the tahsil of Kursi on 6th April 1860" *Held* that this showed that he intended the statement of 1862 to be his will and that the statement, as was held with regard to a similar one in *Hurpurshad* v *Sheo Dyal, L R, 3 I A, 259,* was a will within the definition in the above section The talukhdar de-

should be admitted as a will But the instrument of 1860 was not repugnant to the will of 1879 Also the latter document was not registered in accordance with s 20 of the Oudh Estates Act, 1869 and being inoperative as to the talukhdari estate, it could not

the younger surviving brother HAIDAR ALI *v* TASSADDUK RASUL KHAN I. L. R., 18 Calc., 1
[L R, 17 I A., 82

confer any estate upon the person named. BALBHADDAR SINGH *v* SHEO NARAIN SINGH

[I. L. R., 27 Calc, 344
L. R., 26 I. A., 194

3 ———— and ss. 16-19—*Summary settlement with member of joint Hindu family governed by Mitakshara law—Right of alienation*—

OUDH ESTATES ACT (I OF 1869) —*continued.*

112, and *Hardeo Baksh* v. *Jowahir Singh, L. R., 6 I. A., 161*, were decided, is not applicable to make the talukhdar hold subject to a charge for the benefit of such other person. The talukhdar in whom no such trust is vested is entitled to the proprietary right in the lands forming the talukhdari estate comprised in the sanad. A claim against the talukhdar for the proprietary right included lands in which the claimant alleged himself to have purchased under proprietary rights which were not claimed. A decree maintaining the talukhdar's proprietary right was made without prejudice to a claim for the under-proprietary rights. HAIDAR ALI KHAN *v.* NAWAB ALI KHAN . . . I. L. R., 17 Calc., 311
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6. ——— **Estate of a sanad-holding talukhdar**—*Lineal primogeniture by custom—Award of a body of talukhdar within s. 33 of Oudh Estates' Act—Withdrawal of a voluntary admission.*—The title to a talukhdari estate devolving upon a single heir by a custom of linenal primogeniture was contested. The plaintiff claimed to succeed his deceased brother as talukhdar. The defendant, who was his paternal uncle, was in possession. Before the annexation of the province, the kabuliat had been taken in the name of the plaintiff's brother as talukhdar, who afterwards had been settled with, at both the summary settlements. By primogeniture, whether lineal or by proximity of degree (of which latter kind there was no evidence as to its being the customary one) he was the heir. To him a sanad had been granted, and the talukhdari had been entered in list II under the Act of 1869. On the other hand, it was urged that the above was consistent with the existence of a trust for the benefit of the titular talukhdar's uncles, of whom the defendant was the survivor, they having assented to the recognition of a nominal title in their nephew. *Held* that in intention as well as in form the grant of the talukhdari had been made absolutely to the sanad-holding talukhdar. In regard to the *state of things before annexation, it might have been* questioned whether or not the property was being held benami at that time. But after the Oudh Estates' Act, 1869, had become law, the title shown by the plaintiff must prevail, and he must recover the estate, unless a trust for the defendant should have been established. There had been no consideration given, and there was nothing to create a trust. There had been no transfer, no estoppel, and no bar by time. In 1868 an award had been made by a body of talukhdars as arbitrators within s. 33 of the Act, between members of the family other than the present disputants. This as well as a wajib-ul-urz of one of the villages of the talukh was admissible as evidence of what was the custom in regard to its devolution. In 1879 the plaintiff had, on his brother's death, while admitting "the custom prevailing in my family of gaddinashini," joined in a petition that the defendant's name should be entered dakhil kharij in the revenue records. *Held* that there might be a withdrawal of any gratuitous admission, unless there should be some obligation not to withdraw it; that there was no such obligation here; and that there had been no proof of any title upon which the admission could rest. MUHAMMAD IMAM ALI KHAN *v.* HUSAIN KHAN . . I. L. R., 26 Calc., 81
[L. R., 25 I. A., 161
2 C. W. N., 737

7. ——— **A talukhdar settled with on terms imposing a trust on him**—*Settlement of estate—Second summary settlement, 1858—Effect of the confiscation—Rights of the Government.*—A sanad-holding talukhdar, whose name has been entered in lists I and II, made in conformity with the Oudh Estates Act, 1869, holds the talukh subject to such trusts as have been validly created. At annexation, four descendants of a Mahomedan proprietor were entitled in equal shares to the ancestral estate, which in 1858, at the second summary settlement, was settled with the only one of the four who presented himself to the Settlement officer. The settlement with him, as talukhdar, which was then made, was, however, made upon terms providing that the absent co-sharers on their return should obtain their shares. This accorded with his application expressing his willingness. *Held* that the question whether the talukhdar had become a trustee for the

OUDH ESTATES ACT (I OF 1869) —*continued*

plaintiff in respect of his share depended on the terms

as to the co sharer's return or admission to share had been deemed necessary by the Chief Commissioner,

HASAN JAFAR *v* MUHAMMAD ASKARI [I. L. R., 26 Calc, 879 L. R., 26 I. A., 229 4 C W. N., 65

8. ———— **Title under sanad from Government**—*Trustee* —Although a sanad granted by the Government of India subsequent to the proclamation of March 1858, of an estate in Oudh, confers

9 ———— **Mortgage**—*Birt zamindari—Settlement—Under-proprietary rights—Sub-settlement—Malikana—Act XXVI of 1866* —An estate in Oudh, which had been confiscated under Lord Canning's proclamation of the 15th March 1858, was granted to *B* as talukhdar *G S*, who at the date of the proclamation was in possession of the estate as mortgagee "with birt zamindari rights" under a ... mer owner, was ... into possession ... possession *G S* ... rted proprietary ... hat the regular ... The claim was ... as being for a direct settlement of a superior proprietary right, and as such barred by the Oudh Estates Act (I of 1869) On appeal to the Commissioner, the claim was modified into one for a sub-settlement of an under proprietary right, and a decree was made declaring the plaintiff's under proprietary zamindari title, and awarding him possession under the terms of the deed of conditional sale, till such time as the mortgage should be redeemed or the title perfected by foreclosure On appeal to the Judicial Commissioner,

absolute, the full proprietary title, ... a subordinate one *Held* by the Judicial Committee of the Privy Council that the "birt zamindari rights," which the mortgage purported to convey, implied a merely subordinate zamindari interest, and that the claim of the plaintiff to a sub-settlement was valid. *Quære*—Whether, even if the interest intended to be conveyed by the mortgage was not in strictness sub proprietary, a sub-settlement might not have been supported. *Quære*—Whether, under Act XXVI of

OUDH ESTATES ACT (I OF 1869) —*continued*

1866, *B* as talukhdar was entitled to malikana. GOUR SUNKER *v* MAHARAJA OF BULRAMPORE [I. L. R., 4 Calc, 839 L. R., 6 I. A., 1

1. ———— **s. 2 and ss 13, 20, 22 (6)**—*Will of talukhdar—Registration of will—Succession to talukhdari—Son of deceased elder brother*

ment was described by the talukhdar in a letter to the authorities in 1877 as "the will which has been submitted to the Lucknow district through the tahsil of Kursi on 6th April 1860" *Held* that this showed that he intended the statement of 1862 to be his will and that the statement as was

should be admitted as a will But the instrument of 1860 was not repugnant to the will of 1879 Also the latter document was not registered in accordance with s. 20 of the Oudh Estates Act, 1869, and being inoperative as to the talukhdari estate it could not

the younger surviving brother. HAIDAR ALI *v* TASSADDUK RASUL KHAN I. L. R., 18 Calc, 1 [L. R., 17 I. A., 82

2 ————

derogate from the rights of talukhdars in their heritable and transferable estates To such an enquiry an answer in 1862 made by a sanad holding talukhdar, since deceased, who was entered in lists I and II (under the Oudh Estates Act, 1869), stated that

confer any estate upon the person named BALBHADDAR SINGH *v* SHEO NARAIN SINGH [I. L. R., 27 Calc, 344 L. R., 26 I. A., 194

3 ———— **and ss. 16-19**—*Summary settlement with member of joint Hindu family governed by Mitakshara law—Right of alienation—*

OUDH ESTATES ACT (I OF 1869)—*continued.*

Will—Custom as to partition.—By the 8th paragraph of the Oudh proclamation of March 1858, it was declared that *C L* (at that time deceased), zamindar of Mourawan, and others, were thenceforward the sole hereditary proprietors of the lands which they held when Oudh came under British rule, and which form part of the subject of these suits. Summary settlements of the said lands were subsequently made with *G S* (one of the sons of *C L*) by the Government between the 1st April 1858 and the 10th October 1859; a talukhdari sanad was granted to him before the passing of Act I of 1869; and he entered into a kabuliat for the same. His name was not entered in the second schedule annexed to the Act, but *C L*'s was. By a document dated 7th February 1860, relating to property in the district of Oonao, and by other documents similar in effect relating to property in other districts, *G S* directed as follows: "I have been requested by Government to submit an application on the subject of primogeniture, with a view that the talukh may not be split into pieces as I would wish. Now the custom that has been followed in my family for generations past is this: that the eldest member of the family continues to be the head, while the others remain obedient to him; but every one possesses a share in the talukh. Under the custom of the family, the other brothers are at liberty to have their shares separated, should they wish it. The head has no power under the old custom to alienate the estate without consulting every sharer. I therefore wish that the old custom of maintaining the share of each shareholder be preserved, in opposition to the one in accordance with which one member of the family is allowed to succeed." In suits for partition amongst the descendants of *C L* and of his brother, who together constituted a Hindu joint family governed by the Mitakshara law, all the property the subject of the suits having been found to be the joint property of the said family, it was contended on behalf of the appellants in the first appeal that all the estates included in the sanad to their father *G S,* and summary settlements, whether previously joint property of the family or not, became the separate self-acquired property of *G S;* that he was the sole malguzar thereof; and that he and his sons were the sole beneficial owners of it, and that he had no power to transfer it by will or by alienation *inter vivos.* *Held* that the sanad and summary settlements were a mere grant by the Government to one member of the family of property which belonged to the family jointly, and were not intended to enure to the sole benefit of the grantee, and did not affect the rights of the family. As regards such property granted to *G S* (if any) which was not previously part of the family estates, it was granted for services presumably rendered with the use of the joint family funds, and could not therefore be separate self-acquired property within the meaning of the Hindu law. *Held* also that, assuming any portion of such property to have been self-acquired by *G S,* he must, in consequence of Act I of 1869, be deemed to have acquired therein a permanent heritable and transferable right, and had power by will, or alienation *inter vivos,* to transfer the same. *Held* further that the document of the 7th February 1860 and other similar documents, so far as they related to the property in Oudh, amounted to a will within the definition of Act I of 1869, s. 2. Taken in conjunction with other documents, and having regard to the acts of different members of the family under it, the same amounted to evidence of an alienation *inter vivos which in G S's lifetime transferred* the property to the family to be held as joint family property. Ss. 16-19 of Act I of 1869 have no retrospective effect. HURPURSHAD *v.* SHEO DYAL. RAM SAHOY *v.* SHEO DYAL. BALMOKUND *v.* SHEO DYAL. RAM SAHOY *v.* BALMOKUND

[L. R., 3 I. A., 259: 26 W. R., 55

———— ss. 3, 4, 8, and 22.

See SANAD.

[L. R., 5 I. A., 1: 1 C. L. R., 318

1. ———— s. 8—*Talukhdar in the second list—Estate descending to single heir—Primogeniture.*—In the Oudh Estates Act, I of 1869, rules were laid down as to the title of talukhdars whose estates the Government had created, and as to the mode of succession thereto. On a question whether or not a talukh, to which the Act was applicable, descended according to the rules of lineal primogeniture,—*Held* that where a talukhdar's name was entered in the second, but not in the third, of the lists maintained under the above Act, the estate, although it was to descend to a single heir, was not to be considered as passing according to the rules of lineal primogeniture. ACHAL RAM *v.* UDAI PARTAB ADDIYA DAT SINGH

[I. L. R., 10 Calc., 511: L. R., 11 I. A., 51

2.———— and ss. 9 and 10—*Recognition of trust.*—Notwithstanding the confiscation of land in Oduh, followed by its restoration under the Government order of 11th March 1858, affirming the absolute title of those with whom summary settlements had been made, and the granting of sanads to the latter persons, with full power of alienation, confirmed by the Oudh Estates Act, 1869, the legal owner may, either by express agreement or by his conduct, constitute himself a trustee for others as to the whole or part of the beneficial interest in the land, the subject of such restoration, settlement, and sanad. RAMANAND KUAR *v.* RAGHUNATH KUAR. ANANT BAHADUR SINGH *v.* RAGHUNATH KUAR

[I. L. R., 8 Calc., 769: 11 C. L. R., 149

3. ———— and ss. 11 and 19—*Will of a talukhdar—Customary rule of succession in a family to impartible estate—Primogeniture.*—However true it may be that, if there is absolutely nothing to guide to any other conclusion, impartible estate will descend in a family according to the rule of primogeniture, evidence may establish the usage in a family to be that, of several sons, one son, selected without reference to primogeniture, succeeds to the impartible estate. The eldest of three brothers had succeeded to an impartible family estate, and to a talukh, also impartible, which had been, during the lifetime of their father, entered in the first and second, but not in the third, of the lists prepared in conformity

OUDH ESTATES ACT (I OF 1869) —continued

with s 8 of the Oudh Estates Act, I of 1869 Before his death, his eldest brother made an instrument registered as a will, but using the word "tamlik," and stamped as a deed whereby he gave the talukh to the third brother, reserving an interest in the whole for his own life, and in half for any son that might be born to him with maintenance to his wife on her becoming a widow *Held* with reference to the *indicia* of a testamentary character, there being provisions for contingencies which might not be ascertained till the death of the maker of the instrument, as compared with the technical matters attending it, that this instrument was not a transfer *inter vivos*, but was a will, and within the above Act *Held* also, on the objection that a will or declaration made by the father had fixed a mode of descent

4 ———— and s. 22—*Descent of* ... pre- ... states ... unted ... heir ... *Brij* ... *R*, 5 ... v ... v.

[I. L. R., 18 Calc., 111
L.R., 17 I. A., 173

5 ———— and s 22—*Talukh descending to a single heir—Ascertainment of that single*

third, of the list of talukdars ...

descended to a single heir, the heir according to lineal primogeniture is more remote in degree from the ancestor than other persons, who may be collaterals, coming within the line of heirship, then according to the classification in the Oudh Estates Act, nearness in degree prevails over directness of line But if two collaterals, or other persons in the line of heirship, are equal in degree,

OUDH ESTATES ACT (I OF 1869) —continued

then the person rightly entitled is indicated by the seniority of the line to which he belongs S 22, sub s 11 of the Act, referring to the law which would govern descent in default of any heirs who would come under the special provisions of the Act, includes in that law family custom when established In an attempt to prove a family *custom to the effect*

... of which they were recorded with the villages in suit, or belonging to the family which was disputing the succession BHAI NARINDAR BAHADUR SINGH v. ACHAL RAM . I. L. R, 20 Calc, 649
[L. R., 20 I. A, 77

———— ss. 8, 13, and 22.

See HINDU LAW—WILL—CONSTRUCTION—OF WILLS—ESTATES ABSOLUTE OR LIMITED
[I L R, 15 Calc, 725

———— s 10—*Joint family under Mitakshara law—Grant to member of talukhdari—Declaration of trust*—In a suit by an adopted son against his father for a declaration of right with consequential relief in a share of a certain estate, the defen

...

shara attaches to ancestral immoveable estate as between father and son *Held* that the plaintiff was entitled to a declaration to that effect, and that s 10 was no bar to his assertion of the interest declared to be vested in him SETH JAIDIAL v SETH SITA RAM . . L R, 8 I A, 215

1 ———— s 13—*Will of talukhdar—Compulsory registration of will devising talukh—Deposit* ...

[I. L. R, 10 Calc, 976. L. R., 11 I. A, 151

...

OUDH ESTATES ACT (I OF 1869) —*continued.*

to be valid under Act I of 1869, s. 13, to be registered within one month after execution. With a view to its registration, she, being a pardanashin, sent for the neighbouring pargana registrar, who attended at her house for her convenience, took her acknowledgment of the document, recorded the registration, and filed a copy of the document in his office. *Held* that this proceeding was a registration of the document, complete and effective, having been substantially a registration at the pargana office. MAJID HOSSEIN *v.* FAZL-UL-NISSA I. L. R., 16 Calc., 468 [L. R., 16 I. A., 19

3. ——————— *Meaning of "intestate" as there used—Written but unregistered authority to adopt—Registration Act (III of 1877), s. 17.*—The Oudh Estates Act, 1869, requires the registration of the writing by which an authority to adopt is exercised; but not the registration of the authority, which is required by the Act to be in writing. The Indian Registration Act (III of 1877), which does require authorities to adopt to be registered, expressly excepts authorities conferred by will. The word "intestate," in s. 13, sub-s. 1, of the Oudh Estates Act, 1869, means intestate as to the talukhdari estate; and the use of the word does not exclude from the exception in that sub-section a son adopted under an authority conferred by a talukhdar's unregistered will. A talukhdar by his will authorized his senior widow to select and adopt a minor male child of his family to be the owner of the entire riasat. This power having been exercised, the following objections to the adoption were disallowed: first, one founded on the will not having been registered, and, consequently, the authority not having been registered; secondly, one founded on the erroneous argument that the adopted son was not within the class excepted in s. 13, sub-s. 1, and therefore could not take under an unregistered will. BHAIYA RABIDAT SINGH *v.* INDAR KUNWAR . I. L. R., 16 Calc., 556 [L. R., 16 I. A., 53

1. ——————— s. 22—*Conduct of talukhdar as indicating his successor—Daughter's son.*—Where an Oudh talukdar, not having male issue, is shown to have so exceptionally treated the son of a daughter as to give him in the family the place, consequence, and pre-eminence which would naturally belong to a son of his own if one existed, and would not ordinarily be conceded to a daughter's son and has thus indicated an intention that the person so treated shall be his successor, such person will be brought within the enactment of the 4th clause of s. 22, Act I of 1869. Circumstances affording evidence of such an intention considered. PERTAB NARAIN SINGH *v.* SUBHAO KOOER
[I. L. R., 3 Calc., 626 : 1 C. L. R., 113
L. R., 4 I. A., 228

2. ——————— *Talukh inherited by a daughter's son—Succession or inheritance—Primogeniture.*—The talukh to which the succession was in dispute was one of those entered in the first and second of the lists prepared in conformity with s. 8 of the Oudh Estates Act, 1869, descending to a

OUDH ESTATES ACT (I OF 1869) —*concluded.*

single heir by primogeniture. The last talukhdar died without leaving a son, but left a widow, and by a former wife two daughters, of whom the elder had a son. The widow's claim to an estate for life, under sub-s. 17 of s. 22 of the above Act, was met by the defence that the daughter's son, having been treated by his maternal grandfather in all respects as his own son, was under sub-s. 4 entitled to inherit the talukh. The Courts below decided in his favour. *Held* that the Courts below were right as to the treatment of the daughter's son, in regard to sub-s. 4. *Pertab Narain Singh* v. *Subhao Kooer, I. L. R., 3 Calc., 626 : L. R., 4 I. A., 228,* did not show that sub-s. 4 had been construed to require evidence on that point attaining to any special degree. UMRAO BEGUM *v.* IRSHAD HUSAIN
[I. L. R., 21 Calc., 997
L. R., 21 I. A., 163

OUDH LAND REVENUE ACT (XVII OF 1876).

——————— ss. 52, 53—*Claim to resume grant.*—A proprietor in Oudh claimed to resume a perpetual lease as having been granted by his ancestor at a favourable rent, without the sanction, but otherwise, under the circumstances, contemplated by s. 52 of the "Oudh Land Revenue Act," XVII of 1876, so that the grant was resumable. *Held* that the claim failed. The undefined charges, expenses of management, and other payments incidental to the lease, might have been such as to make the rent paid a reasonable one as between lessor and lessee; and that the favourable nature of the rate of rent had not been established. PERTAB BAHADUR SINGH *v.* BADLU
[I. L. R., 25 Calc., 479

——————— ss. 121, 123—*Transfer of share of under-proprietors in arrears of rent—Right to interest on rent from transferee—Oudh Rent Act (XXII of 1886), s. 141.*—Under the Oudh Land Revenue Act, 1876, ss. 121, 123, the shares of defaulting under-proprietors were transferred to three of them who offered to pay. The present suit was brought by the superior proprietor, the talukhdar, in whose estate the mehal was comprised, against the whole body of under-proprietors for arrears of rent accrued, while the term of the above transfer was running. *Held* that the provision in s. 123 of the Oudh Land Revenue Act, 1876, to the effect that such transfer shall not affect the joint liability of the co-sharers of the mehal, had not the effect of charging the co-sharers other than the three transferees with any liability for rent accrued during the term of the transfer. Interest was also claimed, but as to this it was *held* that under-proprietors were not tenants within the meaning of the Oudh Rent Act, 1886, s. 141, providing for payment of interest on rents due from tenants. MUHAMMAD MEHNDI ALI KHAN *v.* MUHAMMAD YASIN KHAN
[I. L. R., 26 Calc., 523
L. R., 26 I. A., 41
3 C. W. N., 218

OUDH LAND REVENUE ACT (XVII OF 1876)—*concluded*

——— s. 158

See JURISDICTION OF REVENUE COURT—OUDH RENT AND REVENUE CASES
[I L R, 15 Calc, 515

——— ss 175 and 176—*Suit against the Collector as agent for the Court of Wards—Disqualified owner—Act XXXV of 1858 (Care of the Estates of Lunatics), s 11—Parties—Defendant—Civil Procedure Code, ss 440 and 464*—A decree was made against a Deputy Commissioner as Agent for the Court of Wards for a debt due from a proprietor whose estate had come under the charge of that officer in virtue of an order made by the District Court under Act XXXV of 1858, the debtor having been found to be of unsound mind and incapable of managing his affairs The Judicial Commissioner, having called for the record under s. 622 of the Civil Procedure Code, set aside the decree, which had been affirmed on appeal He was of opinion that the suit should not have been brought against the Deputy Commissioner in the above character, but would only lie against a manager appointed as Act XXXV of 1858 directed or else against a guardian. This judgment, having gone upon a technicality not well founded, was reversed, and the original decree was restored. ASHARFI LAL *v* DEPUTY COMMISSIONER OF BARA BANKI
[I. L R., 22 Calc, 729
L R, 22 I A, 90

OUDH, LAW OF—

See MAHOMEDAN LAW—DOWER
[I L R., 19 Calc, 689
I L R, 21 Calc, 135
L R, 20 I. A, 144

OUDH LAWS ACT (XVIII OF 1876).

——— s 5

See MAHOMEDAN LAW—DOWER
[I L. R., 19 Calc, 689
I. L R, 21 Calc, 135
L R., 20 I A, 144

——— ss 9 to 13

See PRE EMPTION—RIGHT OF PRE EMPTION—CO SHARERS
[I L R., 21 Calc, 496

OUDH LOANS OF 1838 AND 1842, PAYMENTS DUE UNDER—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PENSION
[I L R., 18 Calc, 216

OUDH REDEMPTION ACT (XIII OF 1866)

——— Mortgage dated previous to—

See LIMITATION ACT ART 144—ADVERSE POSSESSION . I. L. R., 23 Calc, 483
[L R., 23 I. A., 8

OUDH RENT ACT (XIX OF 1868), ss 41 and 83, cl 4.

See JURISDICTION OF REVENUE COURT—OUDH RENT AND REVENUE CASES
[I. L R., 15 Calc., 515

——— s 111

See RES JUDICATA—MATTERS IN ISSUE
[I. L. R., 19 Calc, 159

——— s 141

See INTEREST—MISCELLANEOUS CASES—ARREARS OF RENT
[I. L R, 26 Calc, 523

See OUDH LAND REVENUE ACT, ss 121 123 I. L R., 26 Calc, 523

OUDH, ROYAL FAMILY OF, PENSION TO—

See TREATY CONSTRUCTION OF
[I L R., 17 Calc, 234
L R, 16 I A, 175

OUDH SUB-SETTLEMENT ACT (XXVI OF 1866)

See JURISDICTION OF REVENUE COURT—OUDH RENT AND REVENUE CASES
[I. L R, 15 Calc., 515

1. ——— Right to sub-settlement—*Under-tenures held under contract*—Under tenures held under contract or under any arrangements from which a contract may be inferred are within the definition of sub proprietary rights given in the rules annexed to Act XXVI of 1866 and their holders are entitled to a sub settlement MAHARAJAH OF BULRAMPORE *v* UMAN PAL SINGH
[L R., 5 I. A, 225

2. ——— Under proprietary right in Oudh—*Settlement—Circular Order, 29th January 1861—Birt sankalp and khushust sankalp tenure*—A provision in the Chief Commissioner's Circular Order of 29th January 1861 in effect declares that, to found a claim to a birt tenure in Oudh, possession must be shown to have existed in 1855, the year before annexation This was assumed for the purposes of this decision, to have had the force of law at the time when the Financial Commissioner ruled, in Circular Orders 5 and 6 of 5th June 1868, that "a claimant who cannot prove possession of his [illegible]

of 1865, s. 5 and XIII of 1866, s 1, the suit of a birtiah becoming thereupon cognizable, notwithstanding that he might not have been in possession in 1855 The words of limitation in the Circular Order apply to all birt tenures, including those that are termed "sankalp" when the latter are in the nature of birts. Rules I and II in the schedule of the Oudh Sub Settlement Act, XXVI of 1866, held not to exclude the plaintiff, he having

OUDH SUB-SETTLEMENT ACT (XXVI OF 1866)—*concluded.*

shown that he, and those through whom he claimed, did not, in the words of those rules, hold the land, "through privilege, or by favour of 'the talukhdar,' but held by an under-proprietary right, under contract 'pucka,' with some degree of continuousness, since the village came into the talukh." DRIG BIJAI SING *v.* GOPAL DAT PANDAY

[I. L. R., 6 Calc., 218 : 6 C. L. R., 146 L. R., 7 I. A., 17

3.—— Right of tenant under talukhdari settlement—*Tenancy-at-will—Right of resumption—Absence of under-proprietary right.*—At the confiscation and restoration of Oudh lands in 1858, it was intended to settle and restore under regulation to the talukhdars, with certain exceptions, the talukhdars' rights, and also to protect as far as was necessary, by sub-settlement or otherwise, the existing rights of the occupiers; but there is nothing to show any intention to advance beyond what the rights were at the time. Where the relation of talukhdar and tenant at a rent of land within a talukh has been shown to have existed at that date, and since the tenant cannot defeat the talukhdar's right of resumption on due notice, notwithstanding a lengthened duration of tenancy, he is entitled to an under-proprietary right, either on the ground that, by reason of this state of things having brought him within the meaning of paragraph 2 of the schedule to Act XXVI of 1866, or on the ground that time and undisturbed enjoyment have ripened his holding into a species of ownership. The issues between the parties raising only the question of some form of proprietary right, still, if the tenant had shown any right whatever to remain undisturbed by the talukhdar, such right would have been considered on this appeal and would have received effect. The allegation of a grant in perpetuity in 1826 at a rent to be varied according to the amount of revenue payable by the talukhdar, not having been proved, but the existence and origin of a tenancy having been shown at a rent, paid down to the commencement of the suit,—*Held* that length of enjoyment, coupled with such payment of rent, could give no greater force to the tenant's right than it originally possessed. ROHAN SINGH *v.* SURAT SINGH

[I. L. R., 11 Calc., 318 : L. R., 12 I. A., 25

OUDH TALUKHDARS' RELIEF ACT (XXIV OF 1870).

—— —— s. 3—*Hypothecation of lands under management.*—A talukhdar, the management of whose talukh at the time was vested in an officer appointed under s. 3 of Act XXIV of 1870, made an instrument purporting to hypothecate the talukh to secure payment of money borrowed by him. *Held* that, as the document contained no personal contract to pay out of personal estate, or any estate other than the talukh, it was unnecessary to consider whether a talukhdar, whilst his talukh is under management in pursuance of the provisions of the above Act, is competent to make a personal contract, this being only an hypothecation of the property falling within s. 4, cl. 3, of

OUDH TALUKHDARS' RELIEF ACT (XXIV OF 1870)—*concluded.*

the Act, and invalid within its meaning. NAROTAM DASS *v.* SHEO PARGASH SINGH

[I. L. R., 10 Calc., 740 : L. R., 11 I. A., 83

—————— s. 10—*Appeal—Appeal allowed though presented after time.*—Case in which, having regard to exceptional circumstances and exceptional legislation, an appeal to the Commissioner of Division against a decision of a manager appointed under the Oudh Talukhdars' Relief Act was held to have been rightly allowed, although preferred long after the period of six weeks prescribed by s. 10. It appeared that the appellant in the Court below was a minor and incapable of exercising his right to appeal except through the manager, who himself made the order appealed from, and that the respondents (present appellants) had, after the expiration of the said six weeks, themselves prayed for a judicial determination of substantially the same questions as were raised by the present appeal. RAMJISDAS *v.* BHAGWAN BAX . . . L. R., 5 I. A., 197

—————— s. 25—*Manager not made party to suit—Effect on decree.*—Where a manager of the estate had been appointed under the provisions of Act XXIV of 1870 (The Oudh Talukhdars' Relief Act), but had not been made a party to a suit relating to the right to succeed to the talukhdari,—*Held* that the omission did not, under s. 25, affect the validity of the decree between the parties. PERTAB NARAIN SINGH *v.* TRILOKINATH SINGH

[I. L. R., 11 Calc., 186 : L. R., 11 I. A., 197

OUTCAST.

—————— Property of—

See PROBATE—OPPOSITION TO, OR REVOCATION OF, GRANT.

[I. L. R., 21 Calc., 697

—————— Succession to—

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN.

[I. L. R., 13 All., 573

OUTCASTS.

See HINDU—LAW—INHERITANCE—DANCING GIRLS . I. L. R., 13 Mad., 133

OWNER OR OCCUPIER OF LAND.

See RIOTING . I. L. R., 12 All., 550

OWNERS AND OCCUPIERS, FINE IMPOSED ON—

See BENGAL MUNICIPAL ACT, III OF 1864, s. 67 . . . 8 B. L. R., Ap., 9

OWNERS OF ADJOINING ESTATES.

See DECREE—FORM OF DECREE—POSSESSION . I. L. R., 17 Calc., 814

OWNERSHIP.

See KHOTI TENURE [I. L. R., 11 Bom., 680

——— Evidence of transfer of—

See MAHOMEDAN LAW—GIFT [I. L. R., 19 All., 267
L. R., 24 I. A., 1

See REGISTRATION ACT, s. 49 [I. L. R., 18 Bom., 18

——— Presumption of—

See BOUNDARY . 9 W. R., 426

See ENDOWMENT I. L. R., 16 All., 412

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE I. L. R., 12 All., 46

See ROAD, OWNERSHIP OF [I. L. R., 4 Calc., 206

1. ——— Ownership of tanks—*Possession sufficient to bring suit.*—In a suit to recover possession of the beds of tanks which, though gradually reclaimed and made fit for cultivation by defendants, were situate within plaintiff's mal estate,

2. ——— Enjoyment of fruit on trees—*Disputed right to possession.*—Where the question as to possession was doubtful, a Civil Court was held to have committed no error of law in presuming ownership from the fact of enjoyment of the fruits of trees growing on the disputed land. DOLE GOBIND GOOPTO *v.* BATOO *alias* KISTO CHUNDER CHUCKERBUTTY . . 22 W. R., 405

3. ——— Uncultivated lands—*Possession—Title.*—Lands which have never been occupied for cultivation, and which are of such a nature and description as that no one can be said to be in possession, may be presumed rightfully to belong to the parties with whom the title rests. MOOCHEE RAM MAJHEE *v.* BISSAMBHUR ROY CHOWDHRY [24 W. R., 410

See SUNNUD ALI *v.* KURIMOONISSA 9 W. R., 124

LEELANUND SINGH *v.* BASHEEROONISSA [16 W. R., 102

4. ——— Act of ownership—*Suit for possession—Disputed possession.*—In a suit for possession, where it was found not only that all the land in dispute was comprised within boundaries

ADHIKAREE . . . . 24 W. R., 144

OWNERSHIP—*continued*

5. ——— *Measurement and*

the question of possession. JANOKEE NATH CHOWDHRY *v.* BROJENDRO COOMAR ROY CHOWDHRY [25 W. R., 65

6. ——— Adjoining buildings—*Walls of adjoining buildings on same foundation.*—Where the external walls of two adjoining houses which now belong to different owners, but which at one time were the property of the same person, have been erected wholly or partly on the same foundation wall, and there is an entire absence of evidence on either side as to the dates of the several purchases, or of the terms on which they were made, the presumption is that the line of demarcation of the two properties is that indicated by the superincumbent walls. RADHA MOHUN ROY *v.* RAJ CHUNDER DASS [2 C. L. R., 377

7. ——— Diversion of road—*Right of owners of land adjoining old road—Public road.*—There is a presumption that a highway, or waste land adjoining thereto, belongs to the owners of the soil of the adjoining land. NIHAL CHAND *v.* AZMAT ALI KHAN . . I. L. R., 7 All., 362

8. ——— Forest lands in Malabar—*Hindu law—Property in the soil—Right of Sovereign.*—In the district of Malabar and the tracts administered as part of it, there is no presumption that forest lands are the property of the Crown. According to the Hindu law, a right to the possession of land is acquired by the first person who makes a beneficial use of the soil, the right of the Sovereign being to assess the occupier to revenue. SECRETARY OF STATE FOR INDIA *v.* VIRA RAYAN [I. L. R., 9 Mad., 175

9. ——— Forest lands—*Acts of ownership—Property in the soil—Construction of istemrari sanad of 1803 as to lands granted—Evidence of possession—Questions of fact—Proof of zamindari title.*—A zamindar claimed from the Government the proprietary possession of a tract of hill and forest, in virtue of an istemrar sanad of the year 1803, conferring upon the grantee, his heirs and successors a permanent property in the zamindari as then possessed. To the sanad, which was aptly worded to include the subject of this claim, the acts of the zamindar had been ascribed. But it did not contain any description of the lands which it was intended to carry, a marginal note only specifying three villages then comprising the zamindari. The plaintiff having proved that he and his ancestors had cut wood, pastured cattle, and gathered forest produce in certain forests for fifty years, the lower Court held that such acts of enjoyment were only evidence of an easement and not of adverse possession. *Held* by the High Court that these acts as they had been done under the belief and assertion that the said tracts formed portion of

OWNERSHIP—*continued.*

the zamindari, and that the plaintiff and his ancestors were owners of the said tracts, were evidence of adverse possession. In principle, an act done is one of evidence of an easement or adverse according as the person doing it asserts general ownership or a particular right in another's property. The enjoyment of any right of ownership over the soil is *primâ facie* proof of ownership of the soil. Where, therefore, the lower Court found such an enjoyment of a forest as proved title to the profits thereof, and such enjoyment was consistent with an otherwise ownership of the soil. *Held* that the Court was bound to find a title to the soil established. SIVASUBRAMANYA *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 9 Mad., 285

Held by the Privy Council on appeal (affirming the decision of the High Court) that the grant was not confined to the villages enumerated, and to an area in their immediate vicinity, but that the whole tract of hill and forest was claimable as within the limits, by direct evidence or reasonable inference, that it was in the possession of the zamindar when he obtained a permanent title from the Government. As to part of the tract, the zamindar's acts of possession, such as grazing cattle, cutting timber, and collecting forest produce, had been exclusive of the exercise of such rights by any other persons; but as to another part of the tract, his acts of that character had been concurrent with a similar user of hill and forest by raiyats of neighbouring villages, not part of the zamindari and belonging to the Government. *Held*, as to both parts, that the acts of possession, which had been found by both the Courts below to have been done by the zamindar, did not fall short of proving his proprietary possession, and that the user by the villagers, not having taken place in the assertion of conflicting proprietary right, and whether or not they were sufficient to establish rights of easement, were neither in amount nor quality sufficient to displace the zamindar's proprietary title. The decision of the first Court that the exercise of the abovementioned rights by the zamindar was evidence only of the right on his part to use the land of another for the purposes indicated, had been rightly reversed by the High Court. Where the proprietary right in a tract of land had been constantly asserted, all questions between the disputants as to the amount of the use of the tract by the claimant, and as to the sufficiency of such use to establish his possession over the whole extent, were *held* to be questions of fact. SECRETARY OF STATE FOR INDIA *v.* NEELAKUTTI SIVA SUBRAMANIA TEVAR

[I. L. R., 15 Mad., 101
L. R., 18 I. A., 149

10. ———— Property in trees—*Tree planted by mutwali of a shrine on land belonging to the shrine—Enjoyment of the fruit by mutwali—Attachment of tree in execution of money-decree against mutwali.*—A tree having been planted by the predecessor of a mutwali of a shrine on land admittedly belonging to the shrine, and a judgment-creditor of the mutwali having sought to attach the tree under a money-decree against the mutwali,—*Held* that, although the judgment-debtor's predecessor planted the tree while acting as mutwali, he could acquire no property in the tree by so doing, nor could any benefit, which he or the present mutwali might have derived by taking the fruit of the tree, enable them to acquire any right of ownership in the tree as against the shrine. The land admittedly belonging to the shrine, the tree must have the same character until the contrary was proved. [illegible] *v.* MAGANLAL PANDURDAS

[I. L. R., 10 Bom., 547

OWNERSHIP IN THE SOIL.

See PENSIONS ACT, 1871, s. 3.
[I. L. R., 1 Bom., 523

OWNERSHIP, RIGHT OF—

See LIMITATION ACT, 1877, s. 26.
[I. L. R., 16 Bom., 592

OWNERSHIP, TRANSFER OF—

See CONTRACT ACT, s. 78.
[I. L. R., 4 Calc., 801

See CASES UNDER VENDOR AND PURCHASER.

P

PANCHAYAT.

1. ———— District panchayat—*Mad. Reg. XII of 1816—Mad. Reg. VII of 1816—Madras Civil Courts Act, III of 1873.*—Neither the total repeal of Regulation VII of 1816 by Act III of 1813 (Madras Civil Courts Act) nor the partial repeal of Regulation XII of 1816, so far as it contained words of reference to Regulation VII of 1816, abolished the jurisdiction of district panchayats. A Collector cannot order a reference to a district panchayat under Regulation XII of 1816 unless there has been (1) an inquiry as to whether the parties will submit to the jurisdiction of a village panchayat; (2) an objection from either party to such reference, and a request in writing by one of the parties that the matter be referred to a district panchayat. CHIKATI ZAMINDAR *v.* PEDDAKIMEDI ZAMINDAR

[I. L. R., 8 Mad., 569

2. ———————— *Mad. Reg. XXXII of 1802—Mad. Reg. XII of 1816—Cases in which a district panchayat may be appointed—Finality of award—Notice of nomination of panchayatdars.* The applicability of the procedure provided in Madras Regulation XII of 1816 is not limited to cases in which a breach of the peace has taken place or is apprehended. When a district panchayat, appointed under that Regulation, has come to a decision, that decision is final and conclusive between the parties and cannot be impeached or set aside, except in the

PANCHAYAT—*concluded*

manner prescribed by the Regulation Such decision is not invalid because only one party consented to the reference of the matter in dispute to a panchayat or because the other party who protested against the proceedings had not notice of the time when the nomination of the panchayatdars was to take place NARAYANA v CHANDRA

[I L R., 15 Mad., 1

PANCHNAMA

——— Refusal to attend to make—

See BOMBAY DISTRICT POLICE ACT s 53
[I L R, 22 Bom, 970

PAPER-BOOKS

See CASES UNDER PRACTICE—CIVIL CASES —PAPER-BOOKS

——— Failure to deposit costs of—

See LETTERS PATENT HIGH COURT cl 15 I L R, 23 Calc, 339

See LIMITATION ACT ART 168
[I L R, 23 Calc, 339

See REVIEW—POWER TO REVIEW
[I L R, 23 Calc, 339
I L R., 24 Calc, 350

PAPER CURRENCY ACT (XX OF 1882)

——— s 25

See PROMISSORY NOTE—FORM
[I L R., 16 Bom, 689

PARDANASHIN WOMEN

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE
[I L R., 25 Calc., 807
2 C W N., 566

See ATTACHMENT—ATTACHMENT OF PERSON I L R, 7 Calc., 19
[17 W R., 86

See COMMISSION—CRIMINAL CASES
[I. L. R., 5 All., 92
I L R., 15 Calc., 775
I L R, 24 Calc, 561

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS
[1 B L R., O C, 28, 31 note

See INSPECTION OF DOCUMENTS
[I. L. R., 8 All., 265

See ONUS OF PROOF—DECREES AND DEEDS SUITS TO ENFORCE OR SET ASIDE
[10 B L. R., 205
13 B L R., 427
L. R., 1 I. A, 192

PARDANASHIN WOMEN—*continued*

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS I. L. R., 7 Calc, 245
[L. R., 8 I. A., 39

See REGISTRAR OF HIGH COURT
[I. L. R., 16 Calc, 330

See WILL—ATTESTATION
[I. L R., 16 Calc., 19

1. ——— Dealings with parda women —*Onus of proof—Evidence of bond fides* —A Hindu parda woman is entitled to receive in the Courts of this country that protection which the Court of Chancery in England always extends to the weak ignorant and infirm and to those who for any other reason are specially likely to be imposed upon by the exertion of undue influence which is presumed to have been exerted unless the contrary be shown In all dealings therefore with persons so situated it is incumbent on the party interested in upholding the transaction to show that its terms are fair and equitable the most usual mode of discharging such

2 ——— Execution of deed by pardanashin—*Registration of deed—Evidence of execution* —In cases of transactions by parda women mere registration does not go far to corroborate the proof of their validity unless a mutation of names takes place which if done under a mooktearnama has not the same effect as against a parda woman as it has against a person capable of transacting his own business and acting for himself Where the conveyance by a parda woman is impeached there ought to be clear evidence not of the mere signature by the party but that the secluded woman had the means of knowing what she was about FUZZUL HOSSEIN v AMJUD ALI KHAN 17 W R., 523

3 ——— *Registration—Evidence of genuineness* —The mere registration of a lease is no proof of its genuineness especially in the case of a lease which was first produced as a valid instrument nearly nine years after its execution and which was alleged to have been granted by a pardanashin lady but no satisfactory evidence was given that she had put her signature and seal to it and that she did so with a knowledge of the nature and contents of the instrument DOOLEE CHAND v OOMDA KHANUM 18 W R., 238

4 ——— *Explanation of document* —In order to charge a pardanashin woman upon an instrument or power purporting to have been

[I L R., [illegible] Calc., [illegible]

5 ——— *Onus probandi—Evidence of deed being explained—Pardanashin without legal assistance* —Where the defendant who was shown to be an illiterate pardanashin lady denied on her oath that in executing a wakfnama she had

PARDANASHIN WOMEN—*continued.*

any intention of creating an absolute wakf, or that she understood the effect of the deed when she executed it, the onus was on the plaintiffs to show that she was fully aware of the character of the document and its legal effect, and that she had proper professional advice at the time of its execution. In the absence of such proof,—*Held* that the deed was not binding on her. DELROOS BANOO BEGUM *v.* ASHGAR ALLY KHAN [15 B. L. R., 167 : 23 W. R., 453

Held, in the same case, on appeal to the Privy Council, who affirmed the judgment of the High Court: A Court, when dealing with the disposition of her property by a parda woman, ought to be satisfied that the transaction was explained to her, and that she knew what she was doing; especially in a case where, without legal assistance, for no consideration, and without any equivalent, she has executed a document, written in a language she does not understand, which deprives her of all her property. In the case of a pardanashin woman who has no legal assistance, the ordinary presumption, that if a person of competent capacity signs a deed, he understands the instrument to which he has affixed his name, does not arise. ASHGAR ALI *v.* DELROOS BANEE BEGUM [I. L. R., 3 Calc., 324

See also the cases of MANOHAR DASS *v.* BHAGABATI DASI . . . 1 B. L. R., O. C., 28

KANAILAL JOWHARI *v.* KAMINI DEBI [1 B. L. R., O. C., 31 note

THAKOORDEEN TEWARY *v.* ALI HOSSEIN KHAN [13 B. L. R., 427 : 21 W. R., 340 L. R., 1 I. A., 192

SOONDUR KOOMAREE DEBIA *v.* KISHOREE LAL SEIN . . . . 5 W. R., 246

ROOP NARAIN SINGH *v.* GUJADHUR PERSHAD NARAIN . . . . . . 9 W. R., 297

6. —— *Death-bed disposition—Proof of boná fide intention.*—Where a deed purports to have been executed by a parda woman, the Court should see that it was fairly taken from her, and that she was a free agent and duly informed of what she was about. When the disposition is in the nature of a death-bed disposition, the Court that upholds it ought, from whomsoever it proceeded, to be satisfied that it was the free voluntary act of the party by whom it purports to have been executed, and expressed her real intention. GRISH CHUNDER LAHOREE *v.* BHUGGOBUTTY DEBIA [14 W. R., P. C., 7 : 13 Moore's I. A., 419

7. —— *Mooktearnamah, Validity of.*—The issue being as to whether a certain mooktearnamah, which purported to have been signed by the respondent, was valid or not, the validity of the mookhtearnamah was pronounced against, as there was no legal proof of its execution, and the absence of legal proof was not compensated by any legitimate inference arising out of or by any of the facts disclosed by the other parts of the case, the whole of the transactions relative to the execution thereof being of a very questionable character. SEETUL PERSHAD *v.* DOOLHIN BADAM KONWUR [8 W. R., P. C., 22 : 11 Moore's I. A., 268

8. —— *Document obtained by chief male member of family.*—A document obtained by the chief male member of a family from a parda woman should receive a strict construction. SOOKYABOYE AMMAL *v.* LATCHMI AMMAL [13 W. R., P. C., 3

9. —— *Contract with pardanashin woman—Proof as to knowledge of transaction before execution of document.*—Where two Nambudri females—a mother and daughter (plaintiff)—executed a document in favour of defendant, a male relative (nephew of the former), which purported to divest the plaintiff and her mother of the entire property of the illom of which they were the sole proprietors, and to vest it in the defendant in consideration of his promise to mary and raise up heirs to the illom to which the plaintiff and her mother belonged, and to maintain the plaintiff and her mother till death, and it was proved that plaintiff was well aware of what she was doing, and had subsequently clearly recognised the defendant as absolute proprietor of the property and was contented with his having assumed the position pointed out in the document,—*Held* that the transaction was valid, and could not be called into question on the suggestion that plaintiff was placed at a disadvantage and was not fully cognizant of the irrevocable nature of the deed; and that the rule laid down by the Privy Council in *Ashgar Ali* v. *Delroos Banoo Begam, I. L. R., 3 Calc., 324*, and in *Tacoordeen Tewarry* v. *Ali Hossein Khan, L. R., 1 I. A., 192,* had been complied with, and that defendant had discharged the burden of proof upon him. TAMARASHERRI SIVITHRIS ANDARJANOM *v.* MARANAT VASUDEVAN NAMBUDRIPAD . . I. L. R., 3 Mad., 215

10. —— *Raising of unnecessary defence by legal adviser.*—Observations regarding instructions by a pardanashin lady in a warrant of attorney to her pleader to do "necessary acts." MONMOHINI DASSI *v.* KALIDAS AHIRI [2 C. W. N., 292

11. —— *Conditions necessary to the valid execution of a document by pardanashin—Suit to set aside deed—Onus probandi.*—Where a deed executed by a pardanashin woman is sought to be set aside, it is for the party wishing to uphold the deed to show affirmatively that the transaction intended to be carried out by the deed was a reasonable one; that the executant was fully cognizant of the meaning and legal and practical effect thereof, and that she executed the same with her full and free consent, that is to say, that she had independent advice on the subject and was not otherwise as, *e.g.*, by reason of bodily or mental infirmity or by reason of fraud or coercion practised upon her, incapable of giving a rational consent to the transaction. One *M*, a pardanashin lady of some 70 years of age, and more or less illiterate, executed on the 11th September 1888 a deed which purported to divest her immediately of all her property in

PARDANASHIN WOMEN—*continued.*

S H, were mainly instrumental in procuring the execution of the deed in question The deed was drafted in very artificial language, and it was not shown that the executant ever understood its contents or effect The executant was, moreover at the time of execution in ill health and great mental distress, owing to the death of her son, *H*, which had happened some months previously. The deed was also executed in the absence of the person who was at that time the executant's chief adviser and the manager of her property Lastly, it appeared that, as soon as the executant came to know what the true nature of the deed was, and that proceedings had been initiated in the Revenue Department for mutation of names, she took immediate measures to show her dissent from the provisions of the deed and her disapproval of what had been done thereunder

Baksh Khan v *Hosseini Bibi*, *I L. R*, *15 Calc*, *684*, *Behari Lal* v. *Habiba Bibi I. L R*, *8 All*, *267*, and *Kaniz Fatima* v. *Abbas Ali*, *I L. R*, *8 All*, *627*, referred to MARIAM BIBI *v* SAKINA

[I. L R., 14 All., 8

12 ——— *Proof of explanation of deed—Gosha women, Deed executed by—Onus of proof*—In a suit on a mortgage it was held that two gosha women, who had executed the

13.——— *Proof of explanation of deed executed by pardanashin woman—Mortgage of ancestral property made by Hindu widow under power of attorney given by her to male relative*—It is absolutely necessary, before holding that a pardanashin lady or her property is liable on a contract alleged to have been made by her, or in consequence of an alleged execution by her of a general power of attorney, to be reasonably satisfied that the liability she was incurring and the nature of the transaction were explained to her, and more particularly is this the case, if it is sought, by

Upheld by Privy Council in SHAM SUNDER LAL *v*. ACHHAN KUNWAR . I. L. R, 21 All., 71

[L. R., 25 I. A., 183

PARDANASHIN WOMEN—*continued.*

14. ——— *Dealings with pardanashin—Quasi pardanashin—Proof of incapacity for business*—A woman cannot be held to be a *quasi* pardanashin If she is not actually a pardanashin, sufficient incapacity for business must be proved in order to throw upon those dealing with her the duty of taking special precautions HODGES *v* DELHI AND LONDON BANK

[L. R., 27 I. A., 168

15 ——— *Variance between*

suggested that, although it was not good as a deed of sale, it would be good as a deed of bounty the

Affirming S C. KUMUROONISSA BEGUM *v* SYFOOLLAH KHAN 5 W R, 198

16 ——— *Gift by Hindu lady to mooktear—Onus*—Where a mooktear sued his client, a Hindu widow, upon a purwannah bearing the clients' seal and purporting to give away valuable properties without any substantial consideration,—*Held* that the onus was on the plaintiff to satisfy the Court fully as to the circumstances under which the clients' seal was obtained and to prove that the gift was made advisedly RAM PERSHAD MISSER *v* PHOOLPUTTEE . 7 W. R., 98

17. ——— *Gift by Mahomedan lady to one in a fiduciary position*—Where a Mahomedan lady conveyed to her confidential adviser and two other persons the house in which she dwelt by deed of gift which (though read over and explained to her by a clerk who acted both for the donees and her) was executed by the lady without

[7 Bom., O C., 27

18. ——— *Proof of execu-*

dence, that there were two women behind a parda who the executants of the bond said were their respective wives, and that these women acknowledged

PARDANASHIN WOMEN—*continued.*

they had made the power-of-attorney. There was nothing to show that the ladies had ever benefited in any way from the money advanced under the bond. *Held* that, even if the ladies behind the parda were in fact the two defendants, this evidence would not be enough to bind them, and that it was for the plaintiff, who sought to bring their property to sale on the strength of a transaction with them, to show that they were free agents in the matter, and, having a clear knowledge of what they were doing, accorded their consent to it. *Buzloor Raheem* v. *Shumsoonnissa Begum, 11 Moore's I. A., 551; Ashgar Ali* v. *Delroos Banoo Begum, I. L. R., 3 Calc., 324;* and *Sudisht Lal* v. *Sheobarat Koer, I. L. R., 7 Calc., 245,* referred to by MAHMOOD, *J.* BEHARI LAL *v.* HABIBA BIBI . . . . **I. L. R., 8 All., 267**

19. ——— *Mahomedan law —Sale of an undivided share—Burden of proving validity of sale by a gosha woman.*—Suit for partition and possession of an undivided share of property sold to plaintiff by an aged gosha lady of the class of Canarese Mahomedans called Navayats. The property sold was the vendor's share as heiress of her father, brother, and sister, who died in 1856, 1866, and 1871, respectively; but it appeared that, the property of the family had been in the possession of one managing member since 1856. *Held* that, the plaintiff having discharged the burden of proving that the conveyance to him was voluntarily executed, and that the transaction evidenced by it was real and *boná fide,* the conveyance was operative. KHATIJA *v.* ISMAIL . . . **I. L. R., 12 Mad., 380**

20. ——— *Sale of villages by a wife to her husband—Proof of execution of deed of sale.*—The purchase-money had not been paid on what purported to be a deed of sale of villages by a Mahomedan wife to her husband for a price which, however, the deed acknowledged to have been paid. After her death, two of her relations, disputing the due execution of the sale-deed, sued the husband, who had obtained possession, claiming in the alternative either that they should obtain their shares in the property of the deceased, or, if the sale of the villages should be maintained, that they should receive their proportion of the price as due to the estate left by her. The two Courts below concurred in finding that the wife, a pardanashin, was capable of managing her own affairs, and that she had not received the price. The first Court inferred from the state of things that the wife had in a manner made a gift of the villages to the husband. The High Court reversed that judgment, and decided that, with regard to the probability of influence on the part of the husband, the absence of any independent advice for the wife and other circumstances, the transaction was without effect. The Judicial Committee found that there not being a case of undue influence exercised, either made by the plaint or raised by the issues, they found no evidence that the price stated was inadequate, or the sale an improvident one, or that the husband had been released from having to pay the price. From the findings on the evidence the pre-emption was that the wife intended to pass the property for some purpose, and that the suggestion of a gift being excluded, the deed operated as a sale according to what it purported to be. They did not throw any doubt on the sound doctrine, laid down in numerous cases, as to the obligations upon persons taking benefits from pardanashin ladies. To the one surviving plaintiff was awarded a moiety of the price payable by the husband, who himself inherited the balance. MUHAMMAD IKRAM-UD-DIN *v.* NAJIBAN **I. L. R., 20 All., 447**
[L. R., 25 I. A., 137
2 C. W. N., 545

21. ——— *Want of legal advice—Misapprehension.*—A deed conveying the interest of a native married woman in land will not be set aside on the ground of want of legal advice or misapprehension, where the husband is aware of the alienation, and it is not shown that there is a gross inadequacy of price. MONOHUR DOSS *v.* KHOOLSUN BEGUM . . . . **Cor., 121**

22. ——— *Loan for Mahomedan women on bond executed under mooktearnamah—Onus on lender—Necessity.*—Where *A* wishes to charge Mahomedan ladies under a bond executed in their absence by *B* under a mooktearnamah, even if there was no collusion between *A* and *B*, *A* is bound to show that there was no negligence on his part; that the advance was made after satisfying himself that it was taken for their use, and was required by them for the purposes stated in the mooktearnamah (*viz.,* for the payment of their debts); and also that the money was applied to the use of the ladies. GOLAM SOBHAN *v.* MUDDUN MOHUN PAUL **[18 W. R., 257**

23. ——— **Attendance of pardanashin in Court**—*Personal attendance of accused person—Criminal Procedure Code, s. 205.*—*Held* where a Magistrate had issued a summons to a "pardanashin" woman, alleged to be of good position, who was accused of an offence that the Magistrate should have dispensed with the personal attendance of the accused and permitted her to appear by pleader, until such time as he had before him clear, direct, and reliable *primâ facie* proof that the accused had a real charge to answer. IN THE MATTER OF THE PETITION OF RAHIM BIBI . **I. L. R., 6 All., 59**

24. ——— **Examination of pardanashin**—*Witness—Right to be examined on commission.*—A pardanashin woman, summoned as a witness in a criminal case, has a right to be exempted from personal attendance at Court, and to be examined on commission. IN THE MATTER OF THE PETITION OF HORRO SOONDERY CHOWDHRAIN
[I. L. R., 4 Calc., 20: 3 C. L. R., 93

25. ——— *Privileges of, as witnesses—Attendance in Court.*—Privileges of pardanashin ladies when attending Court in palanquins as witnesses considered. The general rule is that the lady should be admitted into Court in her palanquin, and give her evidence in it, after being properly identified. QUEEN *v.* ROBERTS . **1 B. L. R., S. N., 5**

26. ——— *Attendance in Court.*—The Court will extend the privileges of parda to women who, though not parda, are not

PARDANASHIN WOMEN—*continued*

accustomed generally to appear before the public KISTOMOHUN MOOKERJEE *v* ADARMONEY DABEE [2 Hyde, 88

27. ——————— *Attendance in Court—Identification* —The examination by commission of a pardanashin woman is not necessary where she can be examined in Court in a palki or otherwise on a proper identification NUSRUT BANOO *v.* MAHOMED SAYEM . 18 W. R., 230

28. ——————— *Right of pardanashin lady to be examined on commission—Civil Procedure Code (Act XIV of 1882), s 640* — The defendant applied for a commission to examine a Hindu pardanashin lady The plaintiff objected on the ground that the lady had prior to this appeared in public, and had also been examined in Court in a palki *Held,* the lady being a purdanashin, she was entitled to be examined on commission MOHESH CHUNDER ADDY *v* MANICK LALL ADDY [I. L R , 26 Calc., 650
3 C. W. N., 751

CHAMATKAR MOHINEY DABEE *v* MOHESH CHUNDER BOSE I. L. R., 26 Calc., 651 note
[3 C. W. N , 750

29. ——————— *Civil Procedure Code (Act XIV of 1882), s. 640—Commission to examine witnesses* —In an application to examine the plaintiff under commission, it was admitted that she had appeared personally in the Police Court and had been examined by the Magistrate Ordered that a commission do issue to examine the plaintiff. PROVAT KUMAREE DASSEE *v* OPURBA KISSEN SETT [3 C. W. N , 753

30. ——————— *Privileges of, as witnesses—Civil Procedure Code, 1859, s 21* —In the case of an unmarried girl of some 12 years of

31. ——————— *Irregularity in mode of examination prejudicing the accused* — Where the complainants were pardanashin ladies, and the Deputy Magistrate went to their residence and took their depositions in the presence of the accused, who had no opportunity of cross examining,

who knew the facts. IN THE MATTER OF THE PETITION OF JUDOO NUNDON LALL [24 W. R., Cr., 22

PARDANASHIN WOMEN—*concluded.*

32. ——————— *Personal appearance in Court—Practice* —Although there is no provision in the Criminal Procedure Code which protects pardanashin ladies from appearing in a Court of Justice, nevertheless it is very undesirable to compel the attendance of such persons It cannot be admitted as a general principle that pardanashin ladies whose evidence is required in criminal trials are to be allowed to compel the Courts to examine them at some other place than the Court house itself *In the matter of the petition of Din Tarini Debi,*

the High Court directed him to make arrangements so as to take her evidence either in an empty Court-room in the presence of himself, the accused and the pleader for the prosecution or, if no empty Court-room were available, in his own private room or some other room in the Court building IN THE MATTER OF THE PETITION OF BASANT BIBI [I. L. R , 12 All , 69

33. ——————— *Attendance of pardanashin—Warrant case—Issue of summons—Criminal Procedure Code, 1882, ss 204, 205—Discretion of Court* —In a warrant case, the accused being a pardanashin, the Magistrate can dispense with her attendance under s. 205 of the Criminal Procedure Code, if he issues a summons in the first instance, and this he has a discretion to do under s 204 BASUMOTI ADHIKARINI *v* BUDRAM KALITA [I. L. R., 21 Calc., 588

34 ——————— **Exemption from arrest—**

35. ——————— *Execution of decree* —Pardanashin women or women who, according to usage of the country, ought not to be compelled to appear in public, are not exempt from arrest in execution of a decree MAHARANI OF BURDWAN *v* BARADASUNDARI DEBI [1 B. L. R., F. B , 31 : 10 W. R., F. B , 21

RAJCHUNDER ROY *v.* SHAMA SOONDURI DEBI [I. L. R., 4 Calc., 583

See also KADUMBINEE DOSSEE *v* KOYLASH KAMINEE DOSSEE I. L. R., 7 Calc , 19 : 9 C. L. R 25

PARDON.

See CASES UNDER APPROVERS.

See CONFESSION—CONFESSIONS TO MAGISTRATE . . I. L. R., 2 All., 260
[I. L. R., 23 Calc., 50

PARDON—*continued.*

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.
[I. L. R., 1 Bom., 610
I. L. R., 2 All., 260
8 W. R., Cr., 53
5 N. W., 217
I. L. R., 11 Calc., 580
14 W. R., Cr., 10
I. L. R., 10 Bom., 190
I. L. R., 23 Bom., 213

See SESSIONS JUDGE—JURISDICTION OF.
[I. L. R., 15 Mad., 352
I. L. R., 22 Calc., 50

1. ——— Application for pardon—*Prisoner duly convicted—Fresh evidence sufficient for acquittal—Procedure.*—Where a prisoner has been duly convicted of a criminal offence, and afterwards there turns up fresh evidence, which would, in the opinion of the Judge, if it had been available at the trial, have produced an acquittal, the proper course to take is not to acquit the prisoner, but to apply to the proper authority for a pardon. REG. *v.* HART . . . . 1 Ind. Jur., N. S., 333

S. C. NUSSUR ALI *v.* HART . 6 W. R., Cr., 42

2. ——— *Application for pardon for political offence.*—Application for pardon or mitigation of punishment for a political offence (*e.g.*, for waging war against a Power in alliance with the Queen) should be made to the Executive Government. QUEEN *v.* SAJOWPA . 7 W. R., Cr., 100

3. ——— Tender of pardon—*Power of Magistrate—Witness.*—A Magistrate is competent to tender a pardon to any person. The fact of such party being directly or indirectly concerned in the offence does not preclude him from being admitted as a witness for the Crown under s. 209 of the Code of Criminal Procedure, 1861. QUEEN *v.* CHUNDER CHURN BANERJEE . . . 6 W. R., Cr., 94

4. ——— *Criminal Procedure Code, 1861, s. 210.*—A Sessions Judge was held to be not competent before a trial to instruct a Magistrate to tender a pardon under s. 210 of the Criminal Procedure Code. IN THE MATTER OF NISTARINEE DEBIA . . . . . 7 W. R., Cr., 114

5. ——— *Tender of conditional pardon—Criminal Procedure Code, 1861, s. 209—Power of Magistrate.*—The provisions of s. 209, Criminal Procedure Code, applied to cases triable by the Magistracy concurrently with the Court of Session. ANONYMOUS . 3 Mad., Ap., 2

6. ——— *Criminal Procedure Code, 1861, s. 209—Power of Magistrate.*—The power given to a Magistrate by s. 209 of the Criminal Procedure Code could not properly be exercised, except with a view to the committal of a case for trial before a Court of Session. ANONYMOUS
[3 Mad., Ap., 4

7. ——— *Power of Magistrate—Criminal Procedure Code, 1861, s. 209.*—On a reference by a Sessions Judge, where certain persons were found guilty of gaming by a full power Magistrate, solely on the evidence of a person supposed to have been concerned in the offence, whom the Magistrate had pardoned,—*Held* that the Magistrate had no power to tender a pardon in a case which he tries himself; but only under s. 209 of the Criminal Procedure Code, in the case of an offence triable by the Court of Session. REG. *v.* REMEDIOS
[3 Bom., Cr., 59

8. ——— *Criminal Procedure Code (Act X of 1882, s. 337, read with s. 338)—Offences not exclusively triable by Court of Session.*—A Sessions Judge cannot tender a pardon to an accused under s. 338 of the Criminal Procedure Code, where the offence for which he has been committed is not "triable exclusively by the Court of Session." QUEEN-EMPRESS *v.* SADHEE KASAL
[I. L. R., 10 Calc., 936

9. ——— *Prisoner—Witness—Procedure.*—Procedure as to tendering a pardon to a prisoner before examining him as a witness, discussed. QUEEN *v.* GAGALU
[4 B. L. R., Ap., 50: 12 W. R., Cr., 80

10. ——— *Criminal Procedure Code, ss. 337, 339—Accomplice—Tender of pardon, Effect of—Subsequent trial of accomplice for connected offences.*—A prisoner charged before a Magistrate at Benares with offences punishable under ss. 471, 472, and 474 of the Penal Code, made a confession to the Magistrate in respect of those offences. He was then sent in custody to Calcutta, and was there, together with other persons, charged before a Magistrate with offences punishable under ss. 467, 473, and 475. The conduct to which these charges related was closely connected and mixed up with that to which the charges first-mentioned had reference. Under s. 337 of the Criminal Procedure Code, the Magistrate at Calcutta tendered a pardon to the prisoner upon the condition specified in that section, and the prisoner accepted the pardon, and gave evidence for the prosecution. The Magistrate held that this evidence was not sufficiently corroborated, and accordingly discharged all the accused, but the pardon was not withdrawn, and there was nothing to show that the Magistrate was dissatisfied with the prisoner's statements or considered that he had not complied with the conditions on which the pardon was tendered. Subsequently the prisoner was committed by the Magistrate of Benares for trial before the Court of Session upon the charges under ss. 471, 472, and 474 of the Penal Code. He pleaded not guilty, but did not in terms plead the pardon as a bar to the trial, though he made some reference to the subject; and the Sessions Judge, having made a brief inquiry as to the proceedings at Calcutta, came to the conclusion that there was no sufficient proof of any conditional pardon, and convicted and sentenced the accused. *Held* that, by the terms of the conditional pardon granted to the accused by the Calcutta Magistrate, the conditions of which were satisfied as was shown by its never having been withdrawn, the accused was protected from trial at Benares in respect of the offences under ss. 471, 472, and 474, and was not liable to be proceeded against in respect of them, and that the

PARDON—*continued*

trial and conviction were therefore illegal Although s 337 of the Criminal Procedure Code does not in terms cover a case where a Magistrate holding a preliminary inquiry for committal against several persons tenders a conditional pardon to one of them examines him as a witness and subsequently discharges all the accused for want of a *primâ facie* case against them, the words "every person accepting a tender under this section shall be examined as a witness in the case" mean that for all purposes (subject to failure to satisfy the conditions of the pardon as provided for by s 339) such a person ceases to be triable for the offence or offences under inquiry or (with reference to s 339) for "any other offence of which he appears to have been guilty in connection with the same matter" while making "a full and true disclosure of the whole of the circumstances within his knowledge relative to the offences" directly under inquiry The words last quoted refer to the importance when a pardon is tendered of encouraging the approver to give the fullest details so that points may be found in his evidence which may be capable of corroboration The question of how far the pardon protects him and what portion of it should not protect him ought not to be treated in a narrow spirit QUEEN EMPRESS *v* GANGA CHARAN I L R, 11 All., 79

11 ———— *Criminal Procedure Code s 337—Trial of person who having* [illegible]

received pardon until the trial of the principal offence and of any offence connected therewith has been completed QUEEN EMPRESS *v* SUDRA [I. L R., 14 All, 336

QUEEN EMPRESS *v* BHAU [I. L R, 23 Bom, 493

QUEEN-EMPRESS *v* NATU [I. L R., 27 Calc, 137

12 ———— *Criminal Procedure Code (1882), s 339—Tender of pardon by Magistrate inquiring into a criminal case—Pardon withdrawn after some of the witnesses for the prosecution had been examined—Effect of withdrawal of the pardon at that stage*—A Magistrate inquiring into a charge of dacoity tendered a pardon to one of the accused persons The pardon was accepted and the person to whom it was tendered [illegible]

whom it had been tendered back in the dock and ultimately committed him along with the other accused to the Court of Session *Held* that the commitment of the person whose pardon had been withdrawn must be quashed, inasmuch as he had had no opportunity of cross examining the witnesses for the prosecution who were examined before his pardon was withdrawn but that it was not necessary that, if a fresh commitment could be made in time, his trial before the Court of Session should be postponed until the trial of his co-accused had completed *Queen Empress v Sudra I L R 14 All 336*, and *Queen Empress v Mulua, I L R 14 All 502*, referred to QUEEN EMPRESS *v* BRIJ NARAIN MAN [I L R, 20 All, 529

PARDON—*concluded*

13 *Criminal Procedure Code (Act X of 1882) ss 337 529—Tender of pardon by a Magistrate having powers under s 337, but not being the Magistrate before whom the inquiry was being held*—A dacoity was committed in the district of Muttra and was being inquired into in that district Pending such inquiry *one P appeared before the Magistrate of the neighbouring district of Etah* and obtained from him a tender of pardon in respect of the said dacoity the strength of which pardon he was examined as a witness by the Magistrate of the Etah district and made a statement implicating himself and others in the dacoity Subsequently on the case being committed to the Court of the Sessions Judge of Agra the tender of pardon made by the District Magis [illegible]

14 —— *Criminal Procedure Code (1882) s 339—Approver—Withdrawal of conditional pardon—Practice*—The withdrawal of the conditional pardon granted to an approver should be made under s 339 of the Criminal Procedure Code by the authority that granted it and not by the High Court QUEEN EMPRESS *v* MANICK CHANDRA SARKAR I L R., 24 Calc, 492

PARENTAGE, PROOF OF—

See EVIDENCE ACT s 9 [I L R, 18 All, 98

PAROL EVIDENCE

See CASES UNDER EVIDENCE—PAROL EVIDENCE

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865)

See CASES UNDER PARSIS

— ss 3 and 30

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL.
[I. L. R., 13 Bom., 302
I L R., 16 Bom., 136

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865)—*concluded.*

——— s. 28.

See MARRIAGE . I. L. R., 16 Bom., 639

——— s. 30—*Suit for divorce—Guardian ad litem—Minor—Age of majority—Husband and wife.*—In a suit by a husband for divorce under s. 30 of the Parsi Marriage Act (XV of 1865), the defendant, if under the age of 21 years, although more than 18, must be deemed to be a minor, and a guardian of the defendant for the suit must be appointed. SORABJI CAWASJI POLISHVALA *v.* BUCHOOBAI . . . I. L. R., 18 Bom., 366

PARSIS.

See HUSBAND AND WIFE.
[I. L. R., 2 Bom., 75
I. L. R., 16 Bom., 630

See LETTERS OF ADMINISTRATION.
[I. L. R., 17 Bom., 689
I. L. R., 19 Bom., 828

1. ——— Laws applicable to Parsis—*Statute of Frauds (29 Car. II, c. 3).*—The Statute of Frauds (29 Car. II, c. 3), except so far as it has been repealed, applies to Parsis in India. BAI MANECKBAI *v.* BAI MERBAI
[I. L. R., 6 Bom., 363

2. ——— *Act IX of 1837—Immoveable property of Parsis.*—Statement of circumstances which led to the passing of Act IX of 1837 relating to the immoveable property of Parsis. Application of English law to Parsis in Bombay. NAOROJI BERAMJI *v.* ROGERS . 4 Bom., O. C., 1

3. ——— *Suit for redemption—Parsi defendant—Bom. Reg. IV of 1827, s. 26.*—In a suit brought by a Mahomedan to redeem from the defendant, who was a Parsi, certain property that had been conveyed by the ancestor of the latter by a by-al-wafa (deed of conditional sale),—*Held* that the law to be applied was under s. 26 of Regulation IV of 1827, that of the defendant. That in the absence of any specific law for Parsis in the mofussil, the rule of justice, equity, and good conscience should be observed, and the Court should follow, with certain necessary modifications, the practice of the Courts of equity in England. MANCHARSHA ASHPANDIARJI *v.* KAMRUNISA BEGAM
[5 Bom., A. C., 109

4. ——— *Parsis in mofussil of Bombay Presidency—English law—Rule against perpetuities—Equity and good conscience—Gift to heirs of A from generation to generation.*—The law applicable to Parsis in the mofussil of the Presidency of Bombay is, in the absence of evidence of any specific law or usage applicable to the particular case, "justice, equity, and good conscience alone." In applying "justice, equity, and good conscience" to the facts of any particular case, the Courts will be guided by the general principles of English law applicable to a similar state of circumstances, and so as, if possible, to give effect to the intentions of the

PARSIS—*continued.*

parties concerned, where such intentions are clearly expressed, and are not repugnant to any general principle of English law. The Courts will not, in such a case, apply rules of English law which, though well established and binding on English Courts, are yet so special in their nature and origin as to be inapplicable to the different circumstances of this country. The members of a Parsi family, the heirs of one Framji Cowasji Banaji, deceased, entered into an agreement with one another, bearing date the 24th May 1851, by which they agreed that the remaining income, after paying the deceased's debts, of a certain estate which had belonged to the deceased, called the Poway estate—an estate situated in the Island of Salsette, and therefore in the mofussil of the Presidency of Bombay—should be apportioned "to the heirs mentioned in cl. 7 (of the agreement)"—*i.e.*, among the various heirs of Framji Cowasji Banaji, deceased, the parties to the agreement—"but, after their death, their shares are to be enjoyed and received by their heirs and children from generation to generation for ever." It was contended that, Parsis being subject to English law, these words conferred an absolute estate in their respective shares upon the various parties to the agreement under the rule in *Shelley's case.* *Held per* BAYLEY, *J.*, that the plain intention of the parties to the agreement, appearing on the face of the agreement, was that they themselves should take only a life-estate to the extent of their respective shares in the remaining income of the Poway estate; and that the rule in *Shelley's case* should not be applied so as to defeat that plain intention. *Held* on appeal (affirming the order of BAYLEY, *J.*) that, even assuming English law to be applicable, the English law so to be applied could not include the rule in *Shelley's case*, which is a law of property or tenure based on feudal considerations, and unsuited to the circumstances of India; that the rule of construction to be applied to the agreement must in any case be to give effect to the intention of the parties according to the plain meaning of the language; and that to construe the agreement as giving more than a life-interest to the parties thereto would be to defeat their obvious intention. MITHIBAI *v.* LIMJI NOWROJI BANAJI . . . I. L. R., 5 Bom., 506

S. C. on appeal . . I. L. R., 6 Bom., 151

5. ——— The same agreement came before the Court for its construction in a suit brought by the parties interested for the administration of the estate of Framji Cowasji Banaji. In that suit it was contended, and was held by the Division Court, that the subsequent gift to the "heirs and children (of the signatories) from generation to generation for ever" was void as infringing the rule against perpetuities. On appeal,—*Held* that the settlement in favour of the heirs and children of each signatory was in law a valid settlement and not void as creating a perpetuity. In the absence of words in the context showing that they were intended to take less, the respective heirs and children of the signatories took an absolute estate. A gift to the heirs of *A* from generation to generation confers on them, when ascertained, the same estate as

PARSIS—*continued*

if the gift were to X and Y, the heirs of *A nominatim* FERDUNJI MERWANJI BANAJI v. MITHIBAI [I. L. R., 22 Bom., 355

6. ———————— *Marriage of Parsis—Act XV of 1865, s 30—Bigamy—Divorce*—A Parsi residing in Bombay after the passing of Act XV of 1865, but before it came into operation, contracted a second marriage during the lifetime of his wife, from whom he had not been divorced, and whom he, moreover, wilfully deserted for two years ... Parsi ... it for ... sub- ... caus

of action under s 30 of Act XV of 1865, and Act VIII of 1859, s 32 —*Held* that the facts alleged in the plaint did not amount to "bigamy coupled with adultery," nor to "adultery coupled with wilful desertion," within the meaning of s 30 of Act XV of 1865, as a second marriage contracted by a Parsi husband during the lifetime of his first wife was not

7. ———————— *Husband and wife—Parsi Matrimonial Court—Act XV of 1865—Suit by wife for judicial separation—Alimony after decree dismissing wife's suit and pending appeal—Alimony pending petition for review of judgment—Practice in allotment of alimony—Discretion of Court*—A wife sued her husband for judicial separation in the Parsi Matrimonial Court Alimony was granted to her by an order dated 11th July 1891, which directed the defendant to pay alimony to her from the 15th April 1891, 'until the final decree herein be passed" On the 18th July 1891 the suit was dismissed, and after that date the defendant ceased to pay alimony The plaintiff obtained a rule for review of judgment, which was discharged on the 27th January 1892 and on the 18th March 1892 she filed an appeal against the decree dismissing the suit and against the order refusing a review She now applied for an order directing the defendant to pay her all the arrears of alimony "*pendente lite*" from the date of filing the suit, or so much as had not been paid, and that he should pay her further alimony until the final disposal of the appeal *Held*, (1) dismissing the application, that the words "final decree herein," contained in the order of the 11th July 1891, by which alimony was granted, meant the decree in the suit, and not in the appeal, (2) that the Parsi Matrimonial Court, constituted under Act XV of 1865 had no power to award alimony "*pendente lite*" after decree and pending appeal, (3) an unsuccessful wife is not entitled to claim alimony after final decree and pending appeal nor for the period during which she is seeking review of judgment *Quære*—Whether the Court where a petition for review is pending before it has a discretion to allot or continue alimony '*pendente lite*" The words "during the suit" in s 39 of Act XV of 1865 include the period up to the making of a final or absolute decree *Ellis* v. *Ellis, L R, 8 P D, 188*, and *Dunn* v *Dunn, L R, 13 P D, 91*, should

8 ———————— *Parsi Marriage*

proper instrument charging his immoveable property with the payment of R70 per mensem by way of permanent alimony to his wife during her life The instrument was executed accordingly On his death his widow was held entitled, in addition to the R70 per mensem charged on her deceased husband's immoveable property, to a distributive share in his estate MOTIBAI v MOTIBAI I. L. R., 24 Bom., 465

9 ———————— *Marriage—Husband and wife—Agreement for separation—Suit by*

subsequent suit by him for restitution of conjugal rights KAWASJI EDULJI BISNI v SIRINBAI [I. L. R., 23 Bom., 279

10 ———————— *Infant marriage among Parsis—Consent of father or guardian—Suit to declare an infant marriage null and void—High Court—Parsi Matrimonial Court—Jurisdiction—Act XV of 1865—Letters Patent s 12—English law—Subsequent consent or repudiation—Adoption of Hindu practice by Parsis*—In 1868

was living and by whom he had been adopted. Nineteen years afterwards the plaintiff filed this suit praying for a declaration that the pretended marriage was null and void, and did not create the status of husband and wife between the plaintiff and defendant The defendant resisted the suit, and claimed to be the lawful wife of the plaintiff The plaintiff and defendant never lived together as man and wife, nor was the marriage ever consummated. *Held* that under the circumstances the formal consent of the uncle and the tacit consent of the father were enough to satisfy the requirements of s 3 of Act XV of 1865 which requires the previous consent of the father or guardian to the marriage *Held* further that, such a suit not being in the category of suits relegated to a special Court by Act XV of 1865, the jurisdiction to try it remained in the High Court, to which it had been given by s 12 of the Letters Patent *Held* also that the law to be applied was the English law (subject, however, to any well-established usage), that by the English law such a marriage would be an inchoate and imperfect marriage capable of repudiation by either party after

PARSIS—*continued.*

arriving at years of discretion, but capable also of being made a valid and binding marriage by the consent of the parties thereto after they had arrived at such age. *Held* further that the circumstances of the case showed that there had been such acquiescence in, and acceptance of, the marriage by the plaintiff after arriving at years of discretion as to render the marriage valid and binding on him, and incapable of subsequent repudiation. Consummation is the best proof of consent to a marriage, but is not the only proof. And *semble* that, although the practice of infant marriages is one which finds no warrant in their own religious system, the Parsis in Western India have in the course of centuries so generally adopted such practice from their Hindu neighbours as to give such marriages amongst themselves all the validity they possess amongst Hindus, making them independent of any question of subsequent consent or non-consent by the parties thereto. PESHOTAM HORMASJI DUSTOOR *v.* MEHERBAI

[I. L. R., 13 Bom., 302

11. ———————— *Parsi Succession Act (XXI of 1865), s. 5—"Widower," Meaning of word—A widower on second marriage is still a widower relatively to deceased wife.*—In s. 5 of the Parsi Succession Act (XXI of 1865) the word "widower" means a widower relatively to the deceased wife only, and without consideration of the fact or possibility of the widower re-marrying. *D*, a Parsi, died intestate on the 19th September 1885, leaving a widow (the defendant) and two daughters and the heirs of a pre-deceased daughter *J* him surviving. *J* had been the wife of the plaintiff, and had died thirty-four years before the date of this suit, leaving, as her heirs, her husband (the plaintiff) and one daughter, who was still living. After *J*'s death, the plaintiff married again, and his second wife was living at the date of this suit. Letters of administration to *D*'s estate were granted to his widow, the defendant. The plaintiff claimed a share in *D*'s estate, contending that he was the widower of *J*, one of the daughters of the intestate, and entitled as such under s. 5 of the Parsi Intestate Succession Act (XXI of 1865). *Held* that he was the widower of *J* within the meaning of the section, and as such was entitled to a share in *D*'s estate. JEHANGIR DHANJIBHAI SURTI *v.* PEROZBAI . **I. L. R., 11 Bom., 1**

12. ———————— *Infant marriage among Parsis—Custom—Suit for declaration of nullity of infant marriage—Age of majority applicable in case of such suit—Indian Majority Act (IX of 1875), ss. 2 and 3—Parsi Marriage and Divorce Act (XV of 1865), s. 3—Limitation Act (XV of 1877), art. 120.*—A Parsi female, within three years after she had attained the age of twenty-one, brought a suit in the Court of the Subordinate Judge at Broach for a declaration that a marriage ceremony performed in 1869, when she was not three years old, did not create the status of husband and wife between her and the defendant. She had never lived with the defendant as his wife. The Subordinate Judge held that the marriage was valid and binding, being of opinion that the custom of infant marriage among the Parsis was well established and recognized. On appeal the Judge confirmed the decree, holding that at all events in 1869, when the marriage took place, the custom was common and recognized as binding. On second appeal the High Court concurred with the opinion expressed in *Peshotam* v. *Meherbai, I. L. R., 13 Bom., 302*, that the Zoroastrian system did not contemplate marriage in infancy, but the lower Courts having found a custom had grown up among Parsis in India validating such marriages, and that the custom was in force in 1869, did not consider it open on second appeal to arrive at an independent finding as to whether the evidence established the existence of such a custom. *Held* that a Parsi suing to have a marriage declared void is "acting in the matter of marriage," and therefore the Indian Majority Act (IX of 1875), which makes the age of eighteen the age of majority, does not apply to a question of limitation with regard to such suit. The age of majority in such a case is that prescribed by the Parsi Marriage and Divorce Act (XV of 1865), *viz.*, twenty-one years. *Held* also that art. 120 of the Limitation Act (XV of 1877) was applicable to the above suit, and that the plaintiff having, for the purpose of bringing the suit, attained her majority at twenty-one, the suit was not barred. Act XV of 1865 contains no provision as to the age at which a Parsi marriage can be validly contracted, the matter being left to the general law which governs Parsis in that particular, just as the English Marriage Act (4 Geo. IV, c. 76) leaves it to be dealt with by the common law of England. BAI SHIRINBAI *v.* KHARSHEDJI NASARVANJI MASALAVALA

[I. L. R., 22 Bom., 430

13. ———————— *Intestate succession among Parsis—Parsi Succession Act (XXI of 1865), s. 7, sch. II, cl. 2—Next-of-kin.*—One Jerbai, a Parsi widow, died intestate and without issue, her father, mother, three brothers and two sisters having predeceased her. Two of her brothers and one sister had left children. Some of these children had also predeceased her, leaving children (grand-nephews and nieces of Jerbai). Two of this last mentioned class had also predeceased her, leaving children (great-grand-nephews and nieces of Jerbai). *Held* that Jerbai's property should, in the first instance, be divided into three shares, *i.e.*, one for each of the two predeceased brothers who left children, and one for the predeceased sister who left a child. Each brother's share to be two-fifths and the sister's one-fifth. These shares to be sub-divided among the descendants of the two brothers and the sister, respectively, no descendant being entitled to share concurrently with his or her ancestor, and, on each division and sub-division, each male taking double the share of each female standing in the same degree of propinquity. In art. 2 of the second schedule of the Parsi Succession Act (XXI of 1865) the gift to lineal descendants is substitutional in the sense that they take nothing if the head of their branch of the family is living, whereas, if he is dead, they stand in his place and take the share which he would have taken. In distributing an estate, therefore, "among brothers and sisters and the lineal

PARSIS—*continued*

descendants of such of them as have predeceased the

will take equal shares with the lineal descendants collectively If all the brothers are dead, then the share which each would have taken had he survived will be taken by his lineal descendants If in either case the predeceased was a sister, her lineal descendants will take her half share only In both ss 6 and 7 of the Parsi Succession Act the words "next of kin" and relatives" are synonymous and are collective names for the persons mentioned in the first and second schedules respectively HIRJIBHAI CURSETJI BHANDUPWALA v BARJORJI SARABJI ASHBURNER [I L R, 22 Bom, 909

14 ———— *Act XXI of 1865, s 8—Succession Act s 42—Advancement—*

Distribution, s 5, it was not the intention of the Legislature to preserve the last mentioned rule in force for the Parsi community DHANJIBHAI BOMANJI GUGRAT v NAVAZBAI I L R, 2 Bom, 75

15 ———— Parsi succession—*Act XXI of 1865—Effect of words excluding from inherit*

and his three sisters *D S*, and *G*, the first named of whom had been married to *A*, and whose son *F* was the appellant By his will *A* expressly directed that neither his daughter *J* nor his wife w Dhanbai should take any share of his property, the whole of which he bequeathed to his brother *R* who however, predeceased him On the 6th September 1879 *J*

ground that *J* was expressly excluded by *A* from

ney, under s 214 of Act X of 1865 On an appeal to the High Court by *F* alone,—*Held* that *A* had died intestate not having made any bequest or device of his property which could take effect, inasmuch as his sole devisee (*R*) had predeceased him, and that the estate must therefore go in accordance with the law of succession The use of mere negative

1865), widows and children rank before brothers and

PARSIS—*concluded*

sisters S 7, sch II, art 2, of the Parsi Succession Act, is applicable only where the deceased leaves neither lineal descendants, nor a widow or widower ERASHA KAIKHUSRU v JERBAI [I. L. R., 4 Bom, 537

16 ———— *Act XXI of 1865—Children of intestate...*

without issue and a posthumous daughter was afterwards born to the intestate,—*Held* that such last mentioned widow was entitled to one moiety of the share in the intestate's estate which her husband would have taken had he survived the intestate, and that the other moiety of such share devolved on the surviving issue of the intestate including the posthumous daughter and the children of his other predeceased son MANCHERJI KAWASJI DAVUI v MITHIBAI I L R, 1 Bom, 506

17. ———— Parsi will, Evidence of genuineness of—*Adoption* —An adoption made by a Parsi immediately before his death would render extremely improbable the execution of a will by him a very short time previous thereto and therefore calls for very clear proof to establish its existence HOMALHAEE v PUNJEABHAEE DOSABHAEE [5 W R, P C, 102

18 ———— *Usage among Parsis* —The will of a Parsi in favour of his wife and daughter upheld notwithstanding a rule or usage set up by a brother of the testator to the effect that among Parsis no disposition could be made by will to the total disherison of the heir such rule or usage not being proved MODEE KAIKHOOSCROW HORMUSJEE v COOVEERBHAEE [4 W. R, P. C, 94 6 Moore's I A, 448

PARTIES

PARTIES—*continued.*

See Cases under Appeal—Execution of Decree—Parties to Suits.

See Cases under Civil Procedure Code, 1882, s. 244—Parties to Suit.

See Cases under Co-sharers—Suits by Co-sharers with respect to the Joint Property.

See Cases under Costs—Special Cases—Defendants or Respondents.

See Cases under Costs—Special Cases—Parties.

See Cases under Costs—Special Cases—Third Persons, Payment of Costs by.

See Cases under Misjoinder.

See Cases under Multifariousness.

See Plaint, Form and Contents of Plaint—Plaintiffs.

See Cases under Possession, Order of Criminal Court as to—Parties to Proceedings.

See Cases under Res Judicata—Parties.

See Special or Second Appeal—Other Errors of Law or Procedure—Parties.

——— **Addition of—**

See Cases under Limitation Act, 1877, s. 22.

——— **Appearance or non-Appearance.**

See Appeal—Default in Appearance.

See Cases under Civil Procedure Code, ss. 102, 113.

See Cases under Civil Procedure Code, s. 108.

——— **Privilege of—**

See Libel.

——— **Substitution of—**

See Limitation Act, 1877, art. 175c.
[I. L. R., 16 Bom., 27

See Privy Council, Practice of—Death of Party to Appeal.
[I. L. R., 19 Calc., 513

See Privy Council, Practice of—Substitution of Appellant.
[I. L. R., 17 Calc., 693

PARTIES—*continued*

See RIGHT OF APPEAL
[I. L. R., 12 All., 200

See RIGHT OF SUIT—SURVIVAL OF RIGHT
[I. L. R., 22 Calc., 92

1. PARTIES TO SUITS

1. ———— Advocate General—*Suit for account of endowed property on death of last surviving trustee—Quære*—Whether the Advocate General must not be made a party in all cases where an account is sued for of property left by will to a charitable institution of which the last surviving trustee has died. Notice of the decree directed to be given to the Advocate General, in case he should think fit, on behalf of the Crown, to propose a scheme for the management of the charity. Powers of the Advocate General. THAKOOR DOSS SETT *v.* HOGG
[Cor., 68

2. ———— *Suit to administer funds of Hindu charity*—A suit to administer the funds of a Hindu charity is properly brought in the [illegible]

[illegible]

LADLEE PERSHAD *v.* GUNGA PERSHAD
[4 N. W., 59

FYAZOODDEEN *v.* PUDMEE 4 N. W., 68

NUBEEN CHUNDER PAUL *v.* STEPHENSON
[15 W. R., 534

4. ———— *Suit brought in agent's name—Suit by agent for principal*—Where an attorney sues for his principal, the suit should be brought in the name of the principal. CHOONEE SOOKUL *v.* HUR PERSHAD
[1 N. W., Ed. 1873, 277

JUGGUNNATH *v.* BECK . . 2 N. W., 60

HURSARUN SINGH *v.* PURSHUN SINGH
[2 N. W., 415

5. ———— *Suit as agent—Act X of 1859, s. 69*—*Held* (by MARKBY, J.) that no one can be plaintiff in a suit for rent except the person who has the right to recover, the only effect of s. 69, Act X of 1859, being to enable the person who is employed in the collection of rents to sue as agent. MODHOOSOODUN SINGH *v.* MORAN & Co. . 11 W. R., 43

See MEAJAN KHAN *v.* AKALLY
[Marsh., 384: 2 Hay, 428

PARTIES—*continued*

1. PARTIES TO SUITS—*continued*

6. ———— *Suit against agent—Liability of firm for act of gomashta*—A [illegible]

7. ———— Gomashta—*Recognized agent—Beng. Act VIII of 1869, s. 13*—A gomashta holding a written authority from his employer, and suing for rent in the name and on behalf of the latter, should be admitted as the recognized agent of such employer within the meaning of s. 13, Bengal Act VIII of 1869. RAM LALL KURFURMA *v.* RAM TARUN KOONDOO 16 W. R., 254

8. ———— *Bengal Rent Act 1869, s. 32—Principal and agent—Plaintiff—Gomashta.*—Under s. 32 of Bengal Act VIII of 1869, [illegible]

9. ———— *Gomashta—Plaintiffs*—Where a gomashta sued on behalf of a firm, it was ordered that the parties themselves whom he represented should be made parties and a guardian appointed for such of them as were minors. GOBIND DASS *v.* JAYKISHEN DASS 2 Agra, 101

10. ———— *Suit by manager of indigo concern—Right to sue*—In an action brought by the manager of an indigo concern, on the basis of a contract executed by defendant and ad[illegible] could not maintain the action in his own name. GLASCOTT *v.* GOPAL SHEIKH 9 W. R., 254

11. ———— *Suit by Official Assignee—Agent of assignee*—In a suit by the Official Assignee of an Insolvent Court, such Official Assignee should be made the plaintiff and the law then allows him to sue by his recognized agent, but the law does not allow the recognized agent to sue as plaintiff. In a suit so incorrectly instituted the plaint should be returned for amendment. CARTER *v.* MISREE LAL 2 N. W., 179

12. ———— *Agent suing instead of corporate body*—Where a corporate body—*e.g.*, the East Indian Railway Company—is sued, not in its corporate capacity, but through an agent, the suit is brought in a wrong form. NUBEEN CHUNDER PAUL *v.* STEPHENSON 15 W. R., 534

13. ———— Benamidars—*Suit by benamidar—Acquiescence in, or waiver of, objection*—The real owner of property is the person who should institute a suit for it. A benami holder may sue as trustee on behalf of the beneficial owner, without disclosing the name of the real owner; and if the defendant does not object to the suit proceeding in that form, and raises no issue upon the real title

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

of the plaintiff, the suit may proceed and be decided. PROSUNNO COOMAR ROY CHOWDHRY *v.* GOOROO CHURN SEIN. GOOROO CHURN SEIN *v.* OOJULMONEE CHOWDHRAIN . . . . . 3 W. R., 159

14. ———— *Right of suit—Suit for declaration of title to, and for possession of, immoveable property—Disclaimer of real owner.*—In a suit for a declaration of the plaintiff's right by purchase to, and for possession of, certain immoveable property, it was found on the evidence that the plaintiff was merely a benamidar for one of the defendants, and had no right to the property. That defendant in his evidence disclaimed any title to the property. *Held* that the plaintiff had no right to sue, being a mere benamidar, and neither the disclaimer of the real owner, nor the fact that he was a party to the suit, was sufficient to enable the plaintiff to maintain the suit when instituted, or to entitle him to have the real owner added as a co-plaintiff. *Prosunno Coomar Roy Chowdhry* v. *Gooroo Churn Sein, 3 W. R., 159,* followed. HARI GOBIND ADHIKARI *v.* AKHOY KUMAR MOZUMDAR . . I. L. R., 16 Calc., 364

15. ———— *Suit for land sold in execution of decree—Actul purchaser.*—In a suit for possession of land sold in execution of a decree by a person who claimed to have bought the right, title, and interest of the judgment-debtor in the land, but who, in fact, was not the real purchaser,—*Held* the suit must be dismissed because of the non-joinder as plaintiff of the real purchaser. KALLY PROSONNO BOSE *v.* DINONATH MULLICK

[11 B. L. R., 56 : 19 W. R., 434

16. ———— *Benami purchase—Suit for possession Real purchaser.*—A suit for possession of property, which has been purchased benami, cannot be maintained in the name of the nominal purchaser; the real purchaser should be made a plaintiff in the suit. FUZELUN BEEBEE *v.* OMDAH BEEBEE

[11 B. L. R., 60 note : 10 W. R., 469

MEHEROONISSA BIBEE *v.* HUR CHURN BOSE

[10 W. R., 220

TAMAOONNISSA *v.* WOOJJULMONEE DOSSEE

[20 W. R., 72

17. ———— *Suit on title for possession of immoveable property—Right of benamidar to sue in his own name.*—A benamidar, suing for the recovery of immoveable property on title, can sue in his own name, and when such a suit is instituted by a benamidar, it must be held to have been instituted with the consent and approval of the beneficiary, against whom any adverse decision on the title set-up will take effect as a *res judicata. Prosunno Koomar Roy Chowdhry* v. *Gooroo Churn Sein, 3 W. R., 159,* and *Hari Gobind Adhikari* v. *Akhoy Kumar Mozumdar, I. L. R., 16 Calc., 364,* dissented from. *Fusellun Beebee* v. *Omdah Beebee, 10 W. R., 469,* and *Meheroonissa Bibee* v. *Hur Churn Bose, 10 W. R., 220,* distinguished. *Gopeekrist Gosain* v. *Gungapersaud Gosain, 6 Moore's I. A., 53,* explained. *Ram Bhurosee Singh* v. *Bissesser Narain Singh, 18 W. R., 454; Gopi Nath Chobey* v. *Bhugwat Pershad, I. L. R., 10 Calc., 697;* and *Shangara* v. *Krishnam, I. L. R., 15 Mad., 267,* referred to. NAND KISHORE LAL *v.* AHMAD ATA. ANMOLI BIBEE *v.* AHMAD ATA. BHOLE BIBI *v.* AHMAD ATA . . I. L. R., 18 All., 69

18. ———— *Suit by benamidar.*—A mortgage-bond was executed ostensibly in favour of *R*, but *J* was the real mortgagee. A suit was brought by *R*, the benamidar, to enforce the bond; *J*, the real mortgagee, made over the debt on a date previous to the suit, but executed the formal deed of assignment on a date subsequent thereto. *Held* that the benamidar might maintain the suit. BHOLA PERSHAD *v.* RAM LALL . I. L. R., 24 Calc., 34

19. ———— *Suit for foreclosure of mortgage—Beneficial owner not made a party—Transfer of Property Act (IV of 1882), s. 85—Right of suit.*—A suit for foreclosure of a mortgage may be brought by the person named in the mortgage deed as the mortgagee, although he was, in fact, only the benamidar of the beneficial owner; and such a suit should not be dismissed because the beneficial owner is not added as a party. SACHITANANDA MOHAPATRA *v.* BALORAM GORAIN

[I. L. R., 24 Calc., 644

20. ———— *Suit for ejectment.*—A mere benamidar cannot maintain a suit for ejectment, he having neither title to, nor possession of, the property. *Hari Gobinda Adhikari* v. *Akhoy Kumar Mozumdar, I. L. R., 16 Calc., 364,* followed in principle. *Nand Kishore Lal* v. *Ahmad Ata, I. L. R., 18 All., 69,* dissented from. ISSUR CHANDRA DUTT *v.* GOPAL CHANDRA DAS

[I. L. R., 25 Calc., 98
3 C. W. N., 20

21. ———— *Benami purchaser—Right of benamidar to sue for possession of immoveable property.*—A benami purchaser of immoveable property has no right to sue for recovery of possession of the same. *Hari Gobind Adhikari* v. *Akhoy Kumar Mazumdar, I. L. R., 16 Calc., 364,* and *Issur Chundra Dutt* v. *Gopal Chundra Das, I. L. R., 25 Calc., 98,* followed. *Nand Kishore Lal* v. *Ahmad Ata, I. L. R., 18 All., 69,* referred to. *Gopi Nath Chobey* v. *Bhugwat Pershad, I. L. R., 10 Calc., 697,* distinguished. BARODA SUNDARY GHOSE *v.* DINO BANDHU KHAN

[I. L. R., 25 Calc., 874
3 C. W. N., 12

22. ———— *Suit for sale on a mortgage—Right of benamidar mortgagee to sue.*—*Held* that the mortgagee named in a deed of mortgage is competent to sue in his own name for sale on the mortgage, though he is admittedly only a benamidar for some third person. *Nand Kishore Lal* v. *Ahmad Ata, I. L. R., 18 All., 69,* followed. *Gopi Nath Chobey* v. *Bhugwat Pershad, I. L. R., 10 Calc., 697; Bhola Pershad* v. *Ram*

PARTIES—*continued*

1 PARTIES TO SUITS—*continued*

Lall, I L R, 24 Calc, 34, Sachitananda Mohapatra v. Baloram Gorain I L. R, 24 Calc, 644, Shangara v Krishnan, I L R, 15 Mad 267 Raiji Appaji Kulkarni v Mahadev Bapuji Kulkarni, I L R 22 Bom 672 and *Dagdu v Balvant Ramchandra Natu I L R, 22 Bom, 820,* referred to *Hari Gobind Adhikari v Akhoy Kumar Mozumdar, I L R, 16 Calc, 364, Issur Chandra Dutt v Gopal Chandra Das, I L R 25 Calc, 98,* and *Baroda Sundari Ghose v Dino Bandhu Khan, I L R, 25 Calc, 874,* dissented from LAD RAM v UMRAO SINGH

[I L R., 21 All, 380

23 ————— Plaintiff found *to be a mere name lender without interest in suit—Redemption, suit for, by puisne mortgagee—Joinder of mortgagor on second appeal*—On second appeal against a decree dismissing a suit which had

... not been intended that the plaintiff should take any interest under the mortgage sued on —*Held* that the second appeal should be dismissed CHINNAN v RAMACHANDRA I. L R., 15 Mad, 54

24 ————— *Suit in name of benamidar*—Where a suit is brought in the name of a benamidar only, the Court ought to direct that the beneficial owners should be made parties and not to dismiss the suit SITA NATH SHAHA v NOBIN CHUNDER ROY 5 C L. R, 102

See GOPI NATH CHOBEY v BHUGWAT PERSHAD [I L. R, 10 Calc., 697

25 ————— *Suit by benami purchaser—Civil Procedure Code 1859, s 260*—*A* purchased at a Sheriff s sale, in the name of his son, the interest of a mortgagee in certain property and, before Act VIII of 1859 came into operation instituted a suit in his own name to recover the possession of the mortgaged property *Held* that the suit was rightly brought if the son's consent could be shown *Quære*—What is the effect of s. 260 of Act VIII of 1859 on suits of this character? BHAISHANKAR NARBHERAM v HARIVALLABH [1 Bom, 20

26. ——— Bonds, Suits on—*Suit by assignee of bond, after death of obligee—Representative of obligee*—In a suit by *A* on a bond in favour of *B*, the plaintiff may show by oral evidence that the money secured by the bond was his own, but where *B* has died *A* must either entitle himself as *B*'s personal representative, or make *B*'s personal representative a party to the suit DEVA RAU v VENTESA ACHARIYAR . 1 Mad, 452

27. ————— *Indemnity*
[illegible]

obligees have sued, as the faithful service intended to be secured by the bond was service to five persons, and not to three only PARBUTTINATH ROY v TEJOMOY BANERJI I. L. R., 5 Calc, 303

28 ————— *Suit by assignee on bond—Liability of obligee*—The obligee of a common money bond of which a *bonâ fide* valid assignment has been made is not liable to be made a defendant in a suit by his assignee to enforce payment of the bond, and to a decree against himself jointly with the obligor ANONYMOUS v MUTTUSAMIYA PILLAI 1 Mad., 140

29 ————— [illegible]
specific [illegible]
Procedu[illegible]
A stran[illegible]

the latter defendant was improperly mad a party to the suit LUCKUMSEY OOKERDA v FAZULLA CASSUMBHOY I L R, 5 Bom., 177

30 ————— *Suit for specific performance—Receiver*—Where the receiver in a suit had by order of Court sold certain property in the suit, and had executed the contract of sale in his own name a plaint praying for specific performance against the purchaser for refusing to complete the contract was admitted with the receiver as co plaintiff he having obtained leave to sue WILKINSON v GANGADHAR SIRKAR 6 B. L. R., 486

31 ————— *Suit for specific* [illegible]

[illegible] *Luckumsey Ookerda v Fazulla Cassumbhoy I L R, 5 Bom, 177,*—viz, that a stranger to the contract cannot be a party to the suit —is only applicable where from the plaintiff s case it appears that a third party not a party to the contract has

32 ————— *Suit by mortgage without co sharers*—Where a mortgage bond was executed in favour of the plaintiff alone the fact that there were other persons members of the joint family co-sharers with the plaintiff did not render it necessary to make them parties to a suit on the mortgage, as the plaintiff might be regarded as contracting on behalf of himself and the other members of the family as undisclosed principals BUNGSEE SINGH v SOODIST LALL I L. R., 7 Calc, 739 [10 C. L. R., 263

33 ————— *Agreement to share profits of trade—Suit for share under agreement*—Four persons each of whom owned a given ng

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

factory, entered into an agreement, which (*inter alia*) provided that they should charge a uniform rate of R4-8-0 per palla for ginning cotton; that of this sum, R2-8-0 should be treated as the actual cost of ginning; and that the remaining R2 should be carried to a common fund, to be divided each year between the parties to the agreement in proportion to the number of ginning machines which each of them possessed. The agreement was to be in force for four years. The other parties had carried out the agreement, but the defendant, although he had carried the R2 to a separate account, refused to pay the plaintiff his share of the amount. He also refused to pay the other two parties their shares. The accounts had been duly made up, showing the sums which the defendant under the agreement had to pay both to the plaintiff and the two other parties to the agreement. The plaintiff sued the defendant for his share. The defendant contended that the plaintiff ought to have made the other parties to the agreement parties to the suit. *Held* that the other parties to the agreement were not necessary parties to the suit. The accounts had been made up and were admittedly correct, and they showed that the defendant had nothing to receive from any of the parties to the agreement, but that he was indebted in a definite sum to the plaintiff. HARIBHAI MANEKLAL *v.* SHARAFALI ISABJI . I. L. R., 22 Bom., 861

34. ——————— *Co-contractors—Right of some of several co-contractors to sue alone—Refusal to join in the suit as plaintiff, Effect of.*—Where two parties contract with a third party, a suit by one of them making the other a co-defendant ought not to be dismissed merely because the plaintiff has not proved that the co-defendant had refused to join as a co-plaintiff. PYARI MOHUN BOSE *v.* KEDARNATH ROY . . I. L. R., 26 Calc., 409

PYARI MOHAN BOSE *v.* NABIN CHUNDER ROY [3 C. W. N., 271

TARINI KANT LAHIRI *v.* NUND KISHORE PATRONOVIS . . . . . . 12 C. L. R., 588

BISSESSUR ROY CHOWDHRY *v.* BROJO KANT ROY CHOWDHRY . . . . 1 C. W. N., 221

Contra, DWARKANATH MITTER *v.* TARA PROSUNNA ROY . . . . . I. L. R., 17 Calc., 160

35. ——————— Co-sharers—*Joinder of parties—Right of co-sharer to sue alone.*—Unless there is a special provision of the law, co-owners are not permitted to sue through some or one of their members, but all co-owners must join in a suit to recover their property. The defendant cannot be deprived of his right to insist on the other co-owners being joined on the record by the fact that they approve of the suit being brought by the plaintiff alone. BALKRISHNA MORESHVAR KUNTE *v.* MUNICIPALITY OF MAHAD . . . . . I. L. R., 10 Bom., 32

36. ——————— *Suit for arrears of rent—Appeal, Amendment on.*—In a suit for arrears of rent of the plaintiff's share of a talukh, it appeared that in the year 1279 a batwara was effected of the zamindari in which the talukh was situated, and that the talukh ceased to be held exclusively by the plaintiff, but was divided between him and certain other persons, who were not made parties to the suit. *Held* that all the co-sharers should have been joined as parties, and that, as this had not been done, the suit was bad. OBHOY GOVIND CHOWDHRY *v.* HURYCHURN CHOWDHRY [I. L. R., 8 Calc., 277

37. ——————— *Lease—Suit by one of several joint lessors for his share of rent.*—One of several joint lessors of certain land sued the lessee for his share of the rent payable under the lease to all the lessors, making the other lessors defendants. *Held* that the suit was not maintainable, and the making of the other lessors defendants did not cure the defect in the suit. MANOHAR DAS *v.* MANZUR ALI . . I. L. R., 5 All., 40

38. ——————— *Suit for ejectment—Landlord and tenant—Possession, suit for, by one of several proprietors.*—The owners of a 13-anna share of a julkur sued to eject a lessee on his refusal to pay an enhanced rent. *Held* that he could not be ejected by a suit brought by one only of several proprietors. A lease granted by all the proprietors cannot be varied or terminated at the suit of one. BOLLYE SATEE *v.* AKRAM ALLY [I. L. R., 4 Calc., 961

39. ——————— *Suit for possession—Lessors.*—Plaintiff sued to recover possession of certain land said to have been included in a talukh pottah given him by the zamindars, alleging that defendants were obstructing his possession. For the defence it was averred that these lands fell within a 9-anna share which belonged to one *D*, and that by process of sale they became the right of other parties under whom defendants held as lessees. *Held* that it was unnecessary to make the lessors on either side parties in the case. NAGUR CHAND *v.* DOORGA DOSS CHOWDHRY . . . . . 11 W. R., 137

40. ——————— *Suit by co-sharer against mortgagee for share of profits—Act XIV of 1863, s. 1.*—A co-sharer can only sue such persons in the Revenue Court, under cl. 2, s. 1, Act XIV of 1863, as are appointed or entitled by custom to make the collections of rent on behalf of the proprietary body of the estate or any part thereof, and who are bound to pay the revenue and village expenses, and to account to co-parceners for receipts and expenditure as their representatives. SREE KISHEN *v.* ESHREE PURTAUB RAI . . . . . 2 Agra, 299

41. ——————— Debtor and creditor, Suits between—*Bond—Suit for a share of a debt—* *A*, *B*, and *C* were uterine brothers, Mahomedans, to whom jointly a sum of money was due on a bond. *A*, the elder brother, sued the debtor for recovery of the debt, and, after successfully resisting the claim of *B*'s widow to be made a party to the suit, obtained a decree for the principal and interest to the date of decree, together with subsequent interest and costs. *A* realized the decree for the principal and interest to the date of decree only. *B*'s widow, on behalf of

PARTIES—*continued*

1. PARTIES TO SUITS—*continued*

herself and two minor sons sued *A* for the share of

of her two daughters. NURUNNISSA *v* ROUSHAN JAN 2 B L. R, Ap, 1

42 ——— *Trustees for benefit of creditors* —The creditor of an insolvent who has assigned all his property to trustees for the benefit of all his creditors generally sued him for his debt joining the trustees as defendants on the ground that they had refused to register his claim *Held* that they were rightly joined as defendants in the suit AJUDHIA NATH *v* ANANT DAS [I L R, 3 All, 799

43 ——— *Suit by trustees of deed for benefit of creditors to set aside attachment* —To a suit by the trustees of an assignment for the benefit of his creditors by an insolvent trader to set aside an attachment by an execution creditor who did not assent to the assignment, it is not necessary to make all the creditors parties STEPHENSON *v* BAUMGARTNER 3 Agra, 104

44 ——— Declaratory decrees—*Suit to declare pottahs forgeries—Interested parties* —In a suit by a superior holder representing the zamindar by whom certain pottahs were alleged to have been granted) for a declaration that the pottahs were forgeries, against a party holding a portion of land by a title derived from lessees under those

suit in a Court of equity DUKHEENA MOHUN ROY *v* AMEEROODDEEN MAHOMED 12 W. R., 247

45 ——— *Suit for declaration of right against proprietor—Agent* —In a suit for declaration of right against a proprietor of an estate, it is necessary that the proprietor himself, and not his karindah only, be made a party to the suit A decree against the karindah cannot bind the proprietor MADHO RAO APA *v* THAKOOR PERSHAD 3 Agra, 127

46 ——— Ejectment, Suit for—*Suit based on lease from Government—Government as party to suit* —If the plaintiff in an ejectment suit can make out a legal title to the land he is entitled to maintain a suit against the person in actual juridical possession of such land for its recovery without making the person under whom the latter claims to hold a party to the suit So where plaintiffs based their title to the land in dispute on a lease granted by Government giving occupancy right to their predecessor in title, and sued the defendants in ejectment and the defendants claimed to hold the land under an occupancy title conferred on them by Government subsequent to the plaintiff's lease it was *held* that though Government might have properly been made a party so as to bind it by the decree and prevent future litigation, it was not a necessary party to the suit KASHI *v* SADASHIV SAKHARAM SHET [I. L. R, 21 Bom, 229

47 ——— *Civil Procedure Code (1882) s 32—Joinder of parties—Change in character of suit* —In an ejectment suit by a landlord against his tenant, the Court should not bring on to the record the person from whom the plaintiff holds the land nor persons claiming to hold it from a third party, nor such third party SANKARAN NARAYANAN *v* ANANTHANARAYANAYYAN [I L R, 20 Mad., 375

48 ——— Endowments *Parties to suit on behalf of temple* —The samudayi of a temple is not competent to bring a suit on its behalf The proper parties to sue are the uralers (trustees) RAMA VARAR *v* KRISHNEN NAMBUDRI [I L. R., 3 Mad., 270

49 ——— *Suit to redeem lands belonging to temple—Agent—Persons in whom temple is vested* —Plaintiff alleging himself to be 'Karaima samudayam' of the Malamal Ayyappan devaswam sued to redeem lands which had been mortgaged by the devaswam *Held* that he was not entitled to maintain the suit that the uralers are the persons in whom the estate and property of the temple is vested and that the plaintiff was an agent accountable to the uralers and subject to be dismissed by them for misconduct KUNJUNNERI NAMBIAR *v* NILAKUNDEN [I L R, 2 Mad., 167

50 ——— *Agent—Person in whom temple is vested* A karayma samudayam of a Malabar devaswam is merely an agent or manager with a proprietary and hereditary right in his office The ownership of the property of the devaswam is vested in the uralers who are the proper parties to sue the tenants of the devaswam lands PATTINHARIPAT KRISHNAN UNNI NAMBIAR *v* CHEKUR MANAKKAL NILAKANDAN BHATTATHIRIPAD [I. L R, 4 Mad, 141

51 ——— *Suit for property belonging to—Joint suit also—Joint trustees* Where property belonging to an endowment is sought to be recovered from a third party who asserts that he is the owner thereof all the mutwalis of the endowment should be made parties to a suit instituted for the recovery of such property Such of the mutwalis as refuse to join as plaintiffs should be made defendants BECHU LAL *v* OLIULLAH [I. L. R., 11 Calc., 338

52 ——— *Non-joinder of a necessary party—Suit to set aside alienation of debuttar lands—Trust for religious purposes* —The representatives of three out of four Hindus who

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

party. It was not enough that he was a member of the body of sebaits; and although indirectly he might have gained advantage from the suit brought by the other sebaits, this did not suffice to connect him with the suit as a party to it. No ground for making an exception to the general rule was presented. RAJENDRONATH DUTT *v.* MAHOMED LAL [I. L. R., 8 Calc., 42

53. ——— Executors—*Will—Hindu Wills Act (XXI of 1870)—Succession Act (X of 1865), s. 179—Probate and Administration Act (V of 1881), s. 4—Hindu will made outside Bombay relating to property situate partly within and partly outside Bombay—Probate of such will, Effect of—Representation of the estate.*—One *L* died at Surat in 1873, possessed of ancestral property situate partly in Bombay and partly in the Surat district. He left a widow, *B*, and a minor son, *M*. At his death he made a will bequeathing his property to his son, and appointing certain executors to manage the property during the son's minority. The son died in 1877, leaving a minor widow, *N*. In 1879 one of the executors obtained probate of *L*'s will from the High Court. In 1884 a suit was filed, on behalf of the minor *N*, against her mother-in-law, *B*, to recover possession of the property covered by the will of *L*. One of the defences to the suit was that the property in dispute had vested in the executor, who had obtained probate of the will, and that, as the defendant held the estate under the executor, the suit was not maintainable without impleading the executor. *Held* that the executor was not a necessary party to the suit. S. 179 of the Indian Succession Act (X of 1865) as incorporated into the Hindu Wills Act (XXI of 1870) did not apply so far as it related to property outside Bombay. The property in dispute was situated in the Surat district. It was joint ancestral property. On the father's death, it vested in the son by survivorship, and on the son's death, it vested in the son's widow, the plaintiff in the present suit. Under the provisions, therefore, of the Probate and Administration Act (V of 1881), s. 4 (if that Act can be held to operate at all in the mofussil before a notification is issued under s. 2), the estate could not vest in the executor, as it had passed by survivorship to another person long before the Act came into operation. BAI HARKOR *v.* MANEEKLAL RASIKDAS . I. L. R., 12 Bom., 621

54. ——— *Administration, Suit for—Application for appointment of receiver—Civil Procedure Code (1882), s. 438.*—Where a Mahomedan testator had by his will appointed three executors, only one of whom had acted and got possession of the estate, a suit by the testator's widow for administration of the estate was held sufficiently well constituted for the purpose of a motion for a receiver, although only the executor who had acted was made defendant, the other two executors not being parties to the suit. *Quære*—Whether it would not be necessary to add the said two executors before the suit came on for hearing. HAFIZABAI *v.* ABDUL KARIM [I. L. R., 19 Bom., 83

55. ——— Government—*Suit to question act of State—Suit against Government.*—To question an act of State, directly or indirectly, the contention must be raised in a suit duly constituted, to which the Government must be made a party. UMJAD ALLY KHAN *v.* MOHUMDEE BEGUM [10 W. R., P. C., 25: 11 Moore's I. A., 517

56. ——— ——— *Secretary of State—Cause of action—Stat. 21 & 22 Vict., c. 106, s. 65.*—S. 65 of 21 & 22 Vict., c. 106, does not constitute the Secretary of State a body corporate, but simply lays down that that officer and department are to be sued as a body corporate. A suit therefore brought against the Secretary of State is not one against any person or any real body corporate, but is one brought against a nominal defendant, such nominal defendant being put upon the record merely to enable the plaintiff to obtain the remedy secured to him by s. 65. DOYA NARAIN TEWARY *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 14 Calc., 256

57. ——— *Suit for redemption of gatkuli tenure.*—Where, in accordance with a stipulation in a mortgage-deed of gatkuli land, the mortgagor gave in a razinama to Government by which he gave up all claim to the land which was granted to the mortgagee—*Held*, in a suit to redeem the mortgage, the Government was not a necessary party: it is only a necessary party in cases where the nature of the tenure is in dispute. RANU VALAD AVAJI MALI *v.* RAMABAI KOM MAHADU MALI [6 Bom., A. C., 265

58. ——— ——— *Collector—Suit to get property registered in name of vendee—Registering officer.*—To a suit against a vendor to compel him to procure the transfer by the revenue authorities to the name of the vendee of the registration of the property sold, the Collector (the registering officer) must be a party. MANGAMMA *v.* TIMMAPAIYA [3 Mad., 134

59. ——— *Collector—Suit for partition—Necessity of Collector as party.*—In a suit by a shareholder of a joint estate to establish a right to partition, the Collector need not be made a party, unless the public revenue is jeopardized by the contemplated partition. BAMA SOONDUREE DABEE CHOWDHRAIN *v.* KASHEE KISSORE ROY CHOWDHRY [22 W. R., 245

60. ——— *Suit for mutation of names in register.*—The Collector of the district is a necessary party to a suit by a purchaser against his vendor to compel mutation of names in the register. VIRASAMI *v.* RAMA DOSS [I. L. R., 15 Mad., 350

61. ——— *Suit to set aside sale for arrears of revenue—Secretary of State—Civil Procedure Code, 1877, ss. 32, 424.*—The Secretary of State is not a necessary party to a suit to set aside a sale for arrears of revenue, but the Government have such interest as would, on their application, entitle them to be made a party. S. 424

PARTIES—*continued*

1 PARTIES TO SUITS—*continued.*

JIRJUDHUN ROY
[I. L. R., 9 Calc., 271: 11 C. L. R., 466

62. ———————— *Suit to set aside sale for arrears of revenue—Secretary of State for India—Res judicata.*—A Collector had sold an estate, purporting to act under Act XI of 1859, for a supposed arrear of revenue. There was however, only an erroneous debit in the Collectorate books against the estate, in excess of the revenue actually assessed upon it, chargeable against it, and due from it. In a suit brought to set aside the sale in the Courts below, the Government had been made co-defendants, but were not respondents on this appeal, and the objection was taken on the argument of this appeal and by previous petition that they should be made parties, respondents. *Held* that it was a mistaken view that a decree annulling the sale in this suit would be *res judicata* in any future question or proceeding, as between the Government and the unsuccessful purchaser. The Secretary of State for India, therefore, was not a necessary respondent. His position was correctly explained in *Bal Mokoond Lal v. Jirjudhun Roy, I. L. R., 9 Calc., 271* in the judgment of MITTER, J. BALKISHEN DAS v. SIMPSON I. L. R., 25 Calc., 833
[L. R., 25 I. A., 151
2 C. W. N., 513

63. ———————— *Suit to recover*

who was in possession claimed to hold the lands under a settlement which the Government had made with his predecessors in title, the Government having

64. ———————— *Suit to set aside settlement.*—In a suit by a person claiming certain lands which had been resumed by the Government and settled with another party the Government should be made a party. MAHOMED ISRAILE v. WISE 13 B. L. R., F. B., 118: 21 W. R., 327

KRISHNO LALL NAG v. BHYRUB CHUNDER DEB
[22 W. R., 52

65. ———————— *Suit for possession of land settled by Government with successive owners.*—Where a piece of land has been surveyed and settled at one time as an accretion to the estate of *A* and at another as an accretion to the estate of *B*, in a suit by *A* against *B* for possession of the land it is not, as a rule, necessary that the Government should be made a party. *Mahomed Israile v. Wise, 13 B. L. R., 118: 21 W. R. 327,*

PARTIES—*continued*

1. PARTIES TO SUITS—*continued*

considered and explained. GIRDHAREE SAHOO v. HERA LALL SEAL 2 C. L. R., 467

66. ———————— *Suit for possession and declaration of right to participate in a permanent settlement of a mehal resumed under Reg. II of 1819.*—Chur land was held by the proprietors of the adjoining estate. The chur was resumed by Government in 1835, and declared to be liable to assessment under Regulation II of 1819. The recorded proprietors of the adjoining permanently-settled estate, to which the chur was a contiguous accretion, refused to make a permanent settlement with Government at the rent demanded. The chur was then held khas by Government for some time and subsequently leased out for temporary periods to strangers. In these temporary leases Government reserved the proprietor's rights to come in and take a permanent settlement on the expiry of the temporary settlements and also reserved an allowance of 10 per cent on the rent as malikanah on their account, which sum had been kept in deposit in the Collectorate treasury. In 1867 the Government made a permanent settlement with the defendant, one of the recorded proprietors of the contiguous estate, of the entire chur, and refused the application of
be joined in
request of the
s treasury
satisfaction of the Government revenue. An unsuccessful shareholder brought a civil suit against the defendant for possession, and a declaration of his

S. C. KRISTO CHUNDER SANDYAL v. KASHEE KISHORE ROY CHOWDHRY 17 W. R., 145

67. ———————— *Political Agent—Superintendent of Raj.*—A suit for property belonging to the Rajah of Kota was brought in the

his right and interest therein had passed to Government, the Government should have been the plaintiff, but the Political Agent and Superintendent of the Kota State was not entitled to sue for the property. GIRDHARY DAS v. POWLETT
[I. L. R., 2 All., 690

68. ———————— *Suit against Government—Local Government.*—In suits brought against the Government *eo nomine* under the Code of Civil Procedure, the Local Government must be considered as the party sued. SUBBARAYA MUDALI v. GOVERNMENT 1 Mad., 286

69. ———————— *Bombay Abkari Act (V of 1878), ss. 29 and 67—Suit for money illegally levied by a farmer of abkari revenue—Collector.*—The Collector is not a necessary party to a suit brought against a farmer of abkari revenue for a refund of money illegally levied at his instance by

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

the Collector under s. 29 of the Bombay Abkari Act (V of 1878). S. 67 of the Act expressly exempts the Collector from responsibility. NARAYAN VENKU *v.* SAKHARAM NAGU . I. L. R., 11 Bom., 519

70. ——— *Specific Relief Act (I of 1877), s. 42—Obstruction to alleged highway.*—To a suit by an owner of land under s. 42 of the Specific Relief Act against one of the public who formally claims to use such lands as a public road, and who thereby has endangered the title of the owner, it is unnecessary to make the Secretary of State a party. CHUNI LALL *v.* RAM KISHEN SAHU . . . . I. L. R., 15 Calc., 460

71. ——— *Suit for declaration of title against a Municipality.*—The plaintiff sued a Municipal Council, under the Madras District Municipalities Act, for a declaration of his title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it. The structure was found to belong to the plaintiff. *Held* that the Secretary of State was not a necessary party to the suit. KRISHNAYYA *v.* BELLARY MUNICIPAL COUNCIL

[I. L. R., 15 Mad., 292

72. ——— Husband and wife—*Right to sue—Hindu woman.*—A Hindu woman may at all times sue either alone or jointly with her husband. BHOYRUB CHUNDER DOSS *v.* MADHUB CHUNDER PARAMANICK . . . . 1 Hyde, 281

73. ——— *Married Woman's Property Act, 1874, s. 8—Suit for separate property.*—In a suit against a woman married before 1865, in respect of her separate property, it is not necessary to make her husband a co-defendant. STEPHEN *v.* STEPHEN . . 10 C. L. R., 536

74. ——— *Wife added as party—Portion of estate purchased with her separate property.*—Wife made party to the suit, on the ground that a building on the estate was erected by her husband with money forming her separate estate. GOURGOPAL DUTT *v.* BISHONATH GHOSE

[Cor., 41

75. ——— *Practice—Wife having an English domicile suing without her husband.*—Case in which it was held that a wife having an English domicile is capable of suing without joining her husband as a co-plaintiff. HUGHES *v.* DELHI AND LONDON BANK I. L. R., 15 Calc., 35

76. ——— *Hindu wife—Transaction in her own name—Wife's right to sue without joining husband.*—A Hindu wife, living with her husband, brought a suit on a deed of mortgage executed in her favour. *Held* that to enforce her rights under the deed she need not join her husband. MANADA SUNDARI DABI *v.* MAHANANDA SARMA . . . . 2 C. W. N., 367

77. ——— Joint family—*Suit by one member for specific share.*—To a suit by one member of a Hindu joint family, living under the Mitakshara law, for a specific share of the joint family property, all the members of the family are necessary parties. NATHUNI MAHTON *v.* MANRAJ MAHTON

[I. L. R., 2 Calc., 149

See PAHALADH SINGH *v.* LUCHMUNBUTTY

[12 W. R., 256

SUDABURT PERSHAD SAHOO *v.* LOTF ALI KHAN. PHOOLBAS KOOER *v.* LALLA JUGGESSUR SAHI

[14 W. R., 339

S. S. on review PHOOLBAS KOOER *v.* LALLA JUGGESSUR SAHOY . . . . 18 W. R., 48

GOKOOL PERSHAD *v.* ETWARI MAHTO

[20 W. R., 138

78. ——— *Suit to establish right belonging to Hindu family—Necessary parties.*—No member of an undivided Hindu family, except the manager of the family, as such, is entitled to bring a suit to establish a right belonging to the family without making the other members of the family parties to the suit. ARUNACHALA PILLAI *v.* VYTHIALINGA MUDALIYAR . I. L. R., 6 Mad., 27

79. ——— *Suit to set aside alienation of ancestral property—Mitakshara—Legal necessity.*—*J L* and *H N*, brothers, members of a joint Hindu family subject to the Mitakshara law, borrowed money by absolute and conditional sales of their joint estate. After the death of *J L*, his son *L P* brought a suit against the alienees to recover possession of the lands by reversal of the deeds, as to one-half share thereof, which he claimed as the share of his father *J L*, on the ground that there had existed no legal necessity justifying *J L* and *H N* in alienating the property. Neither *H N*, nor any one representing him, had been made a party to the suit. There was nothing to show that the family had been separated, or the property partitioned. *Held* the suit should have been brought by all the joint members to set aside the deeds. If the other members refused to join as plaintiffs, they should have been made defendants. RAJARAM TEWARI *v.* LACHMAN PRASAD

[4 B. L. R., A. C., 118 : 12 W. R., 478

SHEO CHURN NARAIN SINGH *v.* CHUKRAREE PERSHAD NARAIN SINGH . . . 15 W. R., 436

80. ——— *Manager of joint family—Suit by manager alone—Co-parceners whether necessary parties—Civil Procedure Code (Act XIV of 1882), s. 30—Amendment of pleading—Plaint amended in second appeal by adding parties.*—The plaintiff as manager of an undivided Hindu family sued to recover possession of certain lands from the defendant. The defendant contended that the plaintiff's minor brother and uncle who were his undivided co-parceners should be made parties to the suit. The Court of first instance held that the plaintiff as manager could sue alone, and passed a decree for the plaintiff. The first Appellate Court reversed the decree, holding that the plaintiff could not sue alone, except under the provisions of s. 30 of the Civil Procedure Code, which had not been complied with. On second appeal to the High

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

Court —*Held* that the defendant was entitled to have the plaintiff's uncle and minor brother placed on the record either as co plaintiffs or as defendants The right of a plaintiff to assume the character of manager and to sue in that character raises a question of fact and law which varies as the other members of the family are minors or adults, and therefore the defendant is always entitled in such suits, when the

[I. L. R., 12 Bom., 158

81. ——————— *Transfer of Property Act (IV of 1882), s. 85—Suit for sale on mortgage by father without joining sons—Non-joinder of parties — Transfer of Property Act (IV of 1882), s. 85—Notice of interest in mortgaged property—Liability of son to pay father's debt incurred during son's minority—Representative capacity of father—Antecedent debt—Mortgage—Civil Procedure Code (Act XIV of 1882), ss 28, 42*—In the case of a joint Mitakshara family consisting of a father and a minor son where the father executed a mortgage bond hypothecating ancestral family property during the minority of his son and the mortgagee with notice of the interest of the son

share of the son in the ancestral property was liable for the satisfaction of such decree notwithstanding

Singh v. Honooman Sahai, I. L. R., 5 Calc 845, Bhagbut Persad v. Girja Koer, I. L. R., 15 Calc., 717 L. R., 15 I. A., 99, Mohabir Prosad v. Maheswar Nath Sahai, I. L. R., 17 Calc. 584 L. R., 17 I. A., 11, Jagabhai Lalubhai v. Bhukandas Jagjivandas, I. L. R., 11 Bom., 37, relied on *Bhawani Prosad v. Kallu, I. L. R., 17 All., 537,* dissented from *Syud Emam Momtazuddin Mahomed v. Raj Coomar Dass, 23 W. R. 187, Ramasamayyan v. Virasami Ayyar, I. L. R., 21 Mad., 222, Palani Goundan v. Rangayya Goundan, I. L. R., 22 Mad., 207,* referred to. *Semble*—(*a*) in the case of a joint Mitakshara family consisting of a father and minor sons the father is "necessarily" the manager of the joint family, and, as such, for all purposes, is the representative of the family, (*b*) and where the father the managing member, mortgages family property for an antecedent debt, and a suit is brought and decree obtained against the father, such suit and decree should be regarded as instituted and pronounced against him in his representative capacity, (*c*) and that, if a son, after a decree being obtained against the father upon a mortgage executed by the latter, sues to have it declared that his share is not liable to satisfy the said decree, or after a sale in execution thereof sues to recover possession of his share, he cannot succeed unless he proves that the debt was contracted for an immoral or illegal purpose, or that it was of an illusory character *Per* HARINGTON, J that having regard to the provision of s 85 of the Transfer of Property Act and those of ss 28 and 42 of the Civil Procedure Code, the mortgagee was bound to make the plaintiff (the son) a party to the mortgage suit, and that, not having done so he was not entitled to obtain a decree affecting the plaintiff's interest in the mortgaged property. *Bhawani Prasad v. Kallu I. L. R. 17 All 537* followed *Rothschild v. Commissioners of Inland Revenue L. R., 2 Q. B., 142 Ramasamayyan v. Virasami Ayyar, I. L. R., 21 Mad., 222, Palani Goundan v. Rangayya Goundan, I. L. R., 22 Mad. 207,* referred to LALA SURJA PRASAD *v.* GOLAB CHAND

[I. L. R., 27 Calc., 724
4 C. W. N., 701

82 ——————— *Manager Lease granted by manager—Suit for rent—Co-sharers*—A manager of a joint Hindu family who as such, has granted a lease, is during his lifetime the only person to sue for rent due under the lease but after his death his son, who has not succeeded his father in the management, cannot sue without joining the other members of the joint family as parties *Dada v. Bhau P. J., 1876, p. 11,* and *Sayad Fatulla v. Bola, P. J., 1884, p. 33,* followed DAYABHAI LALLUBHAI *v.* GOPALJI DAYABHAI

[I. L. R., 18 Bom., 141

83. ——————— *Suit on bond given in name of one member of joint family for loan made out of joint family funds*—A loan was made to the defendant out of joint family funds, and a bond for the amount was given in the name of one of the members of the joint family He sued the defendant on the bond *Held* that the other members of the joint family were not necessary parties HARI VASUDEV KAMAT *v.* MAHADU DADGAVDA

I. L. R., 20 Bom., 435

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

84. ——— *Manager of joint family—Suit for possession under mortgage.*—In a suit for possession under a mortgage where the managing member of the joint family was made a party, it was held not necessary to make another member of the family a party also. DHAPI *v.* BARHAM DEO PERSHAD . 4 C. W. N., 297

85. ——— *Contract made by member of joint family in individual capacity—Right to sue alone.*—The firm of *S & Co.*, the partners of which were *W S* and *F E*, took a contract from Government on 12th November 1877 to construct a barrel-house at the Gunpowder Manufactory at Kirkee; and on the 28th November 1877 the plaintiff agreed to advance money "up to R15,000" for the purpose of enabling the firm to carry out the contract. Under the agreement, the plaintiff was to receive all sums to become due from the Government on the contractors' bills, and to pay the balance to the firm after repaying himself all advances with interest. On the same day the firm executed a power-of-attorney to the plaintiff, authorizing him to receive from the Government Engineer all such sums to become due to the firm under the contract, which power-of-attorney was deposited by plaintiff in the office of the Executive Engineer at Poona. In March or April 1878 *W S* left for England, up to which time R34,900 had been advanced by the plaintiff, and a balance of R14,942-5-10 still remained due to him after giving credit for the sums received on the bills passed by the Executive Engineer. On 24th July 1878 the plaintiff entered into a fresh agreement with *F E* similar to the former one, to make further advances to the firm up to R16,000 in addition to R15,000 on the same terms as those mentioned in the previous agreement; and by means of these advances the contract was completed at the end of 1879. In 1878 the defendant obtained a decree against *W S* and attached the right, title, and interest of *W S* in a sum of R5,034-11-9 in the hands of the Executive Engineer, which was then due to the firm on the contract. The plaintiff, who alleged that R13,700-1-11 were due to him from the firm, applied to have the attachment removed, which application was refused on 30th September 1879, and the sum attached was paid to the defendant. The plaintiff sued the defendant to recover from him R5,034-11-9. *Held* that, although the plaintiff might be a member of an undivided Hindu family, still, as the contract was entered into with the plaintiff in his individual capacity, and as there was nothing on the face of the contract to show that the plaintiff was acting on behalf of the family, the plaintiff was entitled to sue alone. JAGABHAI LALLUBHAI *v.* RUSTAMJI NASARWANJI [I. L. R., 9 Bom., 311

86. ——— *Partnership—Infant sons—Mitakshara law—Promissory note, Suit on—Nonjoinder of parties—Plea in bar of suit.*—In a suit on a promissory note executed by the defendant in favour of a firm whose original partners were two brothers, one of whom had previously died leaving an infant son surviving, while the other, who also had infant sons, was, at the date of the execution of the note, sole surviving partner of the firm,—*Held* that a Hindu infant, who by birth or inheritance becomes entitled to an interest in a joint family business, does not necessarily become a member of the trading partnership carrying on the business. There must be some consentient act to that effect on the part of the infant and his partners. Even, therefore, where parties are governed by the Mitakshara law, an infant need not be joined as a co-plaintiff in a suit by the father to recover a trade debt. Decrees obtained in such suits by or against the managers of the business are presumed to have been obtained by or against them in their representative capacity, and will be binding on the whole joint family. *Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233; Petum Doss* v. *Ramdhone Doss, 1 Taylor, 279;* and *Ramsebuk* v. *Ramlall Koondoo, I. L. R., 6 Calc., 815,* referred to. LUTCHMANEN CHETTY *v.* SIVA PROKASA MODELIAR I. L. R., 26 Calc., 349 [3 C. W. N., 190

87. ——— *Suit for compensation for wrong—Member of joint family suing alone.*—A member of a joint undivided Hindu family is not precluded from suing alone to obtain compensation in respect of a loss to himself personally caused by wrongful destruction of property in which he had a definite share. GOPEE KISHEN GOSSAIN *v.* RYLAND . . . . . 9 W. R., 279

88. ——— *Bond in favour of one undivided brother for the benefit of himself and others—Suit by promisee alone.*—In a suit on a bond executed by the deceased father of defendants, in favour of the plaintiff, the defendants, while admitting the bond and the consideration for which it had been given, contended that, inasmuch as plaintiff had four undivided brothers and the deed has been executed in his name for the benefit of himself and his brothers, the latter should have been joined as plaintiffs, and that plaintiff could not maintain the suit alone. *Held* that plaintiff was entitled to sue for the family debt without joining his undivided brothers, the contract on which the suit was based being in plaintiff's sole name and not purporting to have been obtained on behalf of any others but himself. ADAIKKALAM CHETTI *v.* MARIMUTHU [I. L. R., 22 Mad., 326

89. ——— *Suit by managing member on behalf of his undivided family, other members not being joined—Maintainability of suit.*—The managing member of an undivided Hindu family sued in his own name for the recovery of certain land and asked for a declaration that it belonged to the plaintiff's family. Plaintiff had an undivided brother, and there was no evidence that he assented to or acquiesced in the institution of the suit. *Held* that the plaintiff was not entitled to sue without making his brother, the other member of the undivided family, a party to the suit. *Alagappa Chetti* v. *Vellian Chetti, I. L. R., 18 Mad., 33,* followed. *Mahabala Bhatta* v. *Kunhanna Bhatta, I. L. R., 21 Mad., 373,* distinguished. ANGAMUTHU PILLAI *v.* KOLANDAVELU PILLAI I. L. R., 23 Mad., 190

PARTIES—*continued*

1 PARTIES TO SUITS—*continued*

90 ——— Landlord and tenant—*Suit for possession*—Where a lessor, who had never been in possession granted a pottah of lands to which his title was disputed and the lessee was kept out of possession by the defendants who disputed the lessor's title—*Held* that the lessee could maintain his action for possession of the lands and need not make his lessor a co-plaintiff PRANKRISHNA DEY *v* BISWAMBHAR SEN

[2 B L R, A. C, 207 11 W. R, 80

91. ——— *Joint lease—Suit by one of joint lessors who has acquired interest of the other—Co-owners—Suit in ejectment by one co owner—Parties—Oral agreement inconsistent with written contract—Evidence Act (I of 1872) s 92*—A and P were co-owners of certain property in Bombay, and by a writing dated January 1883 they granted a lease of the whole of the said property to the defendant for a term of three years from the 1st March 1883 to the 28th February 1886 at a monthly rent of R70. Subsequently to the granting of the said lease *viz* on the 1st September 1883 *P* conveyed her equal and undivided moiety of the said property to the plaintiff On the 30th January 1886, *i.e* a month before the expiration of the lease the plaintiff gave the defendant notice to determine the tenancy, and required him to quit on the 1st March then next The defendant refused and [illegible]

by the plaintiff alone FERAHIM PIR MAHOMED *v* CURSETJI SORABJI DE VITRE

[I L.R., 11 Bom, 644

92 ——— [illegible] *XV of 1850 s* [illegible] *share under* [illegible] a will *directing a certain sum to be paid to M his widow, the unexpended balance of such sum to go at the death of M to his heirs* M brought a suit against the executors of K's will which was compromised on the payment by them to her of a certain sum This sum she deposited with N, one of the members of a firm to be invested in N's own name he paying her such interest as it yielded him On the dissolution of the firm the sum deposited by M was made over to N alone and on the death of N his estate and with it the sum deposited by M came into the hands of the sons of N On the death of M, the plaintiff and two others were the heirs of K In a suit brought by the plaintiff against the sons of N for a third share of the sum deposited by M,—*Held* that such a suit was not a suit for a distributive share under an intestacy or of a legacy under a will" within s 32 Act IX of 1850 All the parties claiming to be entitled to any interest in the sum deposited should have been made parties to the suit HALAN CHANDRA MOOKERJEE *v* NANDAGOPAL MUTTYLALL 13 B. L. R., 142 23 W. R., 71

93 ——— Maintenance, Suits for—*Civil Procedure Code 1882 s 32—Suit for maintenance by member of Malabar tarwad—Necessary parties—Joinder of parties on appeal*—Where a member of a Malabar tarwad sued the karnavan for an increased rate of maintenance *Held* that all the members of the tarwad were necessary parties to the suit *Held* also the Appellate Court having reversed the decree on the ground of non joinder of such persons and directed the plaint to be returned for amendment that the proper course was for the Appellate Court to have added the necessary parties. MAMMALI *v* PAKKI I. L. R, 7 Mad, 428

94 ——— *Right of illegitimate son to maintenance*—The right of an illegitimate son to maintenance out of his deceased father's property cannot be decided in a suit which concerns a portion only of that property and to which all persons in possession of the rest of the father's property are not parties NARAYAN BHARTHI *v* LAVING BHARTHI I L. R., 2 Bom, 140

95 ——— Malicious prosecution, Suit for—*Defendants not sued on same ground of action*—In a suit claiming damages for an unsuccessful criminal prosecution of the plaintiff by the first defendant and sanction d by the second defendant as a Subordinate Judge it was doubted whether the first and second defendants could properly be joined in such an action GIRDHARLAL DYALDAS *v* JAGANNATH GIRDHARBHAI 10 Bom, 182

96 ——— Minor, Suit by—*Suit on behalf of minor—Manager*—Where the trusts of manager and guardian are vested in different persons an action instituted on behalf of the minor with the sanction of the Court of Wards is properly brought by the manager MODHOO SOODUN SINGH *v* PRITHEE BULLUB PAUL 16 W R, 231

97 ——— *Minor contesting will—Misjoinder of, as plaintiff*—A minor interested in contesting the execution and validity of an alleged will by her father having been improperly joined with the alleged executors of the said will as co-plaintiff the decrees of the Courts below were reversed and the suit remanded in order that the minor might be made a defendant and a guardian *ad litem* appointed to protect her interests KRISHNABAI *v* SONUBAI 2 Bom., 327: 2nd Ed., 310

98 ——— Mortgages, Suits concerning *Mortgage by agent—Suit for possession*—When a mortgage was made by the lambardar for himself and as agent for the other sharers—*Held* that in a suit for possession they should have been made parties as well as the lambardar PURGUN SINGH *v* MUNGLE SINGH 2 Agra, Pt II, 207

99 ——— *Redemption Suit for—Co-heir having interest in the mortgaged property at the time of the suit*—A co-heir of the plaintiff having an interest in the mortgage at the time of the redemption suit is a necessary party to the suit but not otherwise TRIMBAK JIVAJI DESHAMUKHA *v* SAKHARAM GOPAL I. L. R., 16 Bom., 599

100 ——— *Suit for redemption—Third parties claiming redemption*—In a suit for redemption of a mortgage the plaintiff may

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

implead other persons who claim the right of redemption in opposition to him. BHOOP SINGH *v.* NURSINGH RAI . . . . . 3 Agra, 144

101. ———————— *Suit for redemption—Suit by one co-sharer.*—Where joint family property, though held in certain shares by the several coparceners, was mortgaged as a whole and redeemable on payment of the whole sum,—*Held* in a suit by one of the joint tenants, or tenants-in-common, to redeem the whole estate, that all persons in whom portions of the equity of redemption were vested must be made parties of the suit. NARO HARI BHAVE *v.* VITHALBHAT [I. L. R., 10 Bom., 648

102. ———————— *Suit for redemption of share of estate.*—*Held* that any one of the mortgagors of his legal representatives is, if the mortgage-debt has been repaid, entitled to sue for redemption, and to be put in possession of his own share of the estate, whatever his coparceners may choose to do in the matter; and that the Judge should not have dismissed the suit merely on account of the majority of the mortgagors who disavowed their claim not being parties thereto, but should have proceeded to dispose of the case according to law. HURDEO *v.* GUNESHEE LALL . 1 Agra, 36

Contra, All the mortgagors ought to be joined in such a suit. RAM BAKSH SINGH *v.* RAM LALL DOSS [21 W. R., 428

And *see* CASES UNDER MORTGAGE—REDEMPTION —REDEMPTION OF PORTION OF PROPERTY.

103. ———————— *Suit for redemption—Parties to such suit—Equity of redemption, Interest in, of person related to the mortgagor.*—The plaintiff sued the defendant to redeem certain khoti lands mortgaged by the plaintiff's father to the defendant's uncle. The defendant objected that the separated uncle and cousins of the plaintiff should be made co-plaintiffs in the suit. These relations of the plaintiff were not joint members of the plaintiff's family at the time of the mortgage, nor did they claim any interest in the equity of redemption. *Held* that the plaintiff's uncle and cousins were not necessary parties. In the absence of evidence to the contrary, it must be presumed that the mortgage was made by the plaintiff's father in his individual capacity. If the defendant had shown that, at the date of the mortgage, the plaintiff's father and uncles were undivided, it might have been presumed that the mortgage was on their behalf as well as on his own. But this the defendant had failed to do. The mortgage did not purport to have been made by the plaintiff's father as manager of the family, nor did it appear that the paintiff's uncle and cousins claimed any interest in the equity of redemption. The mere fact of their relationship gave them no interest in it. RAGHO VINAYAK *v.* DAUD I. L. R., 13 Bom., 51

104. ———————— *Suit for redemption or recovery of property on payment of a charge—Possession after redemption by one of several mortgagors—Adverse possession—Limitation.*—The plaintiff sought to recover his father's share in two portions of family property, one of which had been mortgaged by the plaintiff's father and the father of the defendant No. 1 jointly; the other had been mortgaged by the plaintiff's father jointly with the father of defendant No. 1 and the husband of defendant No. 2. The first was redeemed by the father of defendant No. 1 alone in 1868; the second was redeemed by the defendant No. 1 more than twelve years before the suit. The parties were Mahomedans, and the plaintiff had a brother and three sisters, only one of whom (defendant No. 2) was a party to the suit. Defendant No. 1 contended that the suit was defective for want of parties, and that it was time-barred. The Subordinate Judge awarded the plaintiff's claim. The Assistant Judge on appeal held that the plaintiff's brothers and sisters were necessary parties, but that it was too late to join them, the suit with regard to them having become barred by limitation. He therefore dismissed the suit. On second appeal,—*Held* by the High Court that all persons interested in a property, which it is sought to redeem or recover on payment of a charge, are necessary parties, as otherwise the possessor may be exposed to many suits upon the same cause of action. *Held* also that the plaintiff's brother and sisters ought to have been joined as co-plaintiffs, the defendant No. 1's possession after redemption not being adverse to them. If it was adverse at all, it was adverse to the whole of the plaintiff's branch of the family, so as to bar the right of the group altogether. But that was no reason why the co-owners should not be admitted as co-plaintiffs, and the suit go on upon its merits. BHAUDIN *v.* ISMAIL . . I. L. R., 11 Bom., 425

105. ———————— *Suit by mortgagee for share of mortgaged property.*—A mortgagee cannot maintain a suit for khas possession of an undefined area of the mortgaged land without making his fellow-mortgagees parties to the suit. MAHOMED ISMAIL *v.* LALLA DHUNDUR KISHORE NARAIN . . . . . . 25 W. R., 39

106. ———————— *Suit for foreclosure against assignee of mortgaged property—Representatives of mortgagor.*—In a suit for foreclosure,—*Held* that it was necessary to make the personal representatives of the mortgagor parties. He who has the equity of redemption is the only necessary party. BLAQUIERE *v.* RAMDHONE DOSS [Bourke, O. C., 319

107. ———————— *Suit for mortgagee—Patnidar under mortgagor.*—Where the mortgagee of a zamindari brings a suit on his mortgage against a mortgagor who, previously to the mortgage, has granted a patni lease of the zamindari to a third party, the latter should be made a defendant in order to give him an opportunity to redeem. KASIMUNNISSA BIBEE *v.* NILRATNA BOSE [I. L. R., 8 Calc., 79: 9 C. L. R., 173
10 C. L. R., 113

PARTIES—*continued*

1 PARTIES TO SUITS—*continued*

108 — ——————— — *Suit for possession by mortgagee against third party*—In a suit for possession as mortgagee against a third party, where the mortgagee's (plaintiff's) title is denied it is necessary that the mortgagee should show the extent of the rights and interests of the mortgagor in the property sued for But it is sufficient for this purpose to make the mortgagor a defendant in the suit and there is no necessity for a separate suit against such mortgagor DOOLAY SINGH v GOOLAM HOSSEIN 2 N. W, 72

109 ——————— *Suit by mortgagee where property is alienated*—When a mortgagee sues to enforce his lien on property which has intermediately passed by sale into other hands he is bound to bring his action not against the mortgagor alone, but also against the parties in possession RAM YAD SINGH v LALLA SALIGRAM SINGH [16 W R, 98

110 ——————— *Purchaser at sale of mortgaged property*—*A* mortgaged to his brother *B* his twelfth share in the immoveable estate of the family *C* at *B*'s request became surety for *A* to Government *A* having become a defaulter *C* became liable to Government in respect of his defalcations *B*, with a view to indemnify *C*, transferred to him *A*'s mortgage, *C* at the same time assigning to *B* a debt due by *D* to *A* which had been previously assigned by *A* to *C* Government sold *A*'s interest in the twelfth share which was purchased at the sale by *B*'s son *E* In a suit brought by *C* against *B* to obtain possession of *A*'s share—*Held* that *E* to whom only the equity of redemption passed by the purchase at the Government sale was necessarily a party to the suit which was accordingly remitted to the Court below in order that he might be made a defendant, and a new decree passed upon the merits YASHAVANT SUBAJI KULKARNI v GOPAL LADKO BHANDARKAR [2 Bom, 202: 2nd Ed., 194

111. ——————— *Purchaser under execution against assets of testator—Suit for foreclosure*—A creditor who purchases under an execution against the general assets of a testator's estate takes subject to a mortgage created in pursuance of a power contained in the will; and in a suit to foreclose the purchaser is rightly made a party NILKANT CHATTERJEE v PEARY MOHUN DAS [3 B L R, O C, 7: 11 W R, O C, 21

112. — ——————— *Suit by second mortgagee to recover premises when first mortgagee is paid off—Administrator General—Representative of deceased mortgagor—Act XXIV of 1867,* [illegible]

[illegible]

a necessary party Cases bearing on the above question collected and considered. Where it was uncertain who was the heir and legal representative of the deceased mortgagor, and the circumstances attending the execution of the second mortgage were not free from doubt the cause was allowed to stand over for the purpose of enabling the plaintiff to apply for an order to the Administrator General (under s 17 of Act XXIV of 1867) directing him to apply for letters of administration to the estate and effects of the mortgagor, and the plaintiff was allowed (in the event of letters of administration being granted to the Administrator General) to amend his plaint by making the Administrator General a party to represent the deceased mortgagor The plaintiff was however ordered to give security for the probable costs of the Administrator General in the suit VITHALDAS NAROTAMDAS v KARSANDAS KESHAVDAS [5 Bom, O C, 76

113 ——————— *Right to sale—Death of sole mortgagee leaving several heirs—Sale of mortgagee's rights by one of such heirs—Suit by purchaser for sale of mortgaged property—Transfer of Property Act (IV of 1882) s 67*—Upon the death of a sole mortgagee of zamindari property, his estate was divided among his heirs one of whom a son was entitled to fourteen out of thirty two shares The son executed a sale-deed whereby he conveyed the mortgagee's rights under the mortgage to another person In a suit for sale brought against the mortgagor by the representative of the purchaser it was found that the plaintiff acquired under the deed of sale only the rights in the mortgage of the son of the mortgagee though the deed purported to be an assignment of the whole mortgage *Held* by the Full Bench that the plaintiff was not entitled in respect of his own share to maintain the suit for sale against the whole property the other parties interested not having been joined. PARSOTAM SARAN v MULU I. L. R., 9 All., 68

114 ——————— *First and second mortgages—Second mortgagee not made party to suit by first mortgagee for sale of mortgaged property—Transfer of Property Act (IV of 1882) s 85—Notice*—Certain immoveable property was mortgaged in 1865 to *H* in 1871 to *G* and in 1873 again to *H* In 1883 the property was purchased by *M*, the representative of *G* in execution of a decree obtained in 1877 by *G* in a suit for sale brought by him upon the mortgage of 1871 To this suit and decree the mortgagee under the deeds of 1865 and 1873 was not a party In 1885 *M* sued the representatives of *H* for redemption of the mortgage of 1865 One of the defendants pleaded that as he was a puisne incumbrancer in the property in suit at the time of the plaintiff's suit against [illegible]

[illegible] express terms to be allowed to redeem the plaintiff's mortgage but he did not so appeal to the High Court. *Held* with reference to the terms of s. 85 of the Transfer of Property Act that inasmuch as the defendant was in possession of the mortgaged property at the time of the suit of 1877, and his mortgage was a registered instrument, it must be presumed that

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

implead other persons who claim the right of redemption in opposition to him. BHOOP SINGH *v.* NURSINGH RAI . . . . 3 Agra, 144

101. ———————— *Suit for redemption—Suit by one co-sharer.*—Where joint family property, though held in certain shares by the several coparceners, was mortgaged as a whole and redeemable on payment of the whole sum,—*Held* in a suit by one of the joint tenants, or tenants-in-common, to redeem the whole estate, that all persons in whom portions of the equity of redemption were vested must be made parties of the suit. NARO HARI BHAVE *v.* VITHALBHAT [I. L. R., 10 Bom., 648

102. ———————— *Suit for redemption of share of estate.*—*Held* that any one of the mortgagors of his legal representatives is, if the mortgage-debt has been repaid, entitled to sue for redemption, and to be put in possession of his own share of the estate, whatever his coparceners may choose to do in the matter; and that the Judge should not have dismissed the suit merely on account of the majority of the mortgagors who disavowed their claim not being parties thereto, but should have proceeded to dispose of the case according to law. HURDEO *v.* GUNESHEE LALL . 1 Agra, 36

Contra, All the mortgagors ought to be joined in such a suit. RAM BAKSH SINGH *v.* RAM LALL DOSS [21 W. R., 428

And *see* CASES UNDER MORTGAGE—REDEMPTION —REDEMPTION OF PORTION OF PROPERTY.

103. ———————— *Suit for redemption—Parties to such suit—Equity of redemption, Interest in, of person related to the mortgagor.*—The plaintiff sued the defendant to redeem certain khoti lands mortgaged by the plaintiff's father to the defendant's uncle. The defendant objected that the separated uncle and cousins of the plaintiff should be made co-plaintiffs in the suit. These relations of the plaintiff were not joint members of the plaintiff's family at the time of the mortgage, nor did they claim any interest in the equity of redemption. *Held* that the plaintiff's uncle and cousins were not necessary parties. In the absence of evidence to the contrary, it must be presumed that the mortgage was made by the plaintiff's father in his individual capacity. If the defendant had shown that, at the date of the mortgage, the plaintiff's father and uncles were undivided, it might have been presumed that the mortgage was on their behalf as well as on his own. But this the defendant had failed to do. The mortgage did not purport to have been made by the plaintiff's father as manager of the family, nor did it appear that the paintiff's uncle and cousins claimed any interest in the equity of redemption. The mere fact of their relationship gave them no interest in it. RAGHO VINAYAK *v.* DAUD I. L. R., 13 Bom., 51

104. ———————— *Suit for redemption or recovery of property on payment of a charge—Possession after redemption by one of several mortgagors—Adverse possession—Limitation.*—The plaintiff sought to recover his father's share in two portions of family property, one of which had been mortgaged by the plaintiff's father and the father of the defendant No. 1 jointly; the other had been mortgaged by the plaintiff's father jointly with the father of defendant No. 1 and the husband of defendant No. 2. The first was redeemed by the father of defendant No. 1 alone in 1868; the second was redeemed by the defendant No. 1 more than twelve years before the suit. The parties were Mahomedans, and the plaintiff had a brother and three sisters, only one of whom (defendant No. 2) was a party to the suit. Defendant No. 1 contended that the suit was defective for want of parties, and that it was time-barred. The Subordinate Judge awarded the plaintiff's claim. The Assistant Judge on appeal held that the plaintiff's brothers and sisters were necessary parties, but that it was too late to join them, the suit with regard to them having become barred by limitation. He therefore dismissed the suit. On second appeal,—*Held* by the High Court that all persons interested in a property, which it is sought to redeem or recover on payment of a charge, are necessary parties, as otherwise the possessor may be exposed to many suits upon the same cause of action. *Held* also that the plaintiff's brother and sisters ought to have been joined as co-plaintiffs, the defendant No. 1's possession after redemption not being adverse to them. If it was adverse at all, it was adverse to the whole of the plaintiff's branch of the family, so as to bar the right of the group altogether. But that was no reason why the co-owners should not be admitted as co-plaintiffs, and the suit go on upon its merits. BHAUDIN *v.* ISMAIL . I. L. R., 11 Bom., 425

105. ———————— *Suit by mortgagee for share of mortgaged property.*—A mortgagee cannot maintain a suit for khas possession of an undefined area of the mortgaged land without making his fellow-mortgagees parties to the suit. MAHOMED ISMAIL *v.* LALLA DHUNDUR KISHORE NARAIN . . . . . 25 W. R., 39

106. ———————— *Suit for foreclosure against assignee of mortgaged property—Representatives of mortgagor.*—In a suit for foreclosure,—*Held* that it was necessary to make the personal representatives of the mortgagor parties. He who has the equity of redemption is the only necessary party. BLAQUIERE *v.* RAMDHONE DOSS [Bourke, O. C., 319

107. ———————— *Suit for mortgagee—Patnidar under mortgagor.*—Where the mortgagee of a zamindari brings a suit on his mortgage against a mortgagor who, previously to the mortgage, has granted a patni lease of the zamindari to a third party, the latter should be made a defendant in order to give him an opportunity to redeem. KASIMUNNISSA BIBEE *v.* NILRATNA BOSE [I. L. R., 8 Calc., 79: 9 C. L. R., 173 10 C. L. R., 113

PARTIES—*continued*

1 PARTIES TO SUITS—*continued*

108. —————— *Suit for possession by mortgagee against third party*—In a suit for possession as mortgagee against a third party where the mortgagee's (plaintiff's) title is denied it is necessary that the mortgagee should show the extent of the rights and interests of the mortgagor in the property sued for But it is sufficient for this purpose to make the mortgagor a defendant in the suit and there is no necessity for a separate suit against such mortgagor DOOLAY SINGH v GOOLAM HOSSEIN 2 N W., 72

109 —————— *Suit by mortgagee where property is alienated*—When a mortgagee sues to enforce his lien on property which has intermediately passed by sale into other hands, he is bound to bring his action not against the mortgagor alone but also against the parties in possession RAM YAD SINGH v LALLA SALIGRAM SINGH [16 W R, 98

110 —————— *Purchaser at sale of mortgaged property*—*A* mortgaged to his brother *B* his twelfth share in the immoveable estate of the family *C* at *B*'s request became surety for *A* to Government *A* having become a defaulter *C* became liable to Government in respect of his defalcations *B* with a view to indemnify *C*, transferred to him *A*'s mortgage, *C* at the same time assigning to *B* a debt due by *D* to *A* which had been previously assigned by *A* to *C* Government sold *A*'s interest in the twelfth share which was purchased at the sale by *B*'s son, *E* In a suit brought by *C* against *B* to obtain possession of *A*'s share—*Held* that *E* to whom only the equity of redemption passed by the purchase at the Government sale was necessarily a party to the suit which was accordingly remitted to the Court below, in order that he might be made a defendant, and a new decree passed upon the merits YASHAVANT SUBAJI KULKARNI v GOPAL LADKO BHANDARKAR [2 Bom, 202 2nd Ed., 194

111 —————— *Purchaser under execution against assets of testator—Suit for foreclosure*—A creditor who purchases under an execution against the general assets of a testator's estate takes subject to a mortgage created in pursuance of a power contained in the will, and in a suit to foreclose the purchaser is rightly made a party NILKANT CHATTERJEE v PEARY MOHUN DAS [3 B L R, O C, 7: 11 W R, O C, 21

112. —————— *Suit by second mortgagee to recover premises when first mortgagee is paid off—Administrator General—Representative of deceased mortgagor—Act XXIV of 1867, s 17*—[illegible]

[illegible]

mortgagor is according to the balance of authority, a necessary party Cases bearing on the above question collected and considered Where it was uncertain who was the heir and legal representative of the deceased mortgagor, and the circumstances attending the execution of the second mortgage were not free from doubt [illegible] the purpo[illegible] order to [illegible] of Act X[illegible] letters of [illegible] the mortga[illegible] [illegible] was allowed (in the event of letters of administration being granted to the Administrator General) to amend his plaint by making the Administrator General a party to represent the deceased mortgagor The plaintiff was however ordered to give security for the probable costs of the Administrator General in the suit VITHALDAS NAROTAMDAS v KARSANDAS KESHAVDAS [5 Bom, O C, 76

113 —————— *Right to sale—Death of sole mortgagee leaving several heirs—Sale of mortgagee's rights by one of such heirs—Suit by purchaser for sale of mortgaged property—Transfer of Property Act (IV of 1882) s 67*—Upon the death of a sole mortgagee of zamindari property, his estate was divided among his heirs one of whom a son was entitled to fourteen out of thirty two shares The son executed a sale-deed whereby he conveyed the mortgagee's rights under the mortgage to another person In a suit for sale brought against the mortgagor by the representative of the purchaser it was found that the plaintiff acquired under the deed of sale only the rights in the mortgage of the son of the mortgagee though the deed purported to be an assignment of the whole mortgage *Held* by the Full Bench that the plaintiff was not entitled in respect of his own share, to maintain the suit for sale against the whole property, the other parties interested not having been joined. PARSOTAM SARAN v MULC I. L. R., 9 All., 68

114 —————— *First and second mortgages—Second mortgagee not made party to suit by first mortgagee for sale of mortgaged property—Transfer of Property Act (IV of 1882) s 85—Notice*—Certain immoveable property was mortgaged in 1865 to *H*, in 1871 to *G*, and in 1873 again to *H* In 1883 the property was purchased by *H*, the representative of *G* in execution of a decree obtained in 1877 by *G* in a suit for sale brought by him upon the mortgage of 1871 To [illegible]

[illegible]

that as he was a puisne incumbrancer in the property in suit at the time of the plaintiff's suit against the mortgagors in 1877 he ought to have been made a [illegible]

[illegible]

defendant was in possession of the mortgaged property at the time of the suit of 1877, and his mortgage was a registered instrument, it must be presumed that

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

the plaintiff had notice of its existence and should therefore have made him a party, and that, under the circumstances, he should be placed in the same position as he would have held if the decree of 1877 had never been passed. MUHAMMAD SAMIUDDIN *v.* MAN SINGH . . **I. L. R., 9 All., 125**

115. ———— *Suit to determine rights of mortgagee* · *Representatives of mortgagors.*—Case in which the representatives of certain mortgagors were held to be necessary parties to the suit (which was one to determine the rights of mortgagees (*inter se*) on the following grounds:—(*a*) that the rights of the mortgagees could not be determined without at the same time determining the liability of the mortgagors; (*b*) to avoid multiplicity of suits; (*c*) to give them an opportunity of being present at the taking of any account that might be ordered as between the mortgagees; and (*d*) to entitle the plaintiff or defendant to obtain costs out of the proceeds of the sale of the mortgaged property. HUGHES *v.* DELHI AND LONDON BANK

[I. L. R., 15 Calc., 35

116. ———— *Transfer of Property Act (IV of 1882), s. 85—Parties to a mortgage-suit—Objection in written statement as to non-joinder.*—In a suit by a mortgagee against two of his three mortgagors, the defendants objected in their written statement that the suit was bad for non-joinder of the third mortgagor, and also alleged that subsequent incumbrances on the mortgaged premises had been created with the concurrence of the plaintiff. It appeared that the third mortgagor, as a witness, renounced interest in the greater part of the mortgaged premises. On second appeal,—*Held* that the third mortgagor and the subsequent incumbrancers should have been made parties as having an "interest" within the meaning of s. 85 of the Transfer of Property Act. SUBBAN *v.* ARUNACHALAM

[I. L. R., 15 Mad., 487

117. ———— *Transfer of Property Act (IV of 1882), s. 85—Suit by puisne mortgagee on his mortgage—Suit by puisne mortgagee offering to redeem prior mortgage—Determination of validity of mortgage between co-defendants.*—*Held* (1) in a suit by a puisne mortgagee upon his mortgage, a prior mortgagee is not a necessary party, but is a party in such suit, if such puisne mortgagee offer to redeem his mortgage. When the validity of the prior mortgage is in question, the offer to redeem should be made conditionally upon the establishment of such mortgage; (2) that the question of the validity of the prior mortgages can be determined in this suit, between the co-defendants. RAJ COOMARY DASSEE *v.* PREO MADHUB NUNDY

[1 C. W. N., 453

118. ———— *Prior and puisne incumbrancers—Puisne incumbrancer not made a party to suit upon prior incumbrance—Right to redeem.*—To a suit on his mortgage by a prior incumbrancer, having notice of a puisne incumbrance, the puisne incumbrancer should be joined as a party. If he is not so joined, the puisne incumbrancer's right to redeem will not thereby be affected by the decree in the suit. *Mohan Manor* v. *Togu Uka, I. L. R., 10 Bom., 224; Muhammad Samiud-din* v. *Man Singh, I. L. R., 9 All., 125;* and *Gajadhar* v *Mul Chand, I. L. R., 10 All., 520,* referred to. NAMDAR CHAUDHRI *v.* KARAM RAJI

[I. L. R., 13 All., 315

119. ———— *Suit to bring mortgaged property to sale—Puisne incumbrancer—Transfer of Property Act (IV of 1882), s. 85—Registration—Notice.*—*A* and *B* jointly mortgaged certain immoveable property to *X* by a simple mortgage-deed on the 10th September 1882. They again mortgaged the same property to *X* on the 23rd February 1884. On the 6th August 1885 *A* mortgaged a portion of the said property to *Y*. On the 12th August 1885 *B* mortgaged a portion of the same property to *X*. On the 21st August 1885 *A* mortgaged a portion of the same property to *Z*, and *Z*'s mortgage was registered. On the 20th September 1886, *A* and *B* sold to *X* the property mortgaged to him, and with the proceeds of that sale *X*'s three mortgages were paid off. On the 8th January 1887 *Y* sued *A*, *B*, and *X* for cancelment of the deed of sale of the 20th September 1886, and for sale of the property mortgaged to him under his deed of the 6th August 1885. *Y* did not make *Z* a party to this suit. He did not ask for redemption of *X*'s mortgages nor for foreclosure of *Z*'s mortgage. *Held* that, *Z*'s mortgage of the 21st August 1885 having been registered, *Y* must be taken to have had notice of it, and, having had notice thereof, was bound to make *Z* a party to the suit for sale under his (*Y*'s) mortgage. *Damodar Dev Chand* v. *Naro Mahadev Kelkar, I. L. R., 6 Bom., 11,* and *Dullabhdas Dev Chand* v. *Lakshmandas Sarup Chand, I. L. R., 10 Bom., 88,* referred to. *Per* MAHMOOD, *J.*—The provisions of s. 85 of Act IV of 1882 are not absolutely imperative, and though thereunder a subsequent incumbrancer ought to be made a party to a suit by a prior mortgagee on his mortgage, the non-joinder of such subsequent incumbrancer is not a fatal defect in the suit. Registration of a subsequent mortgage is not necessarily any notice to a prior mortgagee of the existence of such subsequent mortgage; it being *no part of a* mortgagee's duty to be on the watch for incumbrances subsequent to his own. MATA DIN KASODHAN *v.* KAZIM HUSAIN . . **I. L. R., 13 All., 432**

120. ———— *Suit by mortgagee and sale in execution of mortgage-decree—Grant of patni by mortgagor—Patnidar—Right of redemption—Notice—Constructive notice—Transfer of Property Act (IV of 1882), ss. 3 and 85.*—A mouzah, K, was mortgaged by *D* by bonds extending from 1867 to 1879, the last bond of 5th January 1879 including the amounts borrowed on the former bonds. On 7th January 1872, whilst it was so under mortgage, the same mortgagor *D* executed bonds whereby he mortgaged K to the defendants, and in suits brought on the basis of those bonds came to an amicable settlement with the defendants by

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

which on 25th February 1879 he settled K in patni with them; the bonus for the patni going to satisfy the mortgage-debts. In 1885 a suit, to which the present defendants were not made parties, was brought by the mortgagees of the bond of 5th January 1879, and, in execution of the decree in that suit, K was put up for sale and purchased by the plaintiff on 21st June 1886. In a suit brought in 1890 against the defendants to set aside the patni and for khas possession of K, it was found that the plaintiff had notice of the patni. *Held* that the defendants as patnidars had an interest in K within the meaning of s 85 of the Transfer of Property Act, and should therefore have been made

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Monohar Dass, I. L. R, 6 Calc., 317, referred to JUGUL KISSORE LAL SING DEO *v* KARTIC CHUNDER CHOTTOPADHYA . I. L. R, 21 Calc, 116

121. ——————— *Suit for sale on mortgage—Non joinder of parties—Joint Hindu family—Suit for sale on mortgage by father without joining sons—Transfer of Property Act (IV of 1882), s 85.*—When a plaintiff mortgagee institutes a suit for sale under s. 88 of Act IV of 1882 against his mortgagor, who is the father of sons in an undivided Hindu family governed by the Mitakshara, without joining as parties to the suit the sons of the mortgagor of whose interests he has notice, and obtains a decree and an order absolute for sale against the father only, the sons can successfully sue for a declaration that the mortgagee decree-holder is not entitled to sell in execution of his decree for sale the interests of the sons in the property comprised in the mortgage given by the father, although the sole ground of their suit is that they were not parties to the suit by the mortgagee. So *held* by EDGE, C.J., KNOX, BLAIR, BURKITT, and AIKMAN, JJ., *dissentiente* BANERJI, *J.*—*Held* by BANERJI, J., that where,

debt had they been made parties to the mortgagee's suit. BHAWANI PRASAD *v.* KALLU

I. L. R., 17 All., 537

See LACHMAN DAS *v.* DALLU

[I. L. R., 22 All., 394

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

and HARI RAM *v* BISHNATH SINGH

[I. L. R., 22 All., 408

122. ——————— *Transfer of Property Act (IV of 1882), s. 85—Mortgage suit against Hindu mortgagor and two sons—Sale of mortgage premises—Subsequent suit for share of a third son*—A Hindu, having three sons, executed a mortgage in favour of the defendants, who subsequently obtained a decree for sale on the mortgage and brought the property to sale in execution and

recover his one-quarter share of the mortgage premises claiming that the previous proceedings were not binding on him and alleging that the mortgage was unsupported by consideration. *Held* that the plaintiff was entitled to have the question tried, whether there was really a debt owing by the father to support the mortgage. *Quære*—Whether *Bhawani Prasad v Kallu I L. R., 17 All, 537,* lays down the right rule with reference to Transfer of Property Act, s 85 RAMASAMAYYAN *v* VIRASAMI AYYAR . . . I. L. R., 21 Mad., 222

See HIRA LAL SAHU *v* PARMESHAR RAI

[I. L. R., 21 All., 356

123 — *Suit for payment of mortgage money or foreclosure—Non-joinder of person interested in the mortgaged property, Effect of—Transfer of Property Act (1882), s. 85 -Civil Procedure Code (1882), s 32—Plea*

interest the plaintiff has notice, is a fatal defect in the suit, unless cured by the action of the Court under s 32 of the Code of Civil Procedure, and where

Husain, I L R, 13 All, 432, Janki Prasad v. Kishen Dat, I. L. R., 16 All., 478, and *Bhawani Prasad v. Kallu, I. L R, 17 All, 537,* referred to GHULAM KADIR KHAN *v.* MUSTAKIM KHAN

[I. L. R., 18 All., 109

124. — *Prior and subsequent mortgagees—Effect of non-joinder in a suit on a mortgage of persons interested in the mortgaged property—Transfer of Property Act (IV of 1882), s. 85.*—Certain mortgagees holding a second mortgage obtained a decree against their mortgagor and a subsequent mortgagee, one *H L,* for sale of the mortgaged property. At the time of the suit there was subsisting on the same property a prior mortgage held by one *D P. D P* was not made a party to that suit. After the decree in that suit was passed, but before execution, *D P* brought a suit for sale on his mortgage, but did not make the second mortgagees parties to that suit. In that suit *D P*

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

obtained a decree in execution of which he brought a portion of the mortgaged property to sale, and some of it was purchased by *H L*. On application by the second mortgagees for an order absolute for sale in execution of their decree, it was held that the property purchased by *H L* in execution of *D P*'s decree on his prior mortgage could not be brought to sale in execution of the second mortgagee's decree. *Mata Din Kasodhan* v. *Kazim Husain, I. L. R., 13 All., 432,* referred to. HIRA LAL *v.* KISHAN LAL [I. L. R., 19 All., 543

125. ——— *Transfer of Property Act (IV of 1882), s. 85—Foreclosure suit—Practice—Procedure.*—In a suit for foreclosure by a puisne mortgagee, the prior mortgagee should be made a party to the suit under s. 85 of the Transfer of Property Act (IV of 1882). In a suit where a prior mortgagee was not a party, the Court at the hearing of the suit ordered that he should then be made a party. *Mata Din* v. *Kazim Husain, I. L. R., 13 All., 432,* followed. SORABJI CURSETJI SETT *v.* RATTONJI DOSSABHOY [I. L. R., 22 Bom., 701

126. ——— *Transfer of Property Act (IV of 1882), s. 85—Non-joinder of parties—Subsequent mortgagee after suit upon prior mortgage filed.*—*Held* that s. 85 of the Transfer of Property Act, 1882, does not require the joinder in a suit on a prior mortgage of a subsequent mortgagee whose mortgage was only executed subsequently to the filing of such suit. ISHAQ ALI KHAN *v.* CHUNNI . . . I. L. R., 21 All., 149

127. ——— *Transfer of Property Act (IV of 1882), s. 85—Suit on a mortgage executed by a Hindu father—Sons not made parties—Notice—Onus of proof.*—Where the sons in a joint Hindu family came into Court seeking to get rid of the effect, as against their interests in the joint family property, of a decree on a mortgage executed by their father obtained in a suit to which they were not made parties, the burden of proof lies on them to establish that the mortgagee, when he brought his suit, had notice of their interests in the mortgaged property. RAM NATH RAI *v.* LACHMAN RAI [I. L. R., 21 All., 193

BIJAI BAHADUR SINGH *v.* MOWA LAL [I. L. R., 21 All., 195 note

128. ——— *Transfer of Property Act (IV of 1882), ss. 85, 88—Decree for sale on mortgage in suit against Hindu father—Suit by son for declaration that decree not binding on his share.*—A decree having been obtained against a Hindu father in a suit on a bond hypothecating family property, the sons sued for a declaration that the decree was not binding on their share on the grounds that they had not been made parties to the suit, and that the debt had been contracted by the father for immoral purposes. *Held* (not following the decision of the majority of the Full Bench in *Bhawani Prasad* v. *Kallu, I. L. R., 17 All., 537*) that the true rule as to the effect of s. 85 of the Transfer of Property Act, in cases in which a decree is obtained against a Hindu father without making his sons parties to such a suit, is laid down in *Ramasamayyan* v. *Virasami Ayyar, I. L. R., 21 Mad., 222.* PALANI GOUNDAN *v.* RANGAYYA GOUNDAN . . . I. L. R., 22 Mad., 207

129. ——— *Mortgage by such guardian without Court's permission—Validity of such mortgage—Transfer of Property Act (IV of 1882), s. 85.*—*A* was the owner of the property in dispute. He mortgaged it with possession to defendant No. 1 in 1884. *A* died leaving an adopted son Vithal, a minor. Thereupon one Vasudev was appointed by the District Court to be guardian of the person and property of the minor under Act XX of 1864. In September 1890 Vasudev mortgaged the same property to plaintiff with the sanction of the Subordinate Judge's Court obtained under s. 305 of the Code of Civil Procedure (Act XIV of 1882). In 1895 the plaintiff as second mortgagee brought this suit to redeem the earlier mortgage of 1884. *Held* that such mortgage was only voidable under s. 30 of Act VIII of 1890 at the instance of any other person affected thereby. *Held* further that defendant No. 1, the original mortgagee, was not affected by the plaintiff's mortgage, and that the only person really affected by that mortgage was Vithal, the owner of the equity of redemption, who was a necessary party to the suit. DATTARAM *v.* GANGARAM . . . . I. L. R., 23 Bom., 287

130. ——— *Transfer of Property Act (IV of 1882), s. 85—Suit by puisne mortgagee without making prior mortgagee a party—Effect of non-compliance with s. 85.*—A prior mortgagee, without making a puisne mortgagee a party to his suit, sued on his mortgage, obtained a decree for sale, sold the mortgaged property, and purchased it himself. Subsequently the puisne mortgagee holding a mortgage over the same property, brought his mortgage into suit without making the prior mortgagee a party and obtained a decree for sale. *Held* that the puisne mortgagee could not bring the mortgaged property to sale in execution of such decree. *Janki Prasad* v. *Kishen Das, I. L. R. 16 All., 478,* followed. MEHRBANO *v.* NADIR ALI [I. L. R., 22 All., 212

JANKI PRASAD *v.* KISHEN DAT [I. L. R., 16 All., 478

131. ——— *Suit against mortgagee of administrator for property given by deceased.*—Where *M H*, in consideration of *K N* carrying on litigation concerning a piece of land claimed by *M H* at his own expense, agreed that after he should have recovered the land they should jointly erect buildings on it, the rents and profits of which should be jointly enjoyed by them during the life of *M H*, after whose death the property was to be the sole and absolute property of *K N*,—*Held*, in a suit by *K N* claiming to recover the property from the mortgagee of the administrator of *M H* who was in possession of it, that the representatives of the

PARTIES—*continued*

1. PARTIES TO SUITS—*continued*

mortgagor were not necessary parties to the suit DAMODHAR MADHAVJI *v* KAHANDAS NARANDAS [8 Bom , O C., 1

132 ———— — — *Suit on mortgage-bond—Alienation of property to different alienees*—In a suit on a single mortgage bond where part of the property concerned is conveyed or alleged to be conveyed to different persons all these are entitled to notice and to be made parties Such a suit is not multifarious KRISHNA GOPAL GHOSE *v* HURRY NATH DUTT 25 W R., 60

133. *Suit by Mahomedan heir of zur i peshgi mortgagee to recover advance*—In a suit between Mahomedans by the heirs of a zur i peshgi mortgagee to recover the

134 ——— Nawab Nazim's Debts Act, Suit under—*Suit brought to recover property of nizamut*—*Held* that a suit brought by

passing of the Act been conveyed by the Nawab to his son could not proceed without the Nawab Nazim having been joined as a party OMRAO BEGUM *v* GOVERNMENT OF INDIA

[I L R , 9 Calc 704 12 C L R., 595
L R , 10 I A , 39

135 Negotiable instruments—*Bill of exchange Suit on—Drawer and acceptor—Joinder—Civil Procedure Code 1877, s 29*—The drawer and acceptor of bills of exchange can be joined as co defendants in a suit brought by the holder of such bills PESTONJEE EDULJEE GURDUR *v* MAHOMED ALI I L R., 3 Calc , 541

136 —— ——— — *Bill of exchange—Drawer and payee*—Plaintiff, as payee of

in the Subordinate Judge s Court at Surat Permission to proceed with the suit against the defendant

DAS *v* DAHIABHAI I. L. R., 3 Bom., 182

137 — — ——*Hundi, Suit on—Endorser, acceptor and drawer*—*Held* that a purchaser of a hundi on its being dishonoured is at liberty to sue his endorser alone, and it is not absolutely necessary to implead the acceptor and drawer in the same suit, and if he does so he does not lose his right of suing them so long as his action is within the period of limitation GOPAL DAS *v* SEETA RAM 3 Agra, 268

138 ———— ——— *Civil Procedure Code 1877 s 61—Suit on lost cheque*—The endorsees of a cheque sued the endorser stating in their plaint that the cheque had been lost and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it or the refund of the money they had paid the defendant on the cheque *Held* that the plaint should be amended by joining the drawer of the cheque as a defendant in the suit. BALDEO PRASAD *v* GIRISH CHANDRA BHOSE

[I L. R., 2 All, 754

139 ——— Official Assignee—*Insolvent Act (11 & 12 Vict c 21)—Official Assignee made a party defendant*—In a suit in the mofussil the defendant having been adjudicated an insolvent under the Insolvent Act (11 & 12 Vict c 21) the Official Assignee was placed upon the record as

140 ———— *Suit by heirs of insolvent for property acquired after insolvency*—R became possessed of certain property in 1872 and 1881 In 1866 he had presented a petition of *insolvency and a vesting order was made* No final order of discharge was ever made and R died in 1888 In a suit by the heirs of R for their share of the property acquired after his insolvency *Held* that the Official Assignee was not a necessary party to the suit though in case of a decree in the plaintiff s favour notice should be given him by the Court. FATMABIBI *v* FATMABIBI I. L. R , 16 Bom , 452

141. *Suit against*

schedule and no schedule had ever been filed After his death a suit was brought by a creditor against the defendant as the widow, heiress and legal representative' of the deceased insolvent in which suit a decree was made against her the amount to be levied out of the assets of the deceased in her hands" In an application by the defendant to have the decree set aside on the grounds that the Official Assignee was a necessary party to the suit and that the decree should have been against him as her husband s representative as his estate was in his lifetime and since had continued to be vested in the Official Assignee,—*Held* that the Official Assignee was not a necessary party to the suit. The Official Assignee is not a necessary party to any suit to recover a money debt from a person who is either an insolvent at the time the suit is instituted

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

or becomes insolvent pending the suit. But a decree made against an insolvent under such circumstances should be restricted in form so as not to allow the judgment-creditor by means of execution to obtain an advantage over the general body of creditors. *In re Hunt Monnet & Co.; Ex-parte Gamble* v. *Bhola Gir, 1 Bom., H. C., 251*: and *Miller* v. *Budh Singh Dudhuria, I. L. R., 18 Calc., 43*, referred to. In this case the decree was varied by the omission of the words "to be levied out of the assets of the deceased in her hands," and liberty was reserved to the judgment-creditor to prove for the amount of his decree in the Insolvent Court, with a note that execution of the decree is stayed pending the insolvency. CHANDMULL *v.* RANEESOONDERY DOSSEE

[I. L. R., 22 Calc., 259

142. ——— — Partition, Suit for—*Shareholders in joint property.*—A suit which is in the nature of a partition suit cannot be properly dealt with unless all who are admittedly shareholders in the joint property are before the Court. PAHALADH SINGH *v.* LUCHMUNBUTTY . . 12 W. R., 256

SADABURT PERSHAD SAHOO *v.* LOTF ALI KHAN. PHOOLBAS KOOER *v.* LALLA JUGGESSUR SAHI

[14 W. R., 339

S. C. on review PHOOLBAS KOOER *v.* LALLA JUGGESSUR SAHOY . . . . 18 W. R., 48

GOKOOL PERSHAD *v.* ETWARI MAHTO

[20 W. R., 138

NATHUNI MAHTON *v.* MANRAJ MAHTON

[I. L. R., 2 Calc., 149

143. ——————— *Joint family property—Assignee of member of family.*—In a suit by the mother and guardian of two minors to obtain a partition of joint family property free from the encumbrances which the father and sons had put upon it, wherein a third party was co-plaintiff by virtue of an alleged conveyance from the plaintiff, the Court did not allow such party to remain on the record as co-plaintiff, holding that the mother and guardian could not give him a right of suit against the other members of the family, and that the proprietary interests of the minors might ultimately be prejudiced. MUDDUN GOPAL LALL *v.* GOWURBUTTY

[21 W. R., 190

144. ——————— *Suit for partition after father's death—Son's wives.*—In a suit for partition, after the father's death, between brothers, the sons of different wives, who are alive at the time when such suit is instituted, such wives are necessary parties to the suit, as they are entitled to share with their sons. TORIT BHOOSUN BONNERJEE *v.* TARAPROSONNO BANNERJEE

[I. L. R., 4 Calc., 756 : 4 C. L. R., 161

145. ——————— *Share of joint zamindari.*—The owner of a 12 annas share in a joint zamindari granted to the plaintiff a mokurari lease of his share in a small portion of land within the zamindari. The owners of the remaining 4 annas share granted a patni of his share in the whole zamindari to the defendants. The plaintiff brought a suit against the defendants for partition of the small plot of land. *Held* that such a suit would not lie, because the zamindars were not made parties. PARBATI CHURN DEB *v.* AIN-UD-DEEN

[I. L. R., 7 Calc., 577 : 9 C. L. R., 170

146. ——————— *Suit for joint property without joining other owners or sharers—Defect of parties—Suit for declaratory decree.*—The plaintiffs based their claim to a goat sacrificed on the fourth day of each month on an alleged custom by which each of five families took certain goats in each month, and sued to establish their right without making the other families parties. *Held* that to make any declaration in a suit to which they were not parties would be in effect to partition joint property, and to define the share of each without all the shares being before the Court. *Prahlad Singh* v. *Luchmunbutty, 12 W. R., 256.* KALI KANTA SURMA *v.* GOURI PROSAD SURMA BARDEURI

[I. L. R., 17 Calc., 906

147. ——————— *Suit for partition and to set aside order disallowing objection to attachment—Purchaser or mortgagee of a co-parcener's share.*—In a partition suit all persons interested in the property to be divided must be brought before the Court. A purchaser or mortgagee of a co-parcener's share in the joint property is a proper, and even necessary, party to a suit for partition. *A*, *B*, and *C* were members of a joint Hindu family. In execution of a decree against *B*, a portion of the family property was attached. Thereupon *A* intervened and objected to the attachment so far as his own share was concerned. The objection was disallowed, and the property was brought to sale and purchased by *D*. *A* then filed a suit (1) to set aside the order in the miscellaneous proceedings disallowing his objection to the attachment; and (2) for a partition of the whole family property. In this suit he impleaded not only his co-sharers *B* and *C*, but also *D*, the auction-purchaser, and *E*, a mortgagee of *B*'s share in the joint property. The Subordinate Judge, holding that the suit was bad for misjoinder of parties as well as of causes of action, returned the plaint for amendment by striking out the prayer for partition. On appeal, this order was confirmed by the District Judge. On *A*'s application to the High Court under s. 622 of the Code of Civil Procedure,—*Held* that the suit was not bad either for misjoinder of parties or for misjoinder of causes of action. Treating the suit as one for partition, the auction purchaser *D* and the mortgagee *E* were proper, and even necessary, parties. If *A* established his right to partition, he would be entitled to have the order in the miscellaneous proceedings set aside in the same suit. SADU BIN RAGHU *v.* RAM BIN GOVIND

[I. L. R., 16 Bom., 608

148. ——————— *Private partition—Patni of separate share—Subsequent partition under Beng. Act VIII of 1876, s. 128.*—The plaintiffs were co-sharers in a certain estate, *T* being another co-sharer. In 1818 a private partition took place between the co-sharers, in the course of which

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

certain specific lands were allotted to *T* in severalty, the rest remaining undivided *T* granted a patni lease of her share to third parties who were thenceforth in possession, and subsequently there was a partition of the whole estate by the Collector under Bengal Act VIII of 1876, in the course of which the specific lands allotted to *T* in the private partition were allotted to the plaintiffs, who brought against the tenants of the land suits for rent to which they made the patnidars defendants *Held* that the patnidars were properly made parties to the suits in order to try the question of the right to receive the rent as between the plaintiffs and the patnidars *Kashee Ram Dass* v *Sham Mohinee, 23 W. R, 227, Ahamudeen* v *Girish Chunder Shamunt, I L R, 4 Calc, 350,* and *Madan Mohan Lal* v. *Holloway, I L R, 12 Calc, 555,* referred to HRIDOY NATH SHAHA v MOHOBUTNESSA BIBEE I. L. R, 20 Calc, 285

149. ——— Partnership, Suits concerning—*Death of old proprietors of firm—Suit by agent*—A firm becomes dissolved when the original proprietors die, and if somebody comes in their place and carries on the business of the firm, the business, whether carried on under the old name or not is not that of the old firm, but of an entirely new firm A suit brought on behalf of such new firm must be brought in the names of the persons who are at the time of the institution of the suit carrying on its business GOSSAIN GUNGA DUTTA BHARUTEE v DABEE DAS BABOO . 25 W. R, 118

150. ——— *Suit by one member for debt due to family firm*—In a suit for money lent, brought by the father of a joint Hindu family who carried on jointly an ancestral money-lending business, the plaintiff stated, in examination, that he had ceased to take an active part in the management of the affairs of the firm, and that the control of its business was in the hands of his sons, whom he described as "maliks." *Held* that, under the circumstances the plaintiff could not maintain the suit in his individual capacity, and without joining his sons as plaintiffs with him, his sons being his partners in the ancestral business, and he not being the managing member or proprietor JUGAL KISHORE v. HULASI RAM I L. R., 8 All., 264

151. ——— *Representatives of a deceased partner*—The representatives of a deceased partner are not necessary parties to an action for damages under a guarantee to the original firm BURKIN YOUNG v BHOOBUN MOHUN BONERJEE [Cor., 90

152 ——— *Suit for dissolution of partnership and account of dealings of deceased partner.*—In a suit for an account of dealings and transactions of a deceased partner in a Hindu family bank, and for a dissolution of the partnership, the heir or legal representative of the deceased partner is a necessary party. JANOKEY DOSS v BINDABUN DOSS . 3 Moore's I. A., 175

153. ——— *Suit for dissolution on basis of compromise in absence of representative of deceased partner*—Where the surviving partners of a firm, in the absence of a representative of a deceased partner, adjusted the partnership accounts and agreed to hand over a portion of the partnership property to one of the partners in compromise of his claim and the partner whose claim was so agreed to be compromise prayed for a dissolution of the firm upon the basis of such compromise, it was held that a representative of the deceased partner was a necessary party to the suit RAMLAL THAKURSIDAS v LAKHMICHAND MUNIRAM [1 Bom, Ap, 51

154. ——— *Suit for the administration of the estate of a deceased partner*—The fact that surviving partners are made parties to an administration suit of the estate of a deceased partner does not of itself alone enable the Court to direct such surviving partners to render an account of the partnership estate Surviving partners cannot be made co-defendants with the executors in such a suit merely by reason of their partnership They can be made co-defendants in certain special cases as where the relation between the executors or administrators of the deceased partner and the surviving partners is such as to present a substantial impediment to the prosecution by the executors or administrators of the rights of the parties interested in the estate against the surviving partners ELIAS v HUBOOB MOOSHEE MOOSHEE Bourke, O. C., 350

155 — *Plaintiffs—Partnership-debt—Suit by sole surviving partner—Representatives of deceased partner—Contract Act (IX of 1872), s 45—Civil Procedure Code s 26*—The rule of English law that, in trading partnerships, although the right of a deceased partner devolves on his representative, the remedy survives to his co-partner, who alone must enforce the right by action, and is liable on recovery to account to the representative for the deceased's share, should be applied in India, in the absence of statutory authority to the contrary The effect of s 45 of the Contract Act [illegible] joined in an action for a partnership-debt brought by the surviving partner, though it may be that they might be joined in such an action GOBIND PRASAD v CHANDAR SEKHAR . I. L. R., 9 All., 486

156. ——— *Joinder of* [illegible] due during the life of a deceased partner [illegible] of a deceased partner, having [illegible] 1872), are [illegible] s 4 of the [illegible] must be complied with in order that the suit may be properly constituted. *Quære*—Whether, in the case of a family

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

partnership under the Mitakshara law, a question might arise as to the applicability of s. 45 of the Contract Act and s. 4 of the Succession Certificate Act (VII of 1889). *Gobind Prosad* v. *Chandar Sekhar, I. L. R., 9 All., 486,* dissented from. RAM NARAIN NURSING DOSS v. RAM CHUNDER JANKEE LOLL . . . I. L. R., 18 Calc., 86

157. ——— *Suit by firm after death of a partner for a debt accrued due during his life - Representatives of deceased partner—Contract Act, s. 45.*—The representatives of a deceased partner are not necessary parties to a suit for the recovery of a debt which accrued due to the partnership in the lifetime of the deceased partner. MOTILAL BECHARDAS v. GHELABHAI HARIRAM. BHANA LALLA v. DADABHOY SAGUNBAKSH [I. L. R., 17 Bom., 6

158. ——— *Suit by one member of an undivided Hindu family Non-joinder of other persons interested in a family business Amendment of plaint—Limitation.*—In 1887 the plaintiff appointed the defendant to serve for three years as manager of a business in Moulmein, which was the business of the undivided Hindu family to which the plaintiff belonged. In 1893 the plaintiff, without joining the other members of his family, sued the defendant for damages for breach of the contract of service. *Held* (1) that the suit was not maintainable in the absence from the record of the other partners in the business; (2) that, under the circumstances, the name of the plaintiff in the cause-title could not be taken as designating his partners also; (3) that by reason of the fact that the amendment might deprive the defendants of the defence of limitation and of the other circumstances in the case, the plaintiff should not be allowed on appeal to amend the plaint by bringing his partners on to the record. ALAGAPPA CHETTI v. VELLIAN CHETTI [I. L. R., 18 Mad., 33

159. ——— *Suit for debt due to partnership after death of partner—Right of representative of deceased partner to sue for a specific asset—Contract Act (IX of 1872), s. 45.*—On the death of a partner leaving a surviving partner still carrying on the business of the firm, the representative of the deceased partner may sue for and recover debts due to the firm, although the firm's assets in the hands of the surviving partner are already sufficient to answer all the claims made on behalf of the deceased partner, and although the surviving partner is willing to satisfy such claims and disapproves of, and refuses to join in, the suit brought by the representative of the deceased partner. AGA GULAM HOSAIN v. SASSOON [I. L. R., 21 Bom., 412

160. ——— *Suit for a partnership debt—Representative of partner who dies pending the suit not a necessary party—Contract Act (IX of 1872), s. 45.* —In a suit to recover a debt due to a trading partnership in which it happens that a deceased person was a partner up to the time of his death, it is not necessary to join as a plaintiff any representative of the deceased partner. *Gobind Prasad* v. *Chandar Sekhar, I. L. R., 9 All., 486; Ram Narain Nursing Doss* v. *Ram Chunder Jankee Loll, I. L. R., 18 Calc., 86;* and *Motilal Bechardas* v. *Ghellabhai Hariram, I. L. R., 17 Bom., 6,* referred to. DEBI DAS v. NIRPAT [I. L. R., 20 All., 365

161. ——— *Suit against partners.*—Where a suit was instituted against *M* and two others as constituting a certain firm, and it appeared that only *M* was a member with two persons other than those sued, it was not incumbent upon the plaintiff to sue all the partners in *M's* firm, and the plaintiff was entitled to proceed against *M* alone. *Per* STANLEY, *J., Lukhimdas Knimji* v. *Purshotam, I. L. R., 6 Bom., 700;* and *Narayana Chetti* v. *Lakshmana Chetti, I. L. R., 21 Mad., 256,* followed. MOHIM LALL v. SRI GUNGAJI COTTON MILLS CO. [4 C. W. N., 369

162. ——— *Purchase of share by mortgagee.*—In a suit in respect of a partnership, the rights and interest in which of *T*, one of the partners, had been purchased by the Delhi and London Bank, who had been mortgagees of some of the partnership property pledged to them by *T* for money borrowed for purposes of the property,—*Held* that the Bank, as *T's* representative by purchase, had been properly joined as a defendant in the suit. HARRISON v. DELHI AND LONDON BANK [I. L. R., 4 All., 437

163. ——— *Partners—Refusal to join as plaintiffs.*—*A*, *B*, and *C*, and others were partners in a firm, and had transactions as such partners with another firm in which also *C* was a partner. In a suit by the former firm against the latter, *C* and other partners in the former firm refused to join as plaintiffs. *Held* (reversing the decision of the Court below) that *C* and the other partners of the former firm were rightly made defendants. BISSONATH RUCKITT v. GUNNESH CHUNDER DEY [2 Ind. Jur., N. S., 203

RUSTUM ALLY v. AMEER ALLY SOUDAGUR [10 W. R., 487

164. ——— *Practice—Contract Act (IX of 1872), s. 43.*—In a suit brought upon a contract made by a firm the plaintiff may select as defendants those partners of the firm against whom he wishes to proceed, allowing his right of suit against those whom he does not make defendants to be barred. LUKMIDAS KHIMJI v PURSHOTAM HARIDAS . . I. L. R., 6 Bom., 700

165. ——— *Contract Act (IX of 1872), s. 43—Joint promisors—Suit for money against person carrying on business of a dissolved partnership—Non-joinder of parties.*—In a suit for money due on account of dealings in clothes from 1889 to 1895 it appeared that the dealings had taken place between the plaintiff and the firm consisting of the defendant and another till 1894 when the firm was dissolved, since which date the defendant had carried on the business and dealt with

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued*

the plaintiff *Held* that the suit was not bad for non-joinder of the late partner. *Per cur* —It is not incumbent on a person dealing with partners to make them all defendants in a suit NARAYANA CHETTI v. LAKSHMANA CHETTI . I L R, 21 Mad, 256

166. ——— *Suit for contribution by one member of dissolved partnership against others—Adjustment of accounts*—In a civil action by one or more members of a defunct firm against another member for contribution to recover money paid in liquidation of a debt due by the firm, if there has been no adjustment of accounts it is necessary to make all the partners parties to the suit PEAREE MOHUN ROY v. CHUNDER NATH ROY [18 W. R, 408

167. ——— Principal and agent—*Suit against principal for acts of agent*—Where a person sues another as liable for the acts of the accredited agent of the latter, it is not necessary that the alleged agent should be made a party to the suit HATHI RAM v. GOBIND RAM . 3 Agra, 131

168 ——— *Suit to recover possession under Specific Relief Act, s 9—Necessary parties—Principal and agent—Suit for ejectment* [illegible]

care-takers appointed by them they had been in the habit of yearly selling the grass of the land to [illegible]

denied the dispossession, and disclaimed any interest in the land Defendants Nos 1 and 3 denied that [illegible]

called on for restitution. As to *A*, he was not actually in possession, and had taken no personal part in the dispossession. He was said to be owner, but that did not imply that he committed the alleged acts of defendants or insisted on his ownership. As he had not the physical possession of the land, it could not be assumed that he had the jural possession merely on the assertion of the defendants He therefore, having done no palpable wrong, was not a necessary party *Held* also that defendant No. 2 was properly made [illegible]

the disclaimer in the present suit would not estop No. 2 from enforcing these terms in a subsequent suit against No 3 Where under a contract between *A* and *B* an exclusive occupation of immoveable property is given to *A*, he is the proper plaintiff in a suit for possession brought under s 9 of the Specific Relief Act (I of 1877) If *B* desires to sue immediately on the possessory right, he should sue in *A's* name, though for an injury to the reversion he (*B*) may properly sue in his own name The intention of the Specific Relief Act (I of 1877) s 9, is not to be frustrated by any private arrangement under which the ejector has acted or by which he may consent to hold on behalf of some other person As between him and that person, his possession may be that of an agent, but to the former holder he is the dispossessor possession derived from him cannot be superior to his, and (the right of suit being given in general terms) is equally subject as his to the result of proceedings taken within the prescribed six months A person who has been ejected from his property in suing to recover it under s 9 of the Specific Relief Act (I of 1877), may sue the actual ejector, or the person under whose orders or by whose authority the actual ejector has acted, or he may sue both, but the wrong-doer who has taken possession is the one from whom primarily it is to be reclaimed If a third party desire to maintain the expulsion as an act done on his behalf, it is for him to come forward and avow it He may claim to be admitted as a defendant, but if [illegible] done, [illegible] by the [illegible] alleged [illegible] party for the protection of the agent The suit against the latter will fail if he acted on due authority where that authority is shown VIRJIVANDAS MADHAVDAS v. MAHOMED ALI KHAN I. L. R., 5 Bom, 208

169. — Purchasers—*Purchaser pendente lite*—A grantee or vendee of the defendant during the pendency of a suit need not be made a party to the suit. GULABCHAND MANICKCHAND v. DHONDI VALAD BHAU . . . 11 Bom., 64

170. ——— *Purchaser pendente lite.*—The purchaser *pendente lite* of property actually in litigation need not be made a party to the suit. The title acquired by the purchaser is subservient or subject to the right of the parties in litigation. UMAMOYI BURMONEA v. TARINI PRASAD GHOSE . 7 W. R., 225

171 ——— *Civil Procedure Code (Act XIV of 1882), ss 108, 109*—*Whether an*

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

himself had purchased the property. The lower Court, however, refused to try the question of benami as not being admissible in a rent suit. On appeal,—*Held* that the question of benami was properly raised in the suit, and ought to have been tried. *Rughoo Nath Pershad* v. *Byjnath Sahoy, 24 W. R., 349,* cited and distinguished. TARINI KANT LAHIRI *v.* KRISHNA MONI CHOWDRAINI . **5 C. L. R., 179**

190. ——— *Question of title.*—In a suit for rent in which an intervenor appeared, the Munsif raised the question, who had up to that time been in the actual and *bonâ fide* receipt and enjoyment of rent? and, on deciding this question in favour of the intervenor, dismissed the suit. On appeal, the Judge tried the question of title. *Held* that the Judge was wrong in raising the question of title at all, and thus proceeding on a basis other than that on which, whether right or wrong, the parties had chosen to litigate the matter, and which the original Court had accepted. *Quære,*—Is the Munsif's procedure in this case the right one, now that Act X of 1859, s. 77, has been repealed, and not re-enacted in the new law? AULUCK MONEE DEBEE *v.* DINO NATH GHOSE . **24 W. R., 421**

See WOOMA TARA *v.* BHUROSA RAM DASS **[24 W. R., 409**

191. ——— *Intervenor irregularly added in lower Court—Civil Procedure Code, 1859, s. 73.*—In a suit for rent before the Munsif, the special appellant petitioned and was irregularly admitted into the suit as intervenor, as if the suit were being tried under Act X of 1859 in a Revenue Court. Defendants having admitted their liability to plaintiff under a kabuliat set up by the latter, the suit was decreed in the lower Appellate Court. *Held*, on special appeal by the intervenor, that he was not entitled to be treated as a party added under s. 73, Act VIII of 1859. CHUNDER KALEE GHOSE *v.* SHIBNATH BHUTTACHARJEE **[17 W. R., 176**

See OOGNEE CHOWDHRAIN *v.* KERAMUTOOLLAH **[17 W. R., 219**

BIRESSUR PANREY *v.* JOGENDRO CHUNDER DEB **[24 W. R., 261**

192. ——— *N. W. P. Rent Act (XII of 1881), s. 148—Landholder and tenant—Suit for rent where the right to receive it is disputed—Third person who has received rent made party—Jurisdiction of Rent Court to pass decree for rent against such party—Question of title.*—In a suit by a landholder for recovery of rent, the defendants pleaded that they had paid the rent to a co-sharer of the plaintiff. The co-sharer made a deposition, in which he alleged that he was entitled to the rent not only as a co sharer, but also as the appointed agent of the plaintiff. The Court thereupon made him a party to the suit under s. 148 of the Rent Act, and passed a joint decree against him and the tenants for rent. *Held* that the Court was justified in making him a party under s. 148 of the Rent Act, but was not competent to pass a decree for rent against him. A party, who is brought in under s. 148 of the Rent Act, cannot be made subject to the decree for rent so as to allow execution to be taken out against him, whether his *bonâ fide* receipt and enjoyment of the rent is proved or not. The only person against whom such a decree can be passed is the tenant. *Madho Prasad* v. *Ambar, I. L. R., 5 All., 503,* referred to. *Per* EDGE, *C.J.*—*Semble*—That the intention of the Legislature in allowing a third person who claims under s. 148 of the Rent Act to be made a party to the suit may possibly have been that, by bringing him in, he may be bound by a declaration in the suit that he had, in fact, received the rent, so as to prevent him in the civil suit from denying the fact that he had received it. In a suit by a landholder for recovery of rent in which a third person alleged to have received such rent is made a party under s. 148 of the N.-W. P. Rent Act (XII of 1881), the question of title to receive the rent cannot be determined between the plaintiff and such person, but can only be litigated and determined in a subsequent suit in the Civil Court. The only question between the plaintiff and the person so made a party which can be determined in the Rent Court under s. 148 is the actual receipt and enjoyment of the rent. GOBIND RAM *v.* NARAIN DAS . . **I. L. R., 9 All., 394**

193. ——— *Intervenors in suit for registration of names as proprietors—Civil Procedure Code, 1859, s. 73.*—Plaintiffs having succeeded in a suit for a foreclosure of a mortgage, by a conditional bill of sale, of a share of two mouzahs, then sued for possession and registration of names as proprietors. Whilst this suit was pending, certain parties intervened and asked to be made parties under s. 73, Code of Civil Procedure, on the ground that plaintiff's vendors were not entitled to the full share claimed, as they themselves had purchased a portion thereof. *Held* that the Court exercised a wise and proper discretion in allowing the intervenors to be made parties, for a decree in plaintiffs' favour, though not legally binding on them, would nevertheless have caused them great difficulty in all matters of rent. SALIGRAM SINGH *v.* GHEENOO SINGH **[16 W. R., 19**

194. ——— *Unregistered tenants.*—Parties who have not been registered in the zamindari serishta are not entitled to intervene and question the decree passed against the registered tenants. AMATAL FATIMA KHANUM *v.* TARANATH CHAND . . . . . **24 W. R., 151**

195. ——— *Appeal—Reversal of whole decree on appeal by one defendant.*—*D C S*, the zamindar, brought a suit against *B*, a raiyat, for recovery of arrears of rent, value below R100. *B* set up in defence that the rent was not payable to *D C S*, but to *N C A*, the mokuraridar. *N C A*, who claimed under a mokurari title, and alleged that he was in the receipt of the rents from the raiyat, was made a party under s. 73, Act VIII of 1859. The Munsif passed a decree in favour of the plaintiff. On appeal by *N C A*,

PARTIES—*continued*

1 PARTIES TO SUITS—*continued.*

which was heard and decided by the Subordinate

the only issue to be tried was whether the relationship of landlord and tenant subsisted between *D C S* and *B*, and that N C *A* was properly made a party defendant to the suit DOYAL CHAND SAHOY *v* NABIN CHANDRA ADHIKARI

[8 B L R, 180 16 W R, 235

KUNJAL SAHU *v* GURU BAKSH KOER

[8 B L R, 184 note 13 W R, 362

KANHIE ROY *v* HYDER BUKSH 25 W. R, 29

196 ———— *Adding plaintiff—Civil Procedure Code (Act X of 1877), s 32—*

197 ———— *Striking out name of intervenor, Effect of on record of suit —*

198 Reversioner — *Declaratory suit by reversioner—Nonjoinder of other reversioners* —A suit having been brought by a Hindu reversioner for a declaration that an adoption

RAMA I. L R, 1 Mad, 401

199 ———— *Suit to recover property from Hindu widow—Reversioner* —In a suit to recover possession of property held by a widow the reversioner was held to have been erroneously made a co-defendant KRISTO SUNKUR DUTT ROY *v* KOYLASH NATH DUTT ROY. 15 W R, 6

200 ———— *Right of reversioner to sue for declaratory decree* —A polliam was granted to a *Hindu* on service tenure, and the last male holder died in 1860 leaving him surviving a widow *K*, and a daughter *C* In 18 5 the Govern-

estate was acknowledged by the Government and the estate was confirmed to her as her absolute property subject to the quit rent. In 1883 *C* and her minor son *A* sued *K* and others to whom *K* had alienated portions of the estate for a declaration that they were the reversionary heirs of *K* and that the alienations made by *K* were good only during the lifetime of *K* The District Judge held that, there being no collusion between *C* and the defendants *A was not entitled to join in the suit* —*Held* that *A* was entitled to join *C* as co-plaintiff NARAYANA *v* CHANGALAMMA I. L. R., 10 Mad., 1

201 ———— Sale in execution—*Suit under s 246 Civil Procedure Code 1859 by owner against purchaser of property wrongly sold in execution—Execution creditor* —In a suit under the latter portion of s 246 of the Civil Procedure Code brought by the owner against the purchaser of property which has wrongfully been attached and sold in execution of a decree the execution creditor is properly made a party, the object being to restore all parties to the position which they occupied previously to such attachment and sale BANK OF HINDUSTAN, CHINA AND JAPAN *v* PREMCHAND RAICHAND AHMEDBHAI HABIBHAI *v* PREMCHAND RAICHAND 5 Bom, O C, 83

202 ———— Sale-proceeds, Suit for, after distribution—*Suit by attaching creditor dissatisfied with share of sale proceeds allotted to him* —Where an attaching creditor dissatisfied with the share allotted to him on a distribution of sale-proceeds under Act VIII of 1859 s. 270 brings a suit against the other attaching creditors and claims to have made the first attachment he is bound to include as defendants all who have shared in the distribution. BROJOKANTH CHUCKERBUTTY *v* BANEE MADHUB DISCHIT 23 W R., 434

203 ———— Specific performance—*Suit for specific performance of single contract* —In a suit for the performance of a single contract the parties on each side must be marshalled as plaintiffs and defendants KAZI SHAFIA RAHAMAN *v* MOHERMUNNESSA BIBI *alias* KANU BIBI 2 C W N, 42

204. ———— *Purchaser from party to contract of which specific performance was claimed* —The mother and guardian of a Hindu minor entered into a contract for the sale of his land The vendee sued the minor by his mother and guardian *ad litem* for specific performance of the contract and for possession and joined as a defendant a subsequent purchaser from the mother and guardian *Held* that as the cause of action (the right to obtain a sale deed and possession) concerned both the defendants and entitled the plaintiff to relief against both the purchaser was rightly joined as a party *Luckamsey Ookerda v Fazulla Cassumbhoy I L R 5 Bom, 177*, distinguished *Mokund Lall v Chotay Lall, I L R 10 Calc, 1061* referred to. KRISHNASAMI *v* SUNDARAPPAYYAR

[I. L. R., 18 Mad., 415

205 ———— *Suit for specific performance of agreement for partition—Civil Procedure Code s 28* In a suit for specific performance of an agreement by the members of a joint family for partition —*Held* with reference to s 28 of the Civil Procedure Code that the third defendant, a

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

minor, was properly included as a party to the suit, though he was not a party to the arrangement. ALAGAPPA MUDALIAR *v.* SIVARAMASUNDARA MUDALIAR . . I. L. R., 19 Mad., 211

206. ———— *Vendor and purchaser—Suit by purchaser against vendor for specific performance of contract of sale—Covenant by purchaser to build a temple.*—On the 16th November 1893, the first defendant agreed to sell a house to the plaintiff. The contract contained a covenant on the part of the plaintiff to build a temple and to secure an annuity to the vendor and his wife. On the 21st of the same month the first defendant sold and conveyed the same house to the second defendant and put him in possession. In a suit brought by plaintiff against defendants Nos. 1 and 2 for specific performance of the contract of the 16th November,—*Held* that the second defendant was a proper party to the suit. RAMCHANDRA GANESH PURANDHAREE *v.* RAMCHANDRA KONDAJI . . . I. L. R., 22 Bom., 46

207. ———— Sureties—*Act X of 1859—Arrears of rent—Benami lease.*—Some of the defendants had taken a lease in the benami name of *C P B*, and were in actual possession of, and had paid rent for, the lands demised. The other defendants were sureties for *C P B*. A suit was brought in the Court of the Deputy Collector against those who were actually in possession of the land, together with the sureties, for arrears of rent. It did not appear from the lease how far each defendant was interested in or entitled under it. *Held* by both Judges that the suit should be dismissed as against the sureties, who could not as such be sued under Act X of 1859. ROY PRIYANATH CHOWDHRY *v.* BEPINBEHARI CHUCKERBUTTY

[2 B. L. R., A. C., 237 : 11 W. R., 120

208. ———— Tenants in common—*Non-joinder of parties—Civil Procedure Code (Act XIV of 1882), s. 31—Benami mortgage—Suit by some of the heirs of the real mortgagee—Joinder of causes of action.*—In 1880 *A* and *B* jointly advanced moneys on the security of a usufructuary mortgage which was taken in the name of *B*. In 1884 *A* alone advanced moneys on the security of usufructuary mortgages which were likewise taken in the name of *B*. *A* died leaving three sons, of whom the plaintiffs were two. The plaintiffs, having become divided from their brother, now brought suits in 1894 against *B* and the mortgagors for a declaration of their rights to the mortgages and for possession of the documents and for rent of the land which had been collected by *B*. It appeared that there had been no denial of the plaintiff's rights before 1889, that no rent had been collected for several years before suit, the mortgagors who had remained in possession as lessees after the execution of the mortgages having refused to attorn to *B*. *Held* that the suits were not bad for the non-joinder of the plaintiffs' brother. MAHABALA BHATTA *v.* KUNHANNA BHATTA . I. L. R., 21 Mad., 373

209. ———— Trusts, Suits relating to—*Suit as to trust for specific purpose—Surplus after performance of trust.*—Where a trust had been created for specific purposes, *viz.*, the performance of religious and other duties, and the trustee had duly appointed another trustee in his place, the latter being entitled to hold the trust estate,—*Held* that in a suit in which all the parties interested were not before the Court, there could be no decision as to the extent of the trusts nor as to whether any surplus profits of the trust estate would, or would not, after the performance of the trusts, belong to the trustee personally. BISHEN CHAND BASAWAT *v.* NADIR HOSSEIN . I. L. R., 15 Calc., 329

[L. R., 15 I. A., 1

210. ———— *Suit for removal of trustees—Parties—Alienees of trustees.*—In a suit under s. 539 of the Code of Civil Procedure for the removal of a trustee, it is not necessary to make the alienees from the trustee defendant parties to the suit. *Bishen Chand Basawat* v. *Nadir Hossein, I. L. R., 15 Calc, 329 : L. R., 15 I. A., 1; Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev, I. L. R., 15 Bom., 612;* and the *Attorney-General* v. *The Port Reeve of Avon, 33 L. J., N. S. Ch., 172,* referred to. HUSENI BEGAM *v.* COLLECTOR OF MORADABAD . . . . I. L. R., 20 All., 46

211. ———— *Trusts Act (II of 1882), s. 56—Suit by two out of eleven beneficiaries for possession of trust property—Maintainability of suit—Succession Act (X of 1865), s. 271.*—Two daughters of a testator sued defendants Nos. 1 and 2, the testator's sons and his administrators with the will annexed, and other defendants, for a declaration that certain properties devised by the testator to be held in trust and the rents divided among his eleven children were trust properties, and to recover possession thereof. A decree had been obtained against plaintiff No. 2 and her right, title, and interest in the trust property brought to sale. Defendants Nos. 1 and 2 had filed a suit to set aside the sale, but afterwards compromised it on the terms that the sale should be cancelled on payment of a certain sum by defendant No. 1, but that, in default of such payment, the decree should take effect. Default having been made, the property was sold. *Held* (by the whole Court) that the decree of the Court below awarding the plaintiffs possession of the whole property on behalf of themselves and the other beneficiaries must be reversed. *Per* BODDAM, *J.*—That the alienations made in pursuance of the compromise entered into by the administrators were binding upon the plaintiffs, and that therefore neither of them had any cause of action. *Per* O'FARRELL, *J.*—That under all the circumstances the suit could not be treated as a suit to recover the plaintiffs' shares of the trust property. *Per* SUBRAHMANIA AYYAR, *J.* (*dissentiente*)—The fact that the plaintiffs had asked for a larger relief than they were entitled to did not warrant the dismissal of the suit altogether; and that the suit fell within the class of cases in which relief against a third party is such as a Court of equity will administer, and a *cestui qui trust* may be entitled to sue the trustees

PARTIES—*continued*

1. PARTIES TO SUITS—*concluded.*

and the third party jointly, but in which he will be bound to confine his suit to that specific matter in respect of which alone the third party is liable, and not to make it part of a suit for the general administration of the trust; and that plaintiff No 1 was not precluded from recovering her eleventh share. PADMANABHA CHETTIAR *v* WILLIAMS

[I. L. R, 23 Mad., 238

212. ———— *Suit to set aside trust deed—Withdrawal of suit against trustee—Consent decree—Right of trustee to appear as a necessary party in application to set aside consent decree*—In a suit to set aside, *inter alia*, certain trust deed, the trustee, who was made a party, [illegible]

Held that the trustee was entitled to appear and be heard on the motion as a necessary party NUNDA LAL BOSE *v* NISTARINEE DOSSI

[I. L. R., 27 Calc, 428
4 C. W. N., 169

2 SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

213. ———— Suits on behalf of community—*Some suing for whole body of persons—Decree, Effect of*—Convenience requires that in suits [illegible]

DUPURAM RAMALINGAM . . 3 Mad., 226

214 ———— Civil Procedure Code, [illegible] which individual [illegible] sho nedan who is [illegible] posea of devotion [illegible] iterferes with his [illegible] *Ali v. Bakhtawar Singh, I L R, 5 All, 497,* referred to *Jan Ali v. Ram Nath Mundul, I. L R 8 Calc, 32,* dissented from JAWAHRA *v* AKBAR HUSAIN

[I. L R., 7 All, 178

See THAKERSEY DEVRAJ *v* HURBHUM NURSEY

[I. L R., 8 Bom., 432

215. ———— *Suits by individuals for general public*—S. 30 of the Code of Civil Procedure was not intended to allow individuals to sue on behalf of the general public, but to enable

PARTIES—*continued.*

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*continued*

some of a class having special interests to represent the rest of the class ADAMSON *v.* ARUMUGAM

[I. L. R., 9 Mad., 463

216 ———— *Suit against Malabar tarwad*—If it is sought to make a decree in a suit binding on a Malabar tarwad, the procedure laid down in s 30 of the Code of Civil Procedure, 1877, should be followed if the members are numerous A decree against a person who happens to be the karnavan of a Malabar tarwad is not necessarily binding on the tarwad in the absence of fraud. ELAYACHANIDATHIL KOMBI ACHEN *v* KENATUMKORA LAKSHMI AMMA I. L. R, 5 Mad, 201

217. ———— *Suit by legatees on behalf of themselves and other legatees—Costs* [illegible]

[I. L. R., [illegible]

218. ———— *Suit to have land declared wukf*—In a suit to have certain property declared wukf alleging that it was dedicated as wukf, and the profits applied to lighting a mosque [illegible]

219 ———— *Non-joinder of parties—Civil Procedure Codes (Act VIII of 1859 and X of 1877), s 30—Representatives of a certain caste—Chitpavans*—Four persons of the Chitpavan caste brought a suit in 1876 alleging that they and the members of their caste in common with certain other castes, possessed the exclusive right of entry and worship in the sanctuary of a temple, and that the defendants, members of the Palshe caste, not being of the privileged castes, infringed that right in 1871 and thereafter by entering the sanctuary and performing worship therein They prayed for a declaration of their right and an injunction restraining the defendants from interfering with it *Held* that the plaintiffs could maintain the suit for the [illegible]

PARTIES—*continued.*

1. PARTIES TO SUITS—*continued.*

minor, was properly included as a party to the suit, though he was not a party to the arrangement. ALAGAPPA MUDALIAR *v.* SIVARAMASUNDARA MUDALIAR . . I. L. R., 19 Mad., 211

206. ———— *Vendor and purchaser—Suit by purchaser against vendor for specific performance of contract of sale—Covenant by purchaser to build a temple.*—On the 16th November 1893, the first defendant agreed to sell a house to the plaintiff. The contract contained a covenant on the part of the plaintiff to build a temple and to secure an annuity to the vendor and his wife. On the 21st of the same month the first defendant sold and conveyed the same house to the second defendant and put him in possession. In a suit brought by plaintiff against defendants Nos. 1 and 2 for specific performance of the contract of the 16th November,—*Held* that the second defendant was a proper party to the suit. RAMCHANDRA GANESH PURANDHAREE *v.* RAMCHANDRA KONDAJI . . . I. L. R., 22 Bom., 46

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[L. R., 15 I. A., 1

210. ———— *Suit for removal of trustees—Parties—Alienees of trustees.*—In a suit under s. 539 of the Code of Civil Procedure for the removal of a trustee, it is not necessary to make the alienees from the trustee defendant parties to the suit. *Bishen Chand Basawat* v. *Nadir Hossein, I. L. R., 15 Calc., 329 : L. R., 15 I. A., 1; Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev, I. L. R., 15 Bom., 612;* and the *Attorney-General* v. *The Port Reeve of Avon, 33 L. J., N. S. Ch., 172,* referred to. HUSENI BEGAM *v.* COLLECTOR OF MORADABAD . . . . I. L. R., 20 All., 46

211. ———— *Trusts Ac (II of 1882), s. 56—Suit by two out of eleve beneficiaries, for possession of trust property Maintainability of suit—Succession Act (X 1865), s. 271.*—Two daughters of a testator su defendants Nos. 1 and 2, the testator's sons a his administrators with the will annexed, and ot defendants, for a declaration that certain proper devised by the testator to be held in trust the rents divided among his eleven children trust properties, and to recover possession thereof decree had been obtained against plaintiff N and her right, title, and interest in the trust pro brought to sale. Defendants Nos. 1 and 2 had suit to set aside the sale, but afterwards compr it on the terms that the sale should be ca on payment of a certain sum by defendant No. that, in default of such payment, the decree take effect. Default having been made, the p was sold. *Held* (by the whole Court) t decree of the Court below awarding the p possession of the whole property on behalf selves and the other beneficiaries must be *Per* BODDAM, *J.*—That the alienations pursuance of the compromise entered in administrators were binding upon the plai that therefore neither of them had any cause *Per* O'FARRELL, *J.*—That under all the cir the suit could not be treated as a suit to plaintiffs' shares of the trust property. *P* MANIA AYYAR, *J.* (*dissentiente*)—The f plaintiffs had asked for a larger relief were entitled to did not warrant the the suit altogether; and that the suit f class of cases in which relief against a is such as a Court of equity will ad a *cestui qui trust* may be entitled to su

PARTIES—*continued.*

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*continued*

1883 the shevaks issued rules prohibiting people from entering the Nij Mandir and Saja Mandir, which were particularly sacred chambers in the temple, except on payment of certain fees Every visitor was required to purchase a ticket of admission to the interior parts of the temple. The plaintiffs thereupon sued for a declaration of their right of free access to the Nij Mandir and Saja Mandir at all times and on all occasions when the temple was open for purposes of public worship They alleged that the new rules framed by the shevaks constituted an infringement of their immemorial rights of going into the said mandirs without any let or hindrance, of worshipping the idol there for themselves and their patrons and of receiving whatever their patrons gave them They therefore sought for a perpetual injunction restraining the shevaks from interfering with their rights The plaintiffs were 208 in number Thirteen of them obtained leave to bring the suit on behalf of themselves and the rest under s 30 of the Code of Civil Procedure (Act XIV of 1882) The defendants contended *inter alia*) that the plaintiffs had each a separate cause of action, that they had no right to sue jointly, that they were not entitled to a declaratory decree under s 42 of the Specific Relief Act, and that the plaintiffs, never having been obstructed in the exercise of their rights, had no cause of action *Held* that the suit was rightly constituted under s. 30 of the Code of Civil Procedure The rules made by the shevaks in 1883 interfered with the immemorial rights of the gors, and gave a common cause of action to all the plaintiffs They were therefore entitled to sue jointly *Held* also that the plaintiffs were entitled to a declaratory decree under s 42 of the Specific Relief Act (I of 1877), as their title to free access with their patrons to the sacred shrines and to receive presents from their patrons unfettered by the rules of 1883 was denied by those rules *Held* also that the plaintiffs were entitled to further relief by way of perpetual injunction under s 54 of 1877, as the defendants had threatened to invade their enjoyment of property, and the invasion was such that pecuniary compensation would not afford adequate relief *Held* also that the shevaks had no authority to issue the rules of the 12th October 1883 or to levy fees from worshippers in respect of any public religious services held in the temple KALIDAS JIVRAM *v* GOR PARJARAM HIRJI

[I. L. R., 15 Bom, 309

227 ———— *Suit to remove a mohunt—"Numerous parties"*—The "numerous parties" mentioned in s 30 of the Code of Civil Procedure mean parties capable of being ascertained. Two plaintiffs instituted a suit, on behalf of themselves and 42 other persons named in a schedule to the plaint, against a mohunt of an akhra to have

[illegible]

trustee of the property appointed in his place. The plaintiffs alleged that they and the 42 others named in the schedule were in the habit of worshipping the idol or of contributing to the worship and expenses of it, but it was clearly established by the evidence that any Hindu who chose was at liberty to give puja or render service and worship, and that others than the plaintiffs and the 42 persons named in fact did so, and that the plaintiffs and the persons named were therefore not the only persons interested in the suit The plaintiffs applied for and obtained leave to institute the suit under the provisions of s 30 of the Code A decree having been made in their favour, on appeal—*Held* that the suit was not one to which the provisions of s. 30 were applicable as the persons interested therein, not being the whole Hindu community, were incapable of ascertainment SAJEDUR RAJA *v* BAIDYANATH DEB

[I. L. R., 20 Calc., 397

228 ———— *Burial ground—Land belonging in common to all the Mahomedan inhabitants of a village—Encroachment by some of the Mahomedans—Right of suit of some members*

[illegible]

Civil Procedure Code (Act XIV of 1882) On second appeal—*Held* reversing the decree, that s. 30 of the Civil Procedure Code was not applicable to the suit which must be regarded as one in which the plaintiffs claimed to restrain the defendants from violating the common interest they all had in the land TAMBUDIN *v* PANDU I. L. R., 18 Bom, 699

229 ———— *Suit by some of the tenants on an estate on behalf of all the tenants to enforce rights against purchaser*—S 30 of the Civil Procedure Code (Act XIV of 1882)

[illegible]

law? L R, 9 Eq, 241, and *The Mayor of York v. Pilkington*, 1 Atk, 282, followed. *Hallows v Fernie*, L. R, 3 Ch, 467, referred to and distinguished AMEDBHOY HABIBBHOY *v* BALKRISHNA MUKUND . . . I. L. R., 19 Bom., 391

230 ———— *Persons having the same interest in one cause—Civil Procedure Code (1882), ss 26 and 30*—In a suit for the removal of masonry structures raised by one member of a community of Hindu priests upon a certain platform, on which every member of the community had individual right to perform religious rites, praying also for a

PARTIES—*continued.*

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*continued.*

declaration and injunction in connection with such removal, the plaintiffs were seven persons claiming relief as the panch or committee representing the whole community, and also in their individual capacity. It was found by the Court that the plaintiffs did not constitute the panch, and that they did not in that character represent the community. *Held* that s. 26 of the Civil Procedure Code (1882) was only an enabling section, it allowed the plaintiffs to bring a joint action, and should not be read as though all persons of the community must be joined as plaintiffs. *Held* also that s. 30 of the Code is an enabling section, and did not debar the plaintiffs from suing in their own right in this case. BAIJU LAL PARBATIA *v.* BULAK LAL PATHUK . . . I. L. R., 24 Calc., 385

231. ———————— *Misapplication of fund by municipality—Right of tax-payer to sue to restrain municipality from such misapplication—Specific Relief Act (I of 1877), s. 56, cl. (k).*—A suit will lie at the instance of individual tax-payers for an injunction restraining a municipality from misapplying its funds. VAMAN TATYAJI *v.* MUNICIPALITY OF SHOLAPUR . I. L. R., 22 Bom., 646

232. ———————— *Religious endowment, Suit relating to—Suit by worshippers—Leave to sue—Non-joinder of Advocate General—Maintainability of suit.*—Four worshippers at a temple, who were also entitled to vote at the election of dharmakartas, filed a suit for a declaration that the election of certain persons to that office was void. Notice had not been given to the other worshippers, nor had leave of the Court been obtained prior to the institution of the suit. *Held* that the suit was maintainable notwithstanding that the Advocate-General had not been joined as a party; that s. 30 of the Code of Civil Procedure being permissive and not prohibitive and dealing with procedure only, and not affecting substantive rights, the omission to state in the plaint that the suit was instituted on behalf of other worshippers having similar rights to sue as the plaintiffs was not fatal to the maintainability of the suit; that the Court was competent, with a view of adjudicating completely and definitively on the matter in dispute, to require an amendment of the plaint, and that the suit need not necessarily be dismissed; that the omission to apply for leave under s. 30 of the Code of Civil Procedure is not in itself ground for dismissing a suit, but, on objection being taken, the suit should not be allowed to proceed except on the terms of the plaint being amended and the requisite leave being obtained; and that the granting of leave under s. 30 is not a condition precedent, and may take place after the institution of the suit. *Jan Ali* v. *Ram Nath Mundul, I. L. R., 8 Calc., 32,* and *Thaokersey Dewaraj* v. *Hurbhum Nursey, I. L. R., 8 Bom., 432,* considered. SRINIVASA CHARIAR *v.* RAGHAVA CHARIAR . I. L. R., 23 Mad., 28

233. ———————— *Leave must be granted before suit.*—In cases where leave under s. 30 of the Civil Procedure Code is necessary, such leave must be obtained before the suit is brought, and cannot be given subsequently. HARADHONE DASS *v.* RAMDOYAL RAI . I. L. R., 21 Calc., 181 note

NITYANUND GHOSE *v.* MOHENDRO KRISTO GHOSE [I. L. R., 21 Calc., 181 note

PARTIES—*continued.*

2. SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*concluded.*

234. ———————— *Suit by numerous plaintiffs—Leave to institute suit—Right of suit.*—S. 30 of the Civil Procedure Code does not require an "express" permission to be recorded by the Court, but if such permission can be well gathered from the proceedings of the Court in which the suit was instituted, an Appellate Court may (where an objection that no permission was given is taken on appeal) infer from such proceedings that permission was really granted. The dictum of STUART, *C.J.,* in *Hira Lal* v. *Bhairon, I. L. R., 5 All., 602,* dissented from. DHUNPUT SINGH *v.* PARESH NATH SINGH . . . I. L. R., 21 Calc., 180

235. ———————— *Leave to institute suit when to be given*—In a suit brought under s. 30 of the Civil Procedure Code, the permission of the Court required by that section may be given subsequently to the filing of the suit. FERNANDEZ *v.* RODRIGUES . . I. L. R., 21 Bom., 784

236. ———————— *Numerous persons interested similarly in the result of a suit—Permission given to some to sue on behalf of all—Permission granted of the filing of suit by some only.*—*Held* that the permission required by s. 30 of the Code of Civil Procedure may be granted after the filing of a suit by some only of the persons interested therein. *Fernandez* v. *Rodrigues, I. L. R., 21 Bom., 784,* followed. BALDEO BHARTHI *v.* BIR GIR [I. L. R., 22 All., 269

3. ADDING PARTIES TO SUITS.

(*a*) GENERALLY.

237. ———— Discretion of Court—*Civil Procedure Code, 1859, s. 73.*—S. 73, Act VIII of 1859, was permissive, not imperative. Discretion is vested in a Court to make persons not before it parties to a suit. PORAN MUNDUL MOLLAH *v.* SHAM CHAND GHOSE . . . . . . 1 W. R., 228

GYARAM SEAL *v.* ISSUR CHUNDER CHUCKERBUTTY [2 W. R., 158

238. ———— Power of Court—*Suit for share of estate of deceased—Power to change to one for administration.*—Where one son of a deceased party sued in the Recorder's Court another son, who had obtained a certificate under Act XXVII of 1860, for his share of the deceased's estate, it was held that the Recorder had no power to transform the suit into a general administration suit. The Court may, under s. 73, Act VIII of 1859, order all necessary parties who claim a share in the subject-matter of the suit to be made parties. OH LING TEE *v.* AWKINIFEE [10 W. R., 86

PARTIES—*continued.*

3 ADDING PARTIES TO SUITS—*continued.*

GOBIND DOSS *v.* GOUREEPROSHAD SHAHA [7 W. R., 201

240. ———— *Likelihood of being affected by result of suit—Civil Procedure Code, 1859, s 73, Construction of.*—The words in s. 73 of Act VIII of 1859, "who may be likely to be affected by the result," construed to mean "likely to be affected, if added as parties." NGA THA YA *v.* MI KHAN MHAW [5 B. L. R, 371: 13 W R, 443

241. ———— *Likelihood of being affected by result of suit—Interest in suit—Civil Procedure Code, 1859, s 73*—Under s 73,

matter of the suit KOLGLER *v.* PROSONNO COOMAR CHATTERJEE . I. L. R., 2 Calc, 472

242 ———— *Community of interest with plaintiff or defendant—Civil Procedure Code 1877, ss 28, 29, 32—Held,* reading ss 28, 29, and 32 of Act X of 1877 together, that, where an application is made under s 32 for the addition of a person, whether as plaintiff or defendant,

instituted in the Court of a Subordinate Judge by parties claiming adversely to one another as heirs to *B* The Subordinate Judge, on the application of the plaintiffs in these suits under s 32 Act X of 1877, added the plaintiffs in the first suit as defendants in the second and the plaintiffs in the second suit as defendant in the first *Held,* on appeal by the defendant *K* from the orders of the Subordinate Judge, applying the rule stated above, that such

enunciated by SIR BARNES PEACOCK in *Joy Gobind Doss v. Gouree Proshad Shaha, 7 W R, 202, Raja Ram Tewari v. Luchman Prasad, B L R, Sup Vol, 731 8 W. R, 15;* and *Ahmed Hossein v. Khadija, 3 B L R, A C, 28: 10 W R, 369,* and the remarks of PONTIFEX, J., in *Mahomed Bodsha v. Nicol, I L R, 4 Calc, 355* followed and applied NARAINI KUAR *v.* DURJAN KUAR. NARAINI KUAR *v.* PIAREY LAL . I. L. R, 2 All, 738

243 ———— *Civil Procedure Code 1877, s 32*—The object of s. 32 of the Code of Civil Procedure, which enables a Court to add parties whose presence before the Court may be necessary to enable the Court effectually and completely to ad...

questions between the parties to the suit VYDIANADAYYAN *v* SITARAMAYYAN I. L. R., 5 Mad., 52

244. ———— **Application to be added as a party**—*Civil Procedure Code, 1882, s 32*—S 32 does not contemplate any application to the Court by the person proposed to be added MOHINDROBHOOSUN BISWAS *v* SHOSHEEBHOOSUN BISWAS [I. L. R., 5 Calc., 882

245. ———— *Civil Procedure Code, s 32—Power of Court to add party*—A Court may, in the exercise of its discretion under s 32 of the Civil Procedure Code, add a party to a suit upon his own application RABBABA KHANUM *v* NOORJEHAN BEGUM *alias* DALIM SHAHIBA [I. L. R., 13 Calc, 90

246. ———— **Power to add parties**—*Adding parties after reference to Commissioner to take accounts*—After a decree has been made whereby a suit has been referred to the Commissioner's office to have accounts taken and property sold, the Court has still power (if it should be found necessary) to add as fresh parties to the suit persons who are interested in its subject-matter and are likely to be affected by its results VAKATCHAND LAKHMICHAND *v* ADVOCATE GENERAL 8 Bom, O C, 96

247. ———— *Civil Procedure Code, ss 30, 32—Party added after decree*—A Subordinate Judge having permitted the junior widow of a Hindu to be made a party to the proceedings in execution of a decree obtained by the senior widow against a debtor of their deceased husband the High Court declined to interfere under s 622 of the Code of Civil Procedure *Quære*—Whether s 32 of the Code of Civil Procedure does not give a Court a discretionary power to add parties after adjudication of the question raised in the suit LINGAMMAL *v* CHUNIA VENKATAMMAL . I. L. R., 6 Mad., 227

248 ———— *Party added in appeal—Civil Procedure Code, s 32—Party added in appeal who was not a party to the suit nor a representative of such a party—Remand*—When a Court hearing an appeal is of opinion that a person not a party to the suit and not entitled to be brought on the record in a representative capacity should be a party to the record, its proper course is to remand the case to the Court of first instance and to direct that Court to bring on the particular person as a defendant or as a plaintiff if he consents give him

... him

... 332

(b) POWER OF REVENUE COURTS TO ADD PARTIES.

249. ———— *Civil Procedure Code, 1877, s 32—Act XVIII of 1873 (N.-W. P

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

Rent Act).—*B* and *N*, the mortgagees of a mehal, granted the mortgagors a lease of the mehal, the mortgagors agreeing to pay "the mortgagees" a certain rent half-yearly "on account of the right they held in equal shares," and that, on default of payment of such rent, "the mortgagees" should be entitled to sue for payment. The mortgagors having made default in payment of the rent, and *N* refusing to join in a suit against the mortgagors to enforce payment, *B* sued them alone for a moiety of the rent due. The Revenue Court of first instance held, with reference to s. 106 of Act XVIII of 1873, that *B* could not sue separately. *Held* by the High Court that the order of the Revenue Court of first appeal directing, *inter aliâ*, that the Court of first instance should re-try the suit after making *N* a defendant in the suit, was not illegal, notwithstanding that the provisions of s. 32 of Act X of 1877 were not made applicable to the procedure of the Revenue Court by Act XVIII of 1873. SHIB GOPAL *v.* BALDEO SAHAI . . I. L. R., 2 All., 264

(*c*) PLAINTIFFS.

250. ———— Time for adding plaintiff —*Civil Procedure Code, 1877, s. 27, Exercise of power under.*—*Per* PONTIFEX, *J.*—The power given by s. 27 of the Code, of substituting or adding a plaintiff, ought to be exercised before the first hearing of the case. CHUNDER COOMAR ROY *v.* GOCOOL CHUNDER BHUTTACHARJEE I. L. R., 6 Calc., 370

251. ———— Right of plaintiff barred by limitation—*Civil Procedure Code, 1859, s. 73.*—No person ought, under s. 73, to be added as a plaintiff whose right of action is barred by the law of limitation. KISHEN LALL CHOWDHRY *v.* CHUNDER COOMAR ROY . . . . W. R., 1864, 152

GOPAL KASHI *v.* RAMABAI SAHEB PATVERDHAN [12 Bom., 17

252. ———— *Civil Procedure Code, ss. 27 and 32—Limitation—Institution of suits—Change of parties.*—The change of parties as plaintiffs, in conformity with the provisions of s. 27 of the Code, does not give rise to such a question of limitation as arises upon the addition of a new person as a defendant under s. 32. SUBODINI DEBI *v.* GANODA KANT ROY . I. L. R., 14 Calc., 400

253. ———— *Joinder when too late—Rejection of plaint—Joint cause of action—Limitation Act (XV of 1877), s. 22.*—*A*, who with his three brothers composed a joint Hindu family, brought a suit in his own sole name to recover a joint debt. When the objection was taken to the form of the suit on the ground of the non-joinder of *A*'s three brothers, it was too late to add them as co-plaintiffs by reason of s. 22 of the Limitation Act (XV of 1877), a suit on the debt being by that time time-barred. The three brothers at the hearing expressed their willingness that *A* should sue alone. *Held* that such assent did not obviate the necessity of joining all the proper parties as co-plaintiffs, and that the suit therefore, as framed, would not lie. *Held* further that *A* would have been in no better position had he joined his three brothers as co-plaintiffs after the suit was, as regards them, time-barred; since such a suit would have been virtually a suit by himself alone and therefore bad. *Boidonath Bag v. Grish Chunder Roy, I. L. R., 3 Calc., 26*, dissented from. KALIDAS KEVALDAS *v.* NATHU BHAGWAN [I. L. R., 7 Bom., 221

254. ———— *Suit by members of joint Hindu family carrying on business in partnership—Joint co-contractors.*—Two of the sons out of a joint Mitakshara family, consisting of a father and three sons and the widow and sons of a deceased son, and carrying on business in partnership, sued to recover money due on a hathchittá, dated the 11th December 1876; the last payment made and entered by the defendant being on the 20th July 1877. No time was fixed for payment of the money, so that it became payable on the date of the hathchitta. The suit was instituted on the 19th July 1880, and came on for hearing on the 26th July, when an objection was taken that all the parties who ought to sue were not on the record. On the application of the original plaintiffs, the names of the father and the third son were then added, and the plaintiffs were described as surviving partners of the deceased son. At the time the additional plaintiffs were made parties, the suit was, as regards them, barred by limitation. *Held* that the additional plaintiffs were rightly made parties to the suit, notwithstanding that the suit was, as far as they were concerned, barred. In actions of contract it is the right of the defendant, if he takes the objection in proper time, to insist upon all the persons with whom he contracted being joined as plaintiffs; and if, after the objection has been raised, the plaintiff proceeds with the suit without taking steps to add the person or persons whose non-joinder has been objected to, and the Court finds that the objection is well founded, the suit must be dismissed. *Held* that, inasmuch as the original plaintiffs could only enforce their claim in conjunction with the added plaintiffs, and the added plaintiffs were barred by s. 22 of Act XV of 1877, the claim of the original plaintiffs was also barred. *Boydonath Bag v. Grish Chunder Roy, I. L. R., 3 Calc., 26*, dissented from. There is no equity, but often much injustice, in allowing one joint contractor out of many to sue a defendant, notwithstanding an objection duly made by the latter; and the Court has no right to allow one contractor to recover under such circumstances, though he may, no doubt, afterwards adjust the sum which he recovers with his co-contractors. RAMSHEBUK *v.* RAMLALL KOONDOO [I. L. R., 6 Calc., 815: 8 C. L. R., 457

255. ———— *Civil Procedure Code, s. 32—Suit by surviving partner for debts due to firm—Limitation Act, 1877, s. 22.*—Except possibly in the case of an assignment by the other surviving partner or partners, it is not competent to one only of two or more surviving partners to sue for

PARTIES—*continued*

3 ADDING PARTIES TO SUITS—*continued*

a debt due to the firm *Dular Chand* v. *Balram Das, I L. R, 1 All, 453,* and *Gobind Prasad* v *Chandar Sekhar, I L R, 9 All, 486,* referred to A Court may, under s 32 of the Code of Civil Procedure, add a party necessary to a suit, although it may be obliged by the Indian Limitation Act, 1877, to dismiss the suit after such party has been added *Ramsebuk* v. *Ram Lall Koondoo, I L R, 6 Calc, 815,* and *Kalidas Keval Dass* v. *Nathu Bhagwan, I L R, 7 Bom, 217,* referred to *Oriental Bank Corporation* v. *Charriol, I L R, 12 Calc, 642,* discussed IMAM UD DIN *v* LILADHAR [I. L. R, 14 All, 524

256. ——————— *Non-joinder of parties—Application to join necessary parties refused by Court of first instance—Application granted by Court of Appeal—Order to add parties operating nunc pro tunc—Delay the act of the Court—Limitation.*—The plaintiffs, as sharers in certain rent alleged to be due by the defendants, sued to recover their share The defendants contended that all the co sharers were necessary parties At the hearing on the 24th January 1889 the plaintiffs' co sharers applied to be made co-plaintiffs and to be allowed to adopt what the plaintiffs had done in the suit The application was rejected, and the suit was dismissed for want of parties On appeal, the District Court in July 1890 holding that the lower Court ought to have joined the co-sharers, passed an order making them co-plaintiffs, and then confirmed the lower Court's decree on the ground that at the time (3rd July 1890) the co sharers were made plaintiffs the suit was barred by limitation On appeal to the High Court,—*Held,* remanding the case, that the order of the lower Appeal Court of the 3rd July 1890, allowing the co-sharers' application, which had been made on the 24th January 1889, but had been refused by the Court of first instance, should be treated as operating *nunc pro tunc,* and that the *co-sharers should be regarded as having been made* parties to the suit when their application was made. The delay was attributable to the act of the Court, and the plaintiffs should not suffer from it. RAMKRISHNA MORESHWAR *v* RAMABAI [I. L. R, 17 Bom., 29

257. ——————— *Non-joinder of parties—Suit in name of a firm by its manager—Addition of name of other partner as co plaintiff—Misdescription of plaintiff—Civil Procedure Code (Act XIV of 1882), s 27—Limitation Act (XV of 1877), s 22*—This suit was brought to recover a debt due to the firm of *K S* The plaintiff was described as "the firm of *K S* by its manager *S N*" The defendants objected that one *M* was a partner in the firm and should be a party to the suit; he was joined as a co-plaintiff on the 27th January 1888. The defendants then contended that the suit was time-barred under s. 22 of the Limitation Act (XV of 1877) *Held* that the case was one of misdescription and not of non joinder, for the action was brought in the name of the firm by its manager. The order of the words in the vernacular plaint showed that *S*, the manager, did not sue in his own name The defendants were entitled to have the name of the other partner disclosed but it being found as a fact that *S* was entitled to sue for the firm, the addition of *M's* name on the record came within the provisions of s 27 of the Civil Procedure Code KASTURCHAND BAHIRAV DAS *v* SAGARMAL SHRIRAM I. L. R., 17 Bom, 413

258 ——————— Suit by one partner on joint cause of action—*Consent of other partners to suit proceeding—Refusal to amend plaint in appeal*—A suit was instituted by one only of the partners of a firm in respect of a cause of action which had accrued to all jointly Notwithstanding that objection to the non-joinder of the other partners was duly taken the plaintiff contented himself with putting in a petition on behalf of the other partners intimating their willingness that the suit should proceed in the sole name of the plaintiff instead of applying to the Court to add the other partners as plaintiff On appeal the High Court admitted the objection, and refused, under the circumstances to add the other partners as plaintiffs GULAB CHAND *v* BALRAM DAS I. L. R, 1 All, 453

259 [illegible]

with the concurrence of *A*, taken out letters of administration to *B's* estate was on the application of *A* at a hearing of the suit made a co-plaintiff under s 32 of the Civil Procedure Code *Held* that *C* ought not to have been joined as a plaintiff in the suit, inasmuch as *A* had no right at all to sue S 32, as far as the addition of plaintiffs is concerned only applies to those cases in which the original party who brought the suit had some title to sue CHUNDER COOMAR ROY *v* GOCOOL CHUNDER BHUTTACHARJEE . I. L. R., 6 Calc, 370

260 — *Joinder of a party co-plaintiff having interest in a suit in which* [illegible]

who has an interest cannot alter the plaintiff's position or confer on him any right of suit. BHANU TUKARAM SHET *v* KASHINATH PAND SHET [I. L. R., 20 Bom., 537

261. — *Adding as plaintiff a defendant who has assigned his interest in suit where original plaintiff has no right of suit—Civil Procedure Code (1882), ss 27 and 32*—A defendant who has assigned all his rights in the subject matter of the suit and has no longer any interest in it, has no right to be made a co-plaintiff A plaintiff who has no right of action when he brings his suit cannot remedy the defect and acquire the right by joining with him persons who have the right of action ABDUL HAK *v.* GULAM JILANI [I. L. R., 20 Bom., 677

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

262. ———— *Civil Procedure Code (1882), s. 32—Suit by benamidar.*—A mortgage bond was executed ostensibly in favour of *R*, but *J* was the real mortgagee. A suit was brought by *R*, the benamidar, to enforce the bond; *J*, the real mortgagee, made over the debt on a date previous to the suit, but executed the formal deed of assignment on a date subsequent thereto. The assignees were then added as plaintiffs to the suit. *Held* that a benamidar may sue, and, distinguishing the case of *Chunder Coomar Roy* v. *Gocool Chunder Bhuttacharjee, I. L. R., 6 Calc., 370*, that the assignees were rightly added as plaintiffs under s. 32 of the Civil Procedure Code. *Held* also that s. 32 is wide enough to meet every case of defect of parties; and, further, that the power to add parties must be exercised with reference to the interests which those parties have at the time when the addition is being considered. BHOLA PERSHAD *v.* RAM LALL . I. L. R., 24 Calc., 34

263. ———— *Action for slander.*—Plaintiff sued first defendant for damages for slander of plaintiff's sister. The Court, regarding the suit as defective for want of parties, made plaintiff's sister a co-plaintiff under s. 73, Act VIII of 1859. *Held* that the defect was one not to be remedied under that section, and that, as there was no right of suit in the plaintiff, the suit should have been dismissed. SUBBAIYAR *v.* KRISTNAIYAR
[I. L. R., 1 Mad., 383

264. ———— *Procedure.*—In a suit by reversioners to set aside an alienation by the widow, where the Court finds that not the plaintiffs, but another reversioner not represented on the suit, had such right, it should not adjudicate on the propriety or otherwise of the alienation, but the suit should be dismissed. GOSAIEN SHIVA RAM *v.* RUGHO RAI . . . . . 2 Agra, 44

265. ———— *Suit to cancel under-tenures—Act XI of 1859, s. 37.*—On the 13th January 1871 *A* and *B* purchased an estate sold for arrears of Government revenue. The original proprietors asserted their right to collect the rents of a portion of the property by virtue of holding two shikmi talukhs and a howla tenure. This right was affirmed by the High Court in April 1875. *B* had previously sold his interest to *C*. On the 29th May 1876 *A* created a patni of his eight annas in favour of *D* and *E*, and on the 4th July 1876 *C* purchased all the rights of the original proprietors. On the 18th January 1877 *A* sued under Act XI of 1859, s. 37, to cancel or vary the tenures, making the original proprietors *C* and various tenants, defendants. *C* objected that *A* had no right of suit or cause of action, as he had parted with all his rights to *D* and *E*; and that, as his entire interest in the estate was only 8 annas, he could not sue to cancel a part only of the sub-tenures. *D* and *E* then applied to be added as parties, and were made plaintiffs. *Held* that *A* had no cause of action, as he had previously parted with all his rights as zamindar, to cancel these tenures in favour of *D* and *E*; nor could *D* and *E* sue, as they were not "purchasers of an entire estate." That *A* having no cause of action, it was not competent to the lower Court to add *D* and *E* as plaintiffs, and so introduce a right of action which did not previously exist. DWARKANATH PAL *v.* GRISH CHUNDER BANDOPADHYA
[I. L. R., 6 Calc., 827

266. ———— Consent to be added as plaintiff—*Civil Procedure Code (Act X of 1877), s. 32.*—Under s. 32 of the Code of Civil Procedure, no person can be added as a plaintiff unless he has previously consented thereto; and if a person objects to be added as a plaintiff, the proper course is to make him a defendant. UMA SUNDARI DASI *v.* RAMJI HALDAR . . . I. L. R., 7 Calc., 242
[9 C. L. R., 13

See TARA CHUNDER BANERJEE *v.* AMEER MUNDUL . . . . . . 22 W. R., 394

where it was held, under s. 73 of Act VIII of 1859, that persons might be made co-plaintiffs without their consent.

267.———— Application to add plaintiff—*Suit for partition.*—A party holding a miras or perpetual lease of some debutur lakhiraj property to the extent of 12 annas under co-sharers who covenanted in the pottah that he should be entitled to claim partition, sued the owner of the other 4 annas for a partition, making his lessors co-defendants. *Held* that they might properly have been made co-plaintiffs, and that the Court of first instance should under Act VIII of 1859, s. 73, make them such. GOUR CHURN SOOR *v.* JUGOBUNDHOO SEN
[22 W. R., 437

268. ———— *Adoption after suit by widow—Co-plaintiff.*—Where a Hindu widow instituted a suit in respect of rights inherited by her from her deceased husband, and then adopted a son,- *Held* that, under s. 73 of the Code of Civil Procedure, the adopted son might be made a co-plaintiff. PARAVARTANI *v.* AMBALAVANA PILLAI. EX-PARTE PARAVARTANI . . 1 Mad., 197

269.———— *Widow as guardian and in her own right.*—Where the son of a Hindu widow died after her re-marriage, and she sued as guardian of her daughter by her first husband claiming the estate of her son, an application by her to be joined as co-plaintiff in her own right was allowed. KEMP, J. OKHORAH SOOT *v.* BHEDEN BARIANEE . . . . . 10 W. R., 34

270. ———— *Suit for work done ignoring power given to another to sue.*—*J M* executed in favour of *P* an instrument (authorizing *P* to recover, by suit or otherwise, from *Messrs. W and N* a sum of R22,500 or thereabouts) which contained this clause: "From whatever sum *P* may recover from *Messrs. W and N*, he is to pay himself the sum of R8,640, which is due to himself, and also the expenses he may incur in making recovery, and he is to hand over the surplus to me." *J M*, ignoring the above instrument, sued *N* for the R22,500 mentioned in it. *P* thereupon applied to be made a

PARTIES—*continued*

3 ADDING PARTIES TO SUITS—*continued*

party to the suit under s 73 of the Code His application was granted, and he was joined as a co plaintiff *Held* that *P* was properly made a party, but, as the validity of the instrument was disputed by *J M*, *P* should rather have been joined as a defendant than as a plaintiff PESTANJI MANCHARJI WADIA *v* MATCHETT 7 Bom., A C, 10

271 ——— *Suit on behalf of minor without certificate—Adding party—Costs* —A suit, having been instituted by a guardian in the name of an infant without a certificate under Act XL of 1858, was dismissed by the lower Appellate Court The minor, on coming of age, applied to have his name substituted on the record The High Court, under s 73, Act VIII of 1859, ordered that his name should be added as plaintiff, and that the suit should be proceeded with But as the dismissal by the lower Court was correct so far as the materials before the Court enabled it to deal with the suit, the order of remand was not to take effect until all the costs of the defendant had been paid by the plaintiffs MADHUBCHUNDER CHOWDHRY *v* BUKTESSUREE DEBEA 12 W R., 102

272 ——— *Suit by father for joint property—Transportation of father—Sons added as plaintiffs*—*I* sued his brothers for his share of the estate of their deceased father, the father and sons being divided *I* having been transported for life his sons applied to be made plaintiffs in the suit on the ground that they had a joint interest with their father in their grandfather's estate *Held* that, under the circumstances the application was properly granted BYREDDI NARAKKA *v* CHINNA NARAYANA REDDI [I L R., 6 Mad., 331

273 ——— *Civil Procedure Code 1882, s 30—Joinder of parties—Suit for cancellation of deeds—Declaratory suit—Withdrawal of part of claim*—*A* and *B*, junior members of a Malabar tarwad, sued to cancel certain mortgages executed by their karnavan and senior anandravan, on the ground that the secured debt was not binding on the tarwad and to appoint *A* to the office of karnavan The last part of the prayer was withdrawn The mortgages were executed to secure a decree-debt, the decree having been passed *ex parte* against the late karnavan of the tarwad No fraud was alleged but the lower Courts found that the karnavan had been guilty of fraud in allowing the decree to be passed *ex parte* The plaintiffs had not been parties to the decree and the other junior members of the tarwad who had been joined were exempted from liability *Held per cur*—All the members of the plaintiffs' tarwad should have been joined actually, or constructively under s 30 of the Civil Procedure Code MOIDIN KUTTI *v* KRISHNAN [I. L. R., 10 Mad., 322

274 ——— *Nonjoinder of plaintiff—Malabar Law—Jenmi lowment—Suit by one of two co-uralans*—In a suit by one of two co-uralans of a Malabar devasom to recover land the property of the devasom, the other uralan being joined as defendant, there was no evidence that the latter had repudiated the right of the plaintiff to sue in conjunction with himself, and it appeared that he had not been consulted as to the institution of the suit *Held* that the suit was bad for nonjoinder of the co-uralan as plaintiff PARAMESWARAN *v* SHANGARAN I. L. R., 14 Mad., 489

275 ——— *Property vested in three sabhas—Suit by members representing* [illegible] of the third sabha had been consulted with reference to the suit or that they had repudiated the right of the plaintiff to sue in conjunction with that sabha. Permission to sue as representing the whole of the members of the three sabhas had been refused *Held* that the suit was not maintainable PERAMATHAN SOMAYAJIPAD *v* SANKARA MENON [I. L. R., 23 Mad, 82

(d) DEFENDANTS

276 — **Ground for adding defendants**—*Claims opposed to that of plaintiff* Only persons whose claims must necessarily be taken into consideration before deciding on the plaintiff's title should be joined as defendants in a suit GOVERNMENT *v* FERGUSSON 9 W R., 158

277 ——— *Prevention of unnecessary litigation—Discretion of Judge* The object of s 73 Act VIII of 1859 is to prevent needless litigation and there are cases—*e.g.*, as when it is necessary to make plaintiff's coparceners defendants—when a Judge should exercise the discretion vested in him by that section even if the plaintiff omits to ask him to do so. MOTEE CHUND DOSS *v* MURLEF DHUR DOSS 15 W R., 432

278 ——— *Likelihood of being affected by result of suit—Civil Procedure Code, 1859, s 73—Raising unnecessary issues*—S 73 of the Civil Procedure Code enables the Court to bring in as parties to the suit any person whose rights appear to be involved and who may be affected by the result of the suit It does not enable parties who are not liable to be affected by the result to come in and raise altogether new issues which do not properly arise Where the parties however, all acquiesced in the irregularity, and the suit went to trial on the issues raised by the added defendant the High Court did not think it necessary to quash the proceedings PADMALOCHAN SEN *v* LAL CHAND GUPTA [1 B L R., S. N, 23. 10 W. R., 283

279. ——— *Likelihood of being affected by result of suit—Civil Procedure Code, 1859 s. 73—Discretion of Court—Suit for possession—Form of decree*—In a suit to recover possession of a certain mouzah claimed by the plaintiff as a portion of his dar patni talukh which was brought against several defendants four other persons applied to be made defendants, on the ground that they were

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

co-sharers with the defendants on the record in the property in dispute. The application was granted; the added defendants were found to be possessed of the share which they claimed, and on the proofs which they adduced the plaintiff's claim was dismissed. The plaintiff's claim as against the original defendants, who made no opposition, was decreed. In special appeal, on the ground that they should not have been made defendants, and that the plaintiff was not bound to prove his case against anybody else but the person against whom he had brought the suit,—*Held* that s. 73, Act VIII of 1859, leaves to the Courts of original jurisdiction a discretion in such cases; that the section is not limited entirely to cases where the suit as framed cannot proceed; that the words "persons who may be likely to be affected by the result" do not mean persons on whom the result would be legally binding. KALIPRASHAD SING *v.* JAINARAYAN ROY

[3 B. L. R., A. C., 24 : 11 W. R., 361

280. ———— Application to add defendant—*Suit to set aside certificate and for possession*—The plaintiff claimed to be entitled, as cousin of one *M*, to 12 annas of the estate left by *M*, and brought a suit against the two widows of *M*, to whom a certificate had been granted under Act XXVII of 1860, to set aside the certificate, and for possession of the estate with mesne profits from the death of *M*, to the institution of this suit. *N* and others, who claimed to be entitled to a portion of the property specified in the plaint, intervened, and asked to be made defendants under s. 73 of Act VIII of 1859. *Held* that they were not parties likely to be affected by the result within s. 73 of the suit, and should not have been made parties to the suit. AHMED HOSSEIN *v.* KHADIJA

[3 B. L. R., A. C., 28 note: 10 W. R., 369

281. ———— *Civil Procedure Code, 1859, ss. 73, 350—Act XXVII of 1860, s. 4—Certificate of administration—Suit by co-heir against holder of certificate.*—In a suit against a co-heir, who had obtained a certificate under Act XXVII of 1860, for an account of the estate of the deceased proprietor, a third party was added as a defendant under s. 73 of Act VIII of 1859, "it appearing from the accounts put in that a large portion of the assets had been disposed of by him as agent" of the holder of the certificate. On appeal,—*Held* that a co-heir is entitled to follow property of the deceased into the hands of any person who has misappropriated it, and such right is not taken away by the certificate. Therefore, any person who, with the consent of the holder of the certificate, has improperly possessed himself of property belonging to the deceased, and misappropriated it, may be joined as a co-defendant. The third party was rightly so joined in this case. NGA THA YA *v.* MI KHAN MHAW

[5 B. L. R., 371 : 13 W. R., 443

282. ———— *Corporate body sued by an agent—Civil Procedure Code, 1859, s. 73.*—Where a corporate body—*e.g.*, the East Indian Railway Company—is sued, not in its corporate capacity but through an agent, the corporate body is not likely to be affected by the result of the suit. A Court is justified in refusing an application to make such corporate body a party in the suit under s. 73, Act VIII of 1859. NUBEEN CHUNDER PAUL *v.* STEPHENSON . . . . 15 W. R., 534

283. ———— Adding defendant—*Civil Procedure Code, 1859, s. 73—Suit for partition—Adverse title.*—In a suit for a butwarra on the allegation that defendant had encroached upon certain ijmali lands, the latter urged that the said lands were not ijmali, but the self-acquired lands of his (defendant's) son, who ought to be made a party. *Held*, on review of a previous decision, that as the son's interest was not adverse both to himself and defendant, unless the point raised was cleared up, the butwarra could not stand, and the son must therefore be made a party under s. 73, Act VIII of 1859. JOY KISHEN MOOKERJEE *v.* RAJ KISHEN MOOKERJEE

[16 W. R., 101

284. ———— *Suit for possession after foreclosure—Civil Procedure Code, 1859, s. 73.*—An intervenor claiming under a title adverse to that set up both by the plaintiff and the defendant might be made a defendant, under s. 73, Act VIII of 1859, if his interest in the subject-matter of dispute was likely to be affected by the decision between them, as in a suit for possession by foreclosure of a mortgage, in which the defendant admitted the fact of the mortgage, but the intervenor came in declaring the mortgage to be false and collusive between the alleged mortgagor and mortgagee, for the purpose of depriving him of a mokurari tenure which he held in the alleged mortgagor's estate. SARODA PERSHAD MITTER *v.* KYLASH CHUNDER BANERJEE

[7 W. R., 315

285. ———— *Persons likely to be affected by result of suit—Intervenor—Civil Procedure Code, 1859, s. 73.*—A person could not be made a party to a suit under s. 73, Act VIII of 1859, unless he was likely to be affected by the result of the suit. Where an intervenor claimed a portion of the subject-matter of the suit, it was held that it would be most inconvenient and contrary to all principle if every person claiming a title adverse to those set up by the plaintiff and defendant in the suit should intervene and be introduced into the suit, so that, as soon as the plaintiff's title was determined against him, the intervenor might take up the case as a fresh claimant. JOY GOBIND DOSS *v.* GOUREEPROSHAD SHAHA . . . . 7 W. R., 201

286. ———— *Intervenors—Civil Procedure Code, 1859, s. 73.*—Plaintiff sued to recover possession of a share of an estate which he alleged he purchased from the principal defendant, who denied plaintiff's title on the ground that the purchase-money had not been paid. Subsequently certain persons prayed to be made defendants, as they held a dar-mokurari, and were not liable to be turned out. They were accordingly added as defendants under s. 73, Civil Procedure Code. It then appeared that the possession sought by plaintiff was khas

PARTIES—*continued*

3 ADDING PARTIES TO SUITS—*continued.*

possession *Held* that, although it was *prima facie* necessary for these intervenors to be made defendants, yet, after the intention of the plaintiff became apparent, nothing would be gained by removing them from the record, even if the Court had power to do so in special appeal KEWUL SAHOO *v* ISSUR DYAL ROY . . . 12 W. R., 334

287. ———————— *Suit for ejectment by landlord—Intervenor* —In a suit by a landlord to eject his tenant, persons alleging a title adverse to the landlord should not be made parties under s. 73, Act VIII of 1859 Their introduction could not change the character of the suit, and if they wish to establish their own title otherwise than through the tenant, they should bring a separate suit GANU BIN HANMANTRAV *v* MORO GANESH [10 Bom., 429

KARTICK NATH PARRAY *v* CHUMMUN ROY [21 W. R., 51

288. ———————— *Suit for declaration of title to portion of land* —In a suit for establishment of title to a portion of land with which defendants repudiated all connection alleging the land to be in the possession of third parties, who were in consequence made defendants by an order of the Court under s 73, Civil Procedure Code,—*Held* that these parties were rightly made defendants as having been interested both in the subject-matter and in the result of the suit, and even if they had been wrongly made defendants, the onus would under the circumstances, remain on the plaintiffs RAM TARUCK GHOSSAL *v* RADHA BULLUB SIRCAR [15 W. R., 97

289. ———————— *Intervenor in application for attachment before judgment—Civil Procedure Code, 1859, ss 86, 246* —Where a plaintiff applied for attachment of certain property before [illegible]

have been made a party under s 73 of the Code, but that his objection should have been entertained under ss 86 and 246 of the Procedure Code. RAM RUTTUN DASS *v* GOBIND DASS . 2 Agra, 141

290. ———————— *Intervenor—Suit for specific performance* —In a suit to enforce the performance of a contract on the allegation that defendant had received the consideration-money, but refused to execute the conveyance, a third party intervened alleging a subsequent conveyance of the same property by an instrument which had been [illegible]

GUDADHUR CHATTERJEE *v* RAJ KRISTO ROY [13 W. R., 73

291. ———————— *Joint creditor* —Where one of several joint creditors who has no rights separate from that of the others refuses to join in the suit as plaintiff and there is no averment of collusion on his part with the defendant, he cannot rightly be made a defendant in the suit KRISHNARAV RAMCHANDRA *v* MANAJI BIN SATAJI [11 Bom., 103

GURU PRASHAD ROY *v* RAS MOHUN MUKHOPADHYA 1 C L. R., 431

292. ———————— *Civil Procedure Code (Act X of 1877), ss 28 and 32—Judicature Act, Order xvi, Rules 3 and 6* —The plaintiffs brought a suit to recover certain sums of money from the defendants due to them under certain contracts which they alleged had been entered into by themselves and one *A D* as agent of the defendants and asked for an account The defendants in their written statement, contended that there was no privity of contract between themselves and the plaintiffs and denied the alleged agency of *A D* The plaintiffs before the hearing, applied to the Court to have *A D* added as a party defendant under ss. 28 and 32 of Act X of 1877, asking to be allowed to amend their plaint so as to pray for relief in the alternative against the original defendants or the said *A D*, or both against the original defendants and the said *A D* *Held* that under s. 28 they were entitled to the order on the authority of the case of *Child v. Stenning L R, 5 Ch D, 695* BUDDREE DOSS *v* HOARE, MILLER & Co. I. L. R., 8 Calc, 170

293. ———————— *Vendor and purchaser—Joinder—Civil Procedure Code, 1877, s 32* —In a suit by the purchaser of goods by sample against the vendors for damages on the ground that the bulk did not correspond with the sample, the vendors applied, under s 32 of the Civil Procedure Code, to add the vendor to them on the same samples of the goods as a defendant, alleging that the question between the plaintiff and themselves was the same as that between themselves and their vendor *Held*, refusing the application, that the plaintiff "ought" not to have made the vendor to the defendants a party to the suit and that his presence was not "necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit" MAHOMED BADSHA *v.* NICOL, FLEMING & Co [I. L. R., 4 Calc., 355: 2 C. L. R., 330

294. ———————— *Mortgagees of property—Suit to recover title-deeds* —In a suit by a father against a son to recover the title-deeds of certain property alleged to have been purchased by the plaintiff in the name of the defendant when the latter was about two or three years old, which title-deeds were said to be fraudulently retained by the son, the defendant did not appear, but two other persons who alleged that they were mortgagees from the son, were made parties. *Held* that they should not have been made parties under s 73 of the Civil Procedure Code, 1859, simply on the ground that they had lent money to the son on the security of the property. AKBUR ALI *v* MAHOMED FAIZ BUKSH [15 W. R., 12

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

295. ———————— *Suit for partition—Mortgagee of interest of co-owner—Civil Procedure Code (Act X of 1877), s. 32.*—In a suit for the partition of joint family property, the mortgagees of the right, title, and interest of the plaintiff applied under s. 32 of the Civil Procedure Code to be added as parties. *Held* that their presence was not necessary in order "to enable the Court effectually and completely to adjudicate and settle all the questions involved in the suit" within the meaning of s. 32. MOHINDRO BHOOSUN BISWAS *v.* SHOSHEEBHOOSUN BISWAS . . I. L. R., 5 Calc., 882

296. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 32 and 372—Mortgagee added as party—Purchaser pendente lite.—Mortgage before suit of defendant's interest.*—*A* sued *V* and *S* to establish his right to attach a certain house in execution of a decree obtained by him in a previous suit. In their written statement the defendants alleged that *A* had obtained the decree in question by fraud. Shortly before the present suit, *V* had mortgaged the house to *H* for R33,000. About three weeks after the suit had been filed, *H* advanced a further sum of R5,000 to *V* on the same security, and on the same day (12th December 1881) entered into an agreement with *V*, by which he agreed to buy the house for R45,000, the sale to be completed immediately after the decision of the present suit. The agreement provided that *V* should defend the suit; but, if the result of the suit should be to establish the plaintiff's right to seize the house in execution, then that *H* should be at liberty to cancel the contract of sale. Subsequently *V* wrote to *H* declaring his intention of abandoning his defence. *H* thereupon applied to be made a defendant to the suit, in order to protect the house from the plaintiff. *Held* that *H* was entitled to be made a party under ss. 32 and 372 of the Civil Procedure Code (Act XIV of 1882). AHMEDBHOY HUBIBHOY *v.* VULLEEBHOY CASSUMBHOY. EX-PARTE HASSANBHOY VISRAM . . I. L. R., 8 Bom., 323

297. ———————— *Suit for possession after rejection of claim under s. 246, Civil Procedure Code, 1859.*—*M* divided her estate among her children, retaining for herself one-seventh, which was afterwards increased by a portion of what had been given to one of the sons, who died. *M*'s rights in the estate were sold in execution to *D*, who sold them to *N* who sold them to *K*. *K* brought a suit against certain parties, who held the estate in zur-i-peshgi from *M* and her family for possession of the whole estate, but obtained a decree for one-seventh only, giving him possession conditionally on his paying to the zur-i-peshgidars *M*'s proportion of the loan. This decree was confirmed on appeal, and *K* made liable for the costs of those defendants in respect of whom his claim had been dismissed. Meantime *B*, an old judgment-creditor of *K*'s father, took out execution against *R*, and applied for sale of *K*'s rights in the estate, which were accordingly sold, the purchaser being *K* himself. Subsequently one of *M*'s daughters, a successful defendant in the suit brought by *K*, took out execution of her decree for costs, and put up *K*'s rights for sale. The sale was opposed, under s. 246, Civil Procedure Code, 1859, by *R*, a son of *B*, whose claim was summarily rejected, and *K*'s rights were bought by one *A*. *R* then brought a suit within one year to set aside the sale, and to have his own title declared. The suit was against the purchaser and against the representatives of the zur-i-peshgidars; but on the petition of *L*, one of *M*'s heirs, her name was added to the list of defendants. The first Court gave *R* a decree, but the lower Appellate Court found that his claim was barred by limitation against *L*, on the ground of non-possession within twelve years, and in respect of the zur-i-peshgidar because *K*'s decree had lapsed by delay in execution. *Held* that *L* was interested in the result of the suit, and the lower Courts committed no error in law in admitting her to be a defendant under s. 73, Civil Procedure Code, 1859. RAM SURUN SINGH *v.* MAHOMED AMEER . . . 13 W. R., 78

298. ———————— *Official Assignee—Suits against insolvent pending at time vesting order is made.*—The Official Assignee has no legal right under the Insolvent Act to apply to be made a party to suits against the insolvent pending at the time of a vesting order being made, nor has he the power, after judgment and decree have been pronounced in a suit against the insolvent prior to his vesting order, to get himself made a party to such suit with a view of setting aside the judgment or appealing therefrom. IN RE HUNT, MONNET & CO. EX-PARTE GAMBLE *v.* BHOLAGIR MANGIR [1 Bom., 251

299. ———————— *Suit originally against owners—Amendment of plaint—Ship added as party defendant.*—In a suit for collision originally filed against the owners of a ship,—*Held* that the plaintiffs might amend the plaint by adding the ship as a party defendant. BOMBAY AND PERSIA STEAM NAVIGATION COMPANY *v.* SHEPHERD [I. L. R., 12 Bom., 237

300. ———————— *Civil Procedure Code, 1882, s. 32—Joinder of new defendant against whom the plaint prays no relief.*—Suit upon a bond of which the obligor was therein described as the manager of a certain muth. The defendants, who were the sons of the obligor (since deceased), pleaded that the debt was contracted by their father for the benefit of the muth and as manager of the muth. The Judge ordered that the representative of the muth be joined as defendant in the suit under s. 32 of the Code of Civil Procedure, and subsequently a decree was passed against him. *Held* that the order under s. 32 was right, although the plaint had prayed for no relief against the muth. THIRTHASAMI *v.* GOPALA . I. L. R., 13 Mad., 32

301. ———————— *Civil Procedure Code, 1882, s. 437—Nonjoinder of parties—Persons having interest in suit.*—The holder of an impartible zamindari, governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining

PARTIES—*continued.*

3 ADDING PARTIES TO SUITS—*continued*

operations were carried on with success, and the commencement of mining operations was left optional with the lessee On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards), now sued the assignee of the lessee to have the lease set aside The defendant had executed a declaration of trust in respect of his interest in favour of certain persons who were not joined *Held per* MUTTUSAMI AYYAR and WILKINSON, *JJ* (affirming the judgment of PARKER, *J.*), that the defendant's interests not having been shown to be hostile to those of the persons entitled under the declaration of trust, the suit was not bad for non joinder. BERESFORD *v* RAMASUBBA

[I. L. R., 13 Mad., 197

302. ——— *Dismissal of suit for non joinder of parties—Necessary party—Civil Procedure Code (Act XIV of 1882), ss 28, 32, 295, and 315—English Judicature Act, 1875,*

[illegible]

held by defendants 1 to 4 against defendants 5 to 7, the defence mainly was that it was not maintainable in the absence of certain persons, who, like the

[illegible]

tion *Held* that, inasmuch as the absent decree-holders had applied for attachment and sale of the property in dispute in execution of their decrees and had successfully resisted the claim of the plaintiff, the plaintiff had a right to some relief against them (the absent decree holders) in respect of the matter involved in the suit, and as their presence was necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, the absent decree-holders were necessary parties to it, and the plaintiff not having brought them on the record as defendants the suit was not

[illegible]

303. ——— *Civil Procedure Code (1882), s 32—Powers conferred by s. 32, exercised after an order has been passed under s 108* —The powers conferred by s 32 of the Code of Civil Procedure in respect of the addition of parties are exercisable even after a suit had been reinstated on

[illegible]

304. ——— *Civil Procedure Code (1882), s 32—Suit for property wrongly sold in execution—Person claiming under distinct title* —An order for sale was made in execution of a decree A party claiming the property objected. His objection was overruled by the Court of first instance He appealed to the High Court The High Court held that the property ordered to be sold was not the property included in the mortgage on which the decree for sale was made, and was not property which could be sold under that decree In the meantime, the sale had taken place Thereupon the owner of the property, which the High Court had held on appeal was not saleable brought a suit and made the decree-holders and auction purchaser parties to it, and claimed as against them his property *Held* that it was not competent to the Court, acting under s 32 of the Code of Civil Procedure, to introduce into this suit as a defendant a person who claimed the property in suit by a title quite distinct from that under which any of the parties to the suit claimed KALIAN RAI *v* RAM RATAN . . I. L. R., 18 All., 306

305. ——— *Application to file an award and for* [illegible]

[illegible]

sented *K*, a creditor of the defendant, thereupon applied to be made a party to the suit and objected to the filing of the award and to the decree alleging that the award was fraudulent and fictitious and had been made in order to save the defendant's property from his creditors The Subordinate Judge made *K* a party to the suit, and refused the plaintiff's application On application to the High Court,—*Held* that *K* ought not to have been made a party to the suit His remedy was to apply under s 484 of the Civil Procedure Code (Act XIV of 1882) for an attachment before judgment of the defendant's property DUNGARSI DIPCHAND *v* UJAMSI VALSI

[I. L. R , 22 Bom , 727

306. ——— *Civil Procedure Code (Act XIV of 1882), ss. 29 32—Party interested in decision—Suit for removal of a trustee* —Plaintiff brought the present suit to remove the present Sardar Panda of the temple of Baidyanath and to appoint somebody else It was alleged that the custom was that the Panda was elected in a certain way. The defendant denied this and alleged that the succession to the office was by the rule of primogeniture One of the issues was "If the defendant is removed from his position, who should be appointed in his place ? And should any scheme be framed for regulating the management of the debutter properties ?" A petition was then made by the eldest son of the eldest son (now deceased) of the defendant to be made a party *Held* that he should

[illegible]

307. ——— *Civil Procedure Code (Act XIV of 1882), s 372—Champerter*

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

Application by, to be made a party to the suit—Assignment to champertor, disputed—Compromise.—Case in which one *K*, who had advanced moneys to the plaintiff to enable her to carry on the suit and had obtained an assignment of half of her interest, which assignment was disputed by the plaintiff, was made a party defendant on his own application. RAJARANEE DASSEE *v.* DEBENDRA NATH SHAW [3 C. W. N., 754

308. ———— *Power of Court—Limitation—Civil Procedure Code (Act XIV of 1882), ss. 23, 363, 364.*—No question of limitation can arise with respect to the Court's power to make an order adding a party defendant to a suit. ORIENTAL BANK CORPORATION *v.* CHARRIOL [I. L. R., 12 Calc., 642

Nor a respondent. MANICKYA MOYEE *v.* BORODA PROSAD MOOKERJEE . I. L. R., 9 Calc., 355 [11 C. L. R., 430

309. ———— *Limitation—Suit for partnership accounts—Joint contract—Necessary parties, Omission of—Time of joinder, how material.*—A suit was brought for partnership accounts. Upon the objection of the defendant, it was found that a necessary party defendant had been omitted, and such party was afterwards added as a defendant at a time when the suit as against him was barred. *Held* that the whole suit was rightly dismissed. RAMDOYAL *v.* JUNMENJOY COONDOO . . . I. L. R., 14 Calc., 791

310. ———— *Civil Procedure Code (1882), s. 32—Court adding a defendant—Limitation.*—No question of limitation arises where a Court, of its own motion, under s. 32 of the Civil Procedure Code, adds a party defendant to a suit. *Oriental Bank Corporation* v *Charriol, I. L. R., 12 Calc., 642*, followed. GRISH CHUNDER SASMAL *v.* DWARKA NATH DINDA [I. L. R., 24 Calc., 640

KHADIR MOIDEEN *v.* RAMA NAIK [I. L. R., 17 Mad., 12

311. ———— *Civil Procedure Code (Act XIV of 1882), s. 32—Limitation Act (XV of 1877), s. 22—Adding party by a Court of its own motion.*—No question of limitation arises, and s. 22 of the Indian Limitation Act does not apply when the Court of its own motion acts under s. 32 of the Code of Civil Procedure, and orders that the name of any person be added as a defendant. *Grish Chunder Sasmal* v. *Dwarka Nath Dinda, I. L. R., 24 Calc., 640*, and *Oriental Bank Corporation* v. *Charriol, I. L. R., 12 Calc., 642*, followed; *Khadir Moideen* v. *Rama Naik, I. L. R., 17 Mad., 12*, referred to; and *Imam-ud-din* v. *Liladhar, I. L. R., 14 All., 524*, dissented from. FAKERA PASBAN *v.* BIBI AZIMUNNISSA I. L. R., 27 Calc., 540 [4 C. W. N., 459

(*e*) APPELLANTS.

312. ———— Parties, Addition of, on appeal.—An Appellate Court has a discretionary power to substitute or add a new appellant or respondent after the period of limitation prescribed for an appeal. COURT OF WARDS *v.* GAYA PRASAD [I. L. R., 2 All., 108

See RANJIT SINGH *v.* SHEO PRASAD RAM [I. L. R., 2 All., 487

313. ———— Adding appellants—*Persons not parties originally.*—Persons not parties in the original suit are not entitled to have themselves added as appellants in the Appellate Court. WATON *v.* SURNOMOYEE . . 9 W. R., 259

314. ———— *Civil Procedure Code, ss. 32, 582.*—There is no power in the Code of Civil Procedure (Act XIV of 1882) to make a party to the suit a co-appellant. Ss. 32 and 582 of the Code give to an Appellate Court power only to strike out the name of a party, or to direct new parties to be added to the suit, whether as plaintiffs or defendants. VASUDEB BALKRISHNA *v.* SALUBAI [I. L. R., 10 Bom., 227

315. ———— *Assignment of interest pending suit—Adding assignee as party.*—After the dismissal of the plaintiff's suit, and pending a regular appeal to the High Court, the plaintiffs applied for leave to add the name of a party to whom a share of their right in the subject-matter had been assigned subsequently to the dismissal of the suit in the Court below. The Court refused the application. JAMEELA *v.* MAHOMED HOSSEIN [Marsh., 251: 2 Hay, 111

316. ———— *Appeal by widow of judgment-debtor—Alleged adopted son.*—A judgment-debtor died. His widow was thereupon placed on the record as his legal representative. In the execution-proceedings which followed the widow made an appeal to the High Court against a certain order passed by the Court executing the decree. To this appeal, a person, alleging himself to be the adopted son of the deceased judgment-debtor, applied to be made a party. The widow opposed the application denying the fact of the adoption. *Held* that, whether the applicant was or was not the adopted son of the deceased judgment-debtor, there was no objection to entering his name on the record if the decree-holder consented, as it tended to his security that this should be done. The applicant was accordingly made a co-appellant with the widow. LAKSHMIBAI *v.* SANTAPA REVAPA SHINTRE [I. L. R., 13 Bom., 22

(*f*) RESPONDENTS.

317. ———— Adding respondent—*Civil Procedure Code, 1882, s. 559—Limitation Act, 1877.*—The discretionary power of directing a person to be made a respondent, conferred on the Appellate Court by s. 559 of the Civil Procedure Code, is not limited by any provision in the Limitation Act (Act XV of 1877). MANICKYA MOYEE *v.* BORODA PROSAD MOOKERJEE . I. L. R., 9 Calc., 355 [11 C. L. R., 430

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

Nor in the case of the addition of a defendant. ORIENTAL BANK CORPORATION *v.* CHARRIOL [I. L. R., 12 Calc., 642

318. ———— *Appellate Court —Civil Procedure Code (Act XIV of 1882), s. 559* —The Court of first instance gave the plaintiff in a suit for money a decree against the defendant *B*, ex-

the unappealed decree of the Court of first instance behind him, his position was secure, the Appellate Court had improperly made *A* a respondent to the appeal and given a decree against him. ATMA RAM *v.* BALKISHEN . . I. L. R., 5 All., 266

319. ———— *Practice—Parties to cross-appeals.*—Suit by the adoptive son

manager of a joint Hindu family, of which defendant No. 2 was a member, and for the rightful purposes of the family. The family subsequently became divided, and the hypothecated property was divided between defendants Nos. 1 and 2. Defendant No. 1 afterwards hypothecated part of his share for a private debt to defendant No. 3, who,

separate appeals the plaintiff being the sole respondent to each appeal. The District Judge on appeal passed a decree directing that the plaintiff should first proceed against all the property which was not subject to the hypothecation to defendant No. 3 including the share of defendant No. 2. Defendant No. 2 preferred a second appeal joining all the other parties. *Held* that, though both defendants Nos. 2 and 3 preferred separate appeals from the original decree, they only made the plaintiff respondent, and defendant No. 3 omitted to make the appellant (defendant No. 2) a party to his appeal, but the relief prayed for in each appeal was that the original decree might be set aside so far as it was in plaintiff's favour and against each appellant . . . . . Having regard to the relief claimed, there was no reason to hold that the appellant (defendant No. 2) was a necessary party to the appeal preferred by defendant No. 3. GOPALA *v.* SAMINATHAYYAN [I. L. R., 12 Mad., 255

320. ———— *Civil Procedure Code, s. 559—Joinder of respondents on appeal.*—In 1877 the plaintiff executed a deed of hypothecation to one of two partners to secure a loan obtained from them jointly. In 1881 the plaintiff sold, *inter alia*, the hypothecated property to defendants 2 to 4, and it was arranged that the secured debt should be paid off by the vendees. They failed to do this, but in 1882 they executed a mortgage for the amount due in favour of the other of the two partners, and he thereupon gave a written discharge to the plaintiff,

the decree being declared to be charged on the land in the possession of defendants 2 to 4. Meanwhile, defendant 1, who was the assignee of the mortgage of 1882, had obtained a decree upon it against defendant 4. This decree not having been executed, he subsequently sued upon the mortgage again, and obtained a decree against defendants 2 to 4. The plaintiff now sued to have the last mentioned decree set aside and recover the balance of the purchase-money from defendants 2 to 4. The Court of first instance passed a decree for the amount claimed and declared it to be charged on the land. Defendant 1 preferred an appeal in which defendants 2 to 4 were joined by the Court of First Appeal which dismissed the suit. *Held* that defendants 2 to 4 were rightly joined as respondents by the Court under the Civil Procedure Code, s. 559. KANAGAPPA *v.* SOKKALINGA I. L. R., 15 Mad., 362

321. ———— *Power of the Appellate Court to add parties as respondents—Code of Civil Procedure (Act XIV of 1882), s. 559.*—In a suit for contribution by the plaintiffs against the defendants the Court of first instance gave the plaintiffs a decree against one defendant and exonerated the others. On an appeal by the defendant against whom the decree was passed, the Appellate Court directed the defendants exonerated by the first Court to be added as respondents, set aside the decree against the appealing defendant, and passed a decree against the defendants who were added as respondents, as representatives of one S, and ordered the amount so decreed to be recovered from the estate of her (S's) husband. On appeal to the High Court by the defendants, who were thus made liable, on the ground that they were wrongly made parties and no decrees could be passed against them,

LAL MUKERJEE *v.* GIRINDRA NATH MUKERJEE [I. L. R., 25 Calc., 565
2 C. W. N., 425

322. ———— *Civil Procedure Code, s. 559—Power of Appellate Court to add*

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*continued.*

respondent—Limitation Act (XV of 1877), s. 22. —The power of an Appellate Court to make a person a respondent, under s. 559 of the Civil Procedure Code, is not affected by the Limitation Act (XV of 1877). In exercising its powers under s. 559 of the Civil Procedure Code, an Appellate Court is competent to make a person a respondent who, in the original suit, was arrayed on the same side with the appellant. SOHNA *v.* KHALAK SINGH [I. L. R., 13 All., 78

323. ———— *Civil Procedure Code, s. 559—Power of Court to add respondent—Limitation Act (XV of 1877), s. 22.—Held* by the Full Bench that it is competent to a Court sitting under s. 559 of the Code of Civil Procedure to add a person as respondent in an appeal, though the time within which an appeal might have been preferred as against such person has expired. BINDESHRI NAIK *v.* GANGA SARAN SAHU . I. L. R., 14 All., 154

324. ———— *Civil Procedure Code (1882), s. 559—Addition of a party in second appeal.*—A Court cannot, in a second appeal, act under s. 559 of the Code of Civil Procedure, and add a party as a respondent unless such party was a party to the appeal below, and this notwithstanding that he was a party to the suit in the Court of first instance. CHUNNI *v.* LALA RAM . . I. L. R., 16 All., 5

325. ———— *Civil Procedure Code (1882), ss. 32, 559, and 587—Addition of parties on second appeal—Appellate Court, Power of.*—The Court on second appeal is competent to bring on the record persons who had been originally joined in the suit, but were not joined in the lower Appellate Court. *Chunni* v. *Lala Ram, I. L. R., 16 All., 5,* dissented from. PAYA MATATHIL APPU *v.* KOVAMEL AMINA . . I. L. R., 19 Mad., 151

326. ———— *Civil Procedure Code (Act XIV of 1882), ss. 372, 582—Attaching creditor of decree-holder seeking to be brought on to the record as a respondent.—Held* that a creditor of a decree-holder who had attached the decree pending an appeal against it was not entitled to be made a party respondent to the appeal under ss. 372 and 582 of the Code of Civil Procedure. CHAIL BEHARI LAL *v.* RAHMAL DAS . I. L. R., 20 All., 38

327. ———— *Power of the Appellate Court to add parties as respondents—Code of Civil Procedure (Act XIV of 1882), s. 559.*—*C*, owner of a factory, executed a hundi in favour of *B*, and purchased land from *B* from the proceeds thereof. *C* then sold his factory to *H*, who obtained possession of the land. In a suit brought by *B* upon the hundi, *C* and *H* were made defendants, but *C* did not appear in the first instance, and an *ex-parte* decree was passed against him alone. *C* appealed against *B* without making *H* a party respondent to his appeal. The lower Appellate Court passed an order adding *H* as a respondent, and eventually passed a decree against *H*. On second appeal by *H* to the High Court,—*Held*, referring to s. 559 of the Civil Procedure Code (1882), that the lower Appellate Court was right in adding *H* as a party respondent to the appeal. *Atma Ram* v. *Balkishen, I. L. R., 5 All., 266,* dissented from. *Upendra Lal Mukerjee* v. *Girindra Nath Mukerjee, I. L. R., 25 Calc., 565,* and *Manickua Moyee* v. *Baroda Prosad Mookerjee, I. L. R., 9 Calc., 355,* referred to. HUDSON *v.* BASDEO BAJPYE [I. L. R., 26 Calc., 109 3 C. W. N., 76

PARTIES—*continued.*

3. ADDING PARTIES TO SUITS—*concluded.*

328. ———— *Persons interested in the result of the appeal—Civil Procedure Code (1882), s. 559.*—In a suit for possession of land the Court of first instance decreed the plaintiff's suit in part against the defendants. Some of the defendants appealed to the High Court without making the other defendats party-respondents. The plaintiffs preferred a cross-objection under s. 561 of the Code of Civil Procedure. The non-appealing defendants where added as respondents by an order of the High Court to the effect that they might be made parties without prejudice to any objection that might be urged on their behalf at the hearing of the appeal. The non-appealing defendants at the hearing of the appeal contended that they were wrongly made parties. *Held* that the non-appealing defendants were persons who were interested in the result of the appeal, within the meaning of s. 559 of the Code of Civil Procedure, and that therefore they were rightly made parties. BISHUN CHURN ROY CHOWDHRY *v.* JOGENDRA NATH ROY [I. L. R., 26 Calc., 114

4. STRIKING OFF PARTIES.

(*a*) DEFENDANTS.

329. ———— **Removal of name of defendant from record**—*Civil Procedure Code (1882), s. 32.*—An order striking the name of a defendant off the record of a suit cannot be made under s. 32 of the Code of Civil Procedure at a period subsequent to the first hearing of the suit. ABBASI BEGAM *v.* IMDADI JAN . . . I. L. R., 18 All., 53

5. SUBSTITUTION OF PARTIES.

(*a*) GENERALLY.

330. ———— **Substitution of parties in execution proceedings after appeal** — *Representatives of judgment-debtor—Civil Procedure Code (1882), ss. 361 to 372.*—The Civil Procedure Code does not contemplate the representatives of the judgment-debtor being placed on the record after the appellate decree has been passed. There is no express provision for it in the sections relating to execution. Ss. 361 to 372 relate to changes during suit, and speak only of "plaintiffs" and "defendants" —terms which seem to show that they were only intended to apply to proceedings up to final determination by the appellate decree and not to proceedings in execution between the judgment-creditor and

PARTIES—*continued.*

5. SUBSTITUTION OF PARTIES—*continued.*

judgment-debtor. HIRACHAND HARJIVANDAS *v* KASTURCHAND KASIDAS . I. L. R., 18 Bom., 224

331. ———— "Legal representative"— [illegible]

[illegible]

of an appeal, either all the representatives of the [illegible]

[illegible]

[illegible] W. R., 165

See JUDOOPUTTEE CHATTERJEE *v* CHUNDER KANT BHUTTACHARJEE 9 W. R., 309

(*b*) PLAINTIFFS.

333 ———— *Purchaser of plaintiff's interest* —The Court has no power to allow the purchaser of the rights of the plaintiff in a suit to be substituted for him on the record JUDOOPUTTEE CHATTERJEE *v* CHUNDER KANT BHUTTACHARJEE 9 W. R., 309

SAHEB ROY *v* CHOONEE SINGH 9 W. R., 487

BEER CHUNDER ROY *v* TUMEEZOODEEN [12 W. R., 87

See BAL GOBIND TEWAREE *v* HUREENATH PERSHAD SAHOO 16 W. R., 183

334. ———— [illegible]
Assignee of [illegible]
Ground of [illegible]
substitute the assignee of the original plaintiff as [illegible] plaintiff on the record the proper course being to add him as a party plaintiff if he desires it Where, [illegible]

[illegible]

Judooputtee Chatterjee v Chunder Kant Bhuttacharjee, 9 W. R., 309, Saheb Roy v. Choonee Singh, 9 W. R., 487, considered and explained. SUSHEE BURSAN *v* MUDDON MOHUN CHOTTOPADHYA . . 2 C. L. R., 297

335. ———— *Consent of* [illegible]

[illegible]

tiffs *Held* that, although it was not strictly regular or usual to allow the two claimants to come upon the record as co-plaintiffs, the irregularity had been cured by the consent of the parties, it being for their advantage that the trial should proceed and that the co-plaintiffs should be left in possession of any decision which they might obtain against the defendants, and allowed to settle the question arising between themselves in other proceedings. PARBUTTY *v* HIGGINS . . 17 W. R., 475

S C PARBATTI *v* KHIKUN 8 B L. R., Ap., 98

336 ———— *Making defendants plaintiffs after suit by them would be barred —Limitation—Civil Procedure Code, 1882 s 32 —Suit to set aside sale* —A mitta held by tenants in common was sold for arrears of revenue at a time when the owners of a moiety thereof were minors In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale the plaintiffs impleaded *also the other previous owners,* of whom one was the purchaser at the sale Two others, in their written statement, pleaded that the purchase had been made in fraud of their rights, and claimed to be still entitled to their shares in the mitta on the ground that the purchaser must be held to have purchased for their benefit (Indian Trusts Act, 1882, s 90) They further claimed that should the sale be set aside so far as the plaintiff's interests were concerned, the sale of their interests also should be held to be null and void Before the suit came on for hearing, the District Judge *suo motu* ordered that these two defendants should be made plaintiffs in the suit under s 32 of the Code of Civil Procedure At the date when this order was made the claim of these defendants, had they sued to set aside [illegible]

[illegible]

337. ———— *Death of plaintiff after judgment* —When a person desires to be added as representative upon the death of a plaintiff after judgment he must satisfy the Court that he is the proper person to be so added MUHAMMAD HUSAIN *v* KHUSHALO I L. R., 9 All., 131

338 ———— *Civil Procedure Code 1882, ss 365, 367—Procedure when rival parties claim to be the representatives of deceased plaintiff—Rival claimants—Appeal—Appeal by one plaintiff against another* —Pending a suit for redemption, one of the plaintiffs died. Thereupon *A*, claiming as the adopted son, and *B*, as the daughter of the deceased, made separate applications under s 365 of the Code of Civil Procedure (Act XIV of 1882) to be placed on the record. The Subordinate Judge ordered both claimants to be entered on the record as legal representatives of the deceased plaintiff and proceeded with the suit At the hearing he found that *A*'s adoption was proved, and that *B* was not the legal heir of the deceased. He therefore passed a decree for redemption in *A*'s favour Against this decree *B* appealed, making *A* alone the respondent in the appeal The Appellate

PARTIES—*continued.*

5. SUBSTITUTION OF PARTIES—*continued.*

Court held that *B*, and not *A*, was the heir of the deceased. It therefore passed a decree in *B*'s favour and against *A*. On second appeal to the High Court,—*Held* that the Subordinate Judge could not, under s. 367 of the Code of Civil Procedure, admit on the record both the rival claimants as legal representatives of the deceased plaintiff, or adjudicate by his decree between their rival claims. *Held* also that the Appellate Court ought not to have allowed one plaintiff to appeal against the other, or to have decided the rights of different plaintiffs *inter se.* VITHU *v.* BHIMA . . I. L. R., 15 Bom., 145

339. ———— *Civil Procedure Code (1882), ss. 365 and 367—Representation of a deceased plaintiff.*—S. 365 of the Code of Civil Procedure presupposes that the party claiming to represent a deceased plaintiff is his legal representative, but, if the representative character is denied, or when two or more persons claim it, the procedure prescribed by s. 367 of the Code should be followed. OULA *v.* BEEPATHEE . I. L. R., 17 Mad., 209

340. ———— *Dekkan Agriculturists Act (XVII of 1879), ss. 49 and 74—Conciliation agreement forwarded to be filed in Court—Death of plaintiff—Substitution by the conciliator of the name of the deceased's heir on the return of the agreement by the Subordinate Judge—Practice.*—A plaintiff applied to a conciliator appointed under the Dekkan Agriculturists' Relief Act (XVII of 1879) for an amicable settlement of a dispute between himself and the defendant, and came to an agreement disposing of the matter which was duly forwarded to the Subordinate Judge to be filed in Court. On receipt of the agreement, the Subordinate Judge issued notices to the parties to show cause why the agreement should not be filed, and was, on the day of hearing, informed that the agreement could not be filed owing to plaintiff's death. The agreement was then returned to the conciliator, who entered therein the name of the deceased plaintiff's heir and forwarded it to the Subordinate Judge. A question having thereupon arisen as to whether the conciliator could enter on the record the name of the heir of the deceased plaintiff, —*Held* that, although there is no provision in the Dekkan Agriculturists' Relief Act empowering a conciliator to enter the name of the heir of a party, and Government have not apparently under s. 49 (*a*) of the Act made any rules regulating the procedure before conciliators in this respect, yet when a Subordinate Judge is seized of a conciliation agreement, there is a proceeding before him under the Act. He should therefore, under s. 74 of the Act, follow the provisions of the Civil Procedure Code (Act XIV of 1882) in regard to placing on the record the heirs of the deceased parties. NARAYANDAS SAKHARAM *v.* KONDI . . . I. L. R., 19 Bom., 202

341. ———— *Representatives of deceased widow—Civil Procedure Code (1882), s. 365—"Legal representatives"—Reversionary heirs of husband.*—On the death of a Hindu heiress, after institution of a suit to recover property belonging to her deceased husband, the reversionary heirs of the husband are her legal representatives to proceed with the suit within the meaning of s. 365 of the Civil Procedure Code. *Ramkishore Chuckerbutty* v. *Kallykanto Chuckerbutty, I. L. R., 6 Calc., 479,* applied. *Katama Natchiar* v. *The Rajah of Shivagunga, 9 Moore's I. A., 539,* and *Hari Nath Chatterjee* v. *Mothurmohun Goswami, I. L. R., 21 Calc., 8,* referred to. PREMMOYI CHOUDHRANI *v.* PREONATH DHUR

[I. L. R., 23 Calc., 636

342. ———— *Legal representative of Hindu widow—Civil Procedure Code, s. 365—Reversioner.*—A reversioner succeeding to the estate of a deceased person after the death of the widow of that person would be bound by a decree obtained against the widow, provided that there was a fair trial of the suit in which the decree was passed. Consequently the widow's right to sue survives to, and devolves on, the heir of her husband entitled to the estate, and such heir, and not her personal heirs, should be held to be her legal representative for the purposes of s. 365 of the Code of Civil Procedure. *Katama Natchiar* v. *The Rajah of Shivagunga, 9 Moore's I. A., 543; Hari Nath Chatterjee* v. *Mothurmohun Goswami, I. L. R., 21 Calc., 8,* and *Premmoyi Choudhrani* v. *Preonath Dhur, I. L. R., 23 Calc., 636,* referred to. TRIBHUWAN SUNDAR KUAR *v.* SRI NARAIN SINGH

[I. L. R., 20 All., 341

343. ———— *Civil Procedure Code (Act XIV of 1882), s. 372—Application for revival of suit—Limitation—Application in a pending suit.*—In a suit for a declaration of the rights of the parties and for partition a preliminary decree was made on the 12th July 1887, declaring the rights of the parties and directing partition. Since then no steps had been taken to carry out the decree. The plaintiff, the father of the petitioners, died in December 1891, leaving the petitioners, who now applied to have the suit revived in their name. One defendant opposed the application on the ground that it was barred by limitation under s. 372, Civil Procedure Code. He also alleged that he was an infant at the time the suit was instituted, and was not aware of any of the proceedings till notice of this application. *Held* that the application was made in a pending suit, and, though falling within s. 372, Civil Procedure Code, was not time-barred, the right to apply being one which accrues from day to day. *Kedar Nath Dutt* v. *Harra Chand Dutt, I. L. R., 8 Calc., 420,* and *Baroda Kant Mitter* v. *Aghore Nath Neogy,* unreported. Suit No. 265 of 1882. (SALE, *J.*) That the question as to whether the defendant was aware of the proceedings could not be considered at that stage of the case. RAM NATH BHATTACHARJEE *v* UMA CHARAN SIRCAR

[3 C. W. N., 756

(*c*) DEFENDANTS.

344. ———— **Substitution of defendant** —*Death of defendant.*—As soon as it is shown that

PARTIES—*continued*

5 SUBSTITUTION OF PARTIES—*continued*

a defendant was dead at the time the plaint was filed, the Court ought to refuse to proceed further in the suit, and to leave it to the plaintiff to begin *de novo against the proper person* SURNOMOYEE *v* BYKUNT CHUNDER MUSTOFEE . 25 W. R., 17

345. ——— *Death of defendant—Representative of deceased defendant*—Where the plaintiff in a suit prays that a person may be substituted on the record as the heir of a defendant who has died the Judge should raise an issue as to whether the person sought to be substituted is the heir of the deceased defendant KANAI LALL KHAN *v* SASHI BHUSON BISWAS

[I. L R., 6 Calc., 777
8 C. L. R., 117

346 ——— *Procedure—Death of debtor after attachment and before sale—Representatives not made parties—Sale illegal*—Where a judgment debtor died after his land had been attached and the creditor brought the land to sale without making the representatives of the deceased parties to the proceedings—*Held* that the sale was illegal and must be set aside RAMASAMI AYYANGAR *v* BAGIRATHI AMMAL

[I. L R., 6 Mad., 180

347. ——— *Civil Procedure Code, ss 372, 647—Assignment after decree in Court of first instance—Assignee made party after appellate decree for purposes of execution*— [illegible] applied [illegible] of an [illegible] The [illegible] ecution [illegible] ending s 372 with s 647, to bring in a party after decree and make him a judgment debtor for the purposes of execution *Gocool Chunder Gossamee v Administrator-General of Bengal, I. L R 5 Calc., 726*, and *Attorney General v Corporation of Birmingham, L R., 15 Ch D., 423*, referred to Where a Court had so acted, by an order which might have been, but was not made the subject of appeal under s 588 of the Code—*Held* that as there was no jurisdiction to make such an order, the party [illegible]

BANK [illegible]

348 ——— *Civil Procedure Code, ss 234 332 583—Death of judgment-* [illegible]

August. The persons possessed presented a petition under s. 332 of the Code of Civil Procedure disputing his right to be put into possession, on the ground *inter alia*, that the judgment-debtor was not represented on the record. On appeal against the appellate order of the District Judge,—*Held*, assuming that the order for possession was made prior to the death of the judgment-debtor, there was no necessity for the decree-holder to bring any other person on to the record between the date of that order and the date on which the order was executed. *Ramasami v Bagirathi, I L R., 6 Mad., 180* distinguished BIYYAKKA *v* FAKIRA

[I. L. R., 12 Mad., 211

349 ——— *Civil Procedure Code, ss 234 368—Sale in execution of decree—Death of judgment debtor after attachment and before sale—Representatives not joined*—A decree-holder attached land of the judgment-debtor in execution of his decree and a sale proclamation was made the judgment-debtor died and his legal representatives were not brought on to the record but the execution proceeded to sale, *Held* that the repre- [illegible] parties on [illegible] the sale [illegible] *Bagi* [illegible] followed

KRISHNAYYA *v* UNNISSA BEGAM

[I. L. R., 15 Mad., 399

GROVES *v* ADMINISTRATOR-GENERAL OF MADRAS

[I. L R., 22 Mad., 119

Contra, SHEO PRASAD *v* HIRA LAL

[I. L. R., 12 All., 440

(*d*) APPELLANTS

350 **Substitution of appellant** —*Right of lessor after lease has expired to represent lessee*—A lessor cannot, after the expiration of the lessee's lease, appeal from the dismissal of the lessee's suit concerning a boundary dispute COMMISSIONER OF THE SOONDERBUNDS *v* CHUNDER COOMAR GHOSE 3 W. R., 175

"Plaintiff" was held to include an appellant in RAJMONEE DABEE *v* CHUNDER KANT SANDEL

[I. L. R., 8 Calc., 440: 10 C. L. R., 437

351. ——— *Civil Procedure Code (1882), ss 365 366, and 582—Administrator appointed under Bom Reg VIII of 1827 s 10—Act XIX of 1841, s 9—Administrator-General's Act (II of 1874), s 18—Death of appellant—Abatement of appeal.*—An administrator appointed under s 10 of Bombay Regulation VIII of 1827 does not by such appointment become the legal representative of the deceased, or entitled to continue an appeal filed by him MALAPA SIDAPU DESAI *v* DEVI NAIK I. L. R., 21 Bom., 102

352. ——— *Civil Procedure Code (1882), s 365—Legal representative—Executor—Death of appellant.*—A tarwad in Malabar subject to Marumakkatayam law was reduced in number to two persons, *viz*, the karnavan and his younger brother, the plaintiff They quarrelled, and the former without the consent of the latter adopted as members of the tarwad his son and daughter and her children On his death the plaintiff sued for possession of the tarwad property and for a declaration that

PARTIES—*continued.*

5. SUBSTITUTION OF PARTIES—*continued.*

he adoptions were invalid. *Held* that the plaintiff was entitled to the relief asked for. After an appeal was presented by plaintiff, who had obtained a decree for possession but no other relief, he died leaving a will making certain dispositions of the property to which he was solely entitled on the assumption that the adoptions in question were invalid, and his executor was admitted as his legal representative for prosecuting the appeal. PANYATH NANU MENON *v.* CHIETTHIPALLI RAMAN MENON

[I. L. R., 20 Mad., 51

353. ———— *Substitution of beneficiaries for trustees—Decree for possession with directions for mutual conveyances. Effect of—Appeal filed in the name of a wrong person—Civil Procedure Code (Act XIV of 1882), s. 27—Limitation Act (XV of 1877), s. 5.*—From an order made in execution of a decree against certain trustees, the latter filed an appeal on the 18th April 1898. In the meantime, in a suit instituted by the beneficiaries against the trustees, a decree had been passed on the 5th April 1898, declaring that the beneficiaries were entitled to possession of the trust estate from the 18th April and directing the trustees to make over possession to them. This decree further directed that proper conveyances should be executed by the trustees when required. On the 5th July 1898, the beneficiaries applied for substitution of their names in the place of the trustees in the appeal filed on the 18th April. *Held* that, though the trustees were directed to execute proper conveyances when required, yet, having regard to the direction as to delivery of possession, the decree of the 5th April must be taken to have divested the property out of the trustees and vested it in the beneficiaries. The trustees therefore had not any estate left in them on the 18th April sufficient to justify their being appellants. That the beneficiaries can only be substituted in place of the trustees if they can bring the case within s. 5 of the Limitation Act. S. 27 of the Civil Procedure Code does not apply to an appeal filed in the name of a wrong person. DWARKA NATH BISWAS *v.* DEBENDRA NATH TAGORE

[4 C. W. N., 58

(*c*) RESPONDENTS.

354. **Substituting respondent** —*Discretion of Court to add parties as respondents.* —A Judge has discretion in the matter of adding a fresh respondent to the record, the latter having been a party to the original suit. SHOWDAMINEE DOSSEE *v.* RAM ROODRO GANGOOLY 8 W. R., 367

355. *Civil Procedure Code (1882), ss. 3, 368, 582—Respondent, Death of—Practice.*—Having regard to s. 3 of Act XIV of 1882. it is clear that the word "Code" in sch. II, art. 171B, of Act XV of 1877 applies to the present Code of Civil Procedure, Act XIV of 1882; and that therefore the word "defendant" in s. 368 of that Code, when read with s. 582, must be held to include "respondent." IN THE MATTER OF THE PETITION OF SOSHI BHUSAN CHAND. SOSHI BHUSAN CHAND *v.* GRISH CHUNDER TALUKHDAR . . . I. L. R., 11 Calc., 694

356. *Co-sharer of plaintiff in suit.*—When a co-defendant (a co-sharer with the plaintiff in the property in dispute) was thought by the Judge to be a necessary party as respondent in the appeal,—*Held* that the Judge should, under s. 73, Act VIII of 1859, and otherwise, have caused him to be made a respondent, instead of dismissing the appeal. ACHUMBAH PAUREY *v.* RAMSAHOY PAUREY . . W. R., 1864, 136

357. *Procedure in case of the death of respondent pending an appeal —Civil Procedure Code (Act X of 1877), ss. 368, 582.*—Procedure analogous to that laid down in s. 368 of the Civil Procedure Code (Act X) of 1877 in respect of the death of a defendant must be applied in the case of the death of a respondent. Where therefore a respondent dies during the pendency of an appeal, it is for the appellant to take the initiative, and he is at liberty to select one or more persons to defend the appeal; and no person other than the person so selected has a right to force himself into the proceedings and to claim to have his name entered as representative of the deceased respondent against the appellant's consent. Persons so introduced on the record may or may not be the real representatives of the deceased respondent; but the merits of their claim to be such, on the ground of any right or status, such as that of adoption, is immaterial to the determination of the appeal. LAKSHMIBAI *v.* BALKRISHNA . I. L. R., 4 Bom., 654

See RAJMONEE DABEE *v.* CHUNDUR KANT SANDEL I. L. R., 8 Calc., 440 : 10 C. L. R., 437

358. *Civil Procedure Code, 1882, ss. 365, 368, and 582—Deceased sole respondent—Practice.*—Under s. 368 of the Civil Procedure Code (XIV of 1882), a plaintiff may have the representatives of a deceased sole defendant placed on the record so that he may continue his suit against them, but there is no section which allows the representatives of a sole defendant who has died to be placed on the record at their own request. Consequently s. 582 gives no authority to a Civil Court to place on the record at their own request the representatives of a deceased sole respondent. Such an application cannot be entertained. BAI JAVER *v.* HATHISING . . I. L. R., 9 Bom., 56

359. *Civil Procedure Code, ss. 32, 368—Death of respondent in appeal —Rival claims to represent deceased.*—Although a Court is bound by s. 368 of the Code of Civil Procedure to place on the record the name of the person alleged by the appellant to be the legal representative of a deceased respondent, nevertheless, where a person, other than the person alleged by the appellant to be such representative, claims, on good *primâ facie* grounds, to be the representative of the deceased respondent, and the interests of the person entitled to the estate of the deceased may be prejudiced, the Court should, under s. 32 of the Code

PARTIES—*continued*

5 SUBSTITUTION OF PARTIES—*continued*

of Civil Procedure, proceed to make such claimant also a party to the appeal ATHIAPPA v AYANNA [I. L R, 8 Mad, 300

360 — — *Purchasers of share in property after decree* —On appeal to the

by that decree, the Court could not make any order respecting their claims, and they had been unnecessarily made parties to the appeal RADHA KISHEN MAN v BACHAMAN I L R, 3 All, 118

361. — *Civil Procedure Code (Act XIV of 1882), ss 368, 369, and 372—Death of a respondent pending appeal—Right of assignee of his interest to be substituted in his place* —At an auction-sale held in execution of a decree passed against one *G A*, certain property put up for sale was purchased by one *K H*, the husband of the opponent. Subsequently *K A*, the brother of *G A*, brought a suit against the opponent to establish his right to the property purchased by the opponent's husband On the 17th February 1882 he obtained

placed on the record as respondent. *Held* that the applicant was entitled to be made a party The analogy of s 368 is to be extended generally to

in s. 368 may well be intended for the case in which the death, and death only, of the defendant constitutes the change of circumstances for which it was thought necessary to provide, but where there has been not only the death of the respondent, but an alleged prior conveyance to him of the property awarded by the decree appealed against, there is a fact in addition to the fact contemplated by s 368, and the rule in s 372, being alone sufficiently inclusive, must apply. An appellant may determine who shall be respondent, but not that any particular person shall not be a respondent The choice of respondents made by the appellant may be defective through ignorance or fraud and the real representative of the decree-holder cannot justly be refused an opportunity of maintaining the decision which it is sought to upset RAJARAM BHAGVAT v JIBAI I L R., 9 Bom, 151

PARTIES—*continued.*

5 SUBSTITUTION OF PARTIES—*continued.*

362. *Death of respondent—Representatives not added—Civil Procedure Code, 1859, s 104* —A suit having been dismissed, plaintiff appealed from the decision, and although the defendant's death was notified to the Court, and the plaintiff did not attempt, under s 104, Code of Civil Procedure, to bring in the heirs of the deceased or have deceased in any way represented the Court tried the appeal and passed a decree *Held* that the decision of the lower Appellate Court was incorrect in law MONEE LALL v FUZUL HOSSEIN [14 W R., 337

See ROOP NARAIN SINGH v RAMAYEE SINGH [3 C L R., 192

363 — *Death of respondent before decree on appeal passed against him —Decree passed in ignorance of death of party* — Where a suit which had been decreed in the first Court, was dismissed on appeal after the death of the plaintiff, and the representatives of the latter had not aided in keeping the defendant ignorant of his death, the High Court met the difficulty, as to executing a decree against a dead man, by directing

[20 W. R., 103

364. — *Death of plaintiff-respondent during pendency of appeal— Application by defendant-appellant for substitution of deceased's legal representative—Application by third person claiming to be such representative and to be substituted as respondent—Civil Procedure Code, ss 32, 365, 367, 369* —During the pendency of an appeal, the plaintiff respondent died, and, on the application of the appellant, the name of *H* was entered on the record as respondent in place of the deceased. Subsequently *K* applied to be substituted as respondent, alleging that he and not *H* was the legal representative of the plaintiff The Court passed an order making *K* a joint respondent with *H* To this *H* objected, but he did not appeal from the order Ultimately the Court dismissed the appeal, and passed a decree that the money claimed in the suit was payable to the two respondents. *Held* that s. 32 of the Civil Procedure Code did not apply to the case so as to authorise the Court below to add *K* as a respondent; that the only other section under which he might possibly have been brought in was s. 365; that even assuming

PARTIES—*continued.*

5. SUBSTITUTION OF PARTIES—*continued.*

s. 365 to apply to such a case, the Court had no power to make *K* a respondent jointly with *H*, but should have taken one or the other of the courses specified in s. 367, so as to determine who was the legal representative of the deceased plaintiff; and that the course adopted by the Court was an exceedingly inconvenient one, which ought not to have been taken, even if the Court had power under the Code to take it. The "questions involved in the suit," referred to in the second paragraph of s. 32 of the Civil Procedure Code, are questions between the plaintiff and the defendant, and not questions which may arise between co-defendants or co-plaintiffs *inter se*. The section does not apply to questions which are not involved in the suit, but crop up incidentally during the pendency of an appeal, such as the question whether one person or another is the legal representative of a deceased plaintiff-respondent. HAR NARAIN SINGH *v.* KHARAG SINGH

[I. L. R., 9 All., 447

365. ——— ——— ——— *Civil Procedure Code, ss. 365, 366, 367, 368, 582, 587—Death of plaintiff-respondent pending appeal—Substitution of alleged legal representative on her own application—Application by defendants-appellants to substitute another person as true legal representative—Power of Court to determine which of such persons is the true legal representative.*—In a suit for declaration of title to, and for possession of, a share in alleged ancestral property with mesne profits, the plaintiff obtained a decree in the lower Appellate Court from which the defendants appealed to the High Court. Pending the appeal, the plaintiff died childless, and, on her application, his widow was substituted for him as respondent. Subsequently the defendants-appellants applied to the High Court to have the deceased's father brought upon the record as respondent, alleging that he, and not the widow, was the deceased's legal representative and solely entitled to be placed on the record as such. The father made no objection to the proposed substitution. It was common ground that either the father alone or the widow alone was the deceased plaintiff-respondent's true legal representative. *Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that, having regard to the words "as nearly as may be" and "as far as may be" in s. 582 of the Civil Procedure Code, ss. 365, 366, and 367 might be applied, at all events analogically, to the case, so as to enable the real legal representative of the deceased plaintiff-respondent to be ascertained and brought upon the record; that the latter portion of s. 582 did not limit the earlier words of the section so as to make s. 368 the only provision applicable to the case; that a Court of record must have an inherent power to ascertain whether or not it has before it the proper parties to an appeal if the question be substantially raised; and that therefore the Court could and should, either before or at the hearing of the appeal, ascertain and determine, for the purposes of the prosecution of the appeal, the preliminary question whether the father or the widow was the legal representative of the deceased, and should act accordingly. *Held* also by the Full Bench (MAHMOOD, *J.*, dissenting) that s. 32 of the Code did not apply to the case, and that, if it did apply, it would be the duty of the Court to decide whether the father or the widow was the legal representative of the deceased plaintiff-respondent. *Held* by MAHMOOD, *J.*, *contra*, that the effect of s. 582 read with s. 587 was to place the defendants-appellants in the position of plaintiffs and the deceased respondent in that of a defendant for the purposes of array of parties; that consequently the provisions of ss. 363, 364, 365, 366, and 367 had no application; that, applying s. 368, the Court was bound to implead the person named by the defendants-appellants as a respondent to the appeal; that, applying s. 32, the widow occupied a position which gave her a sufficient *primâ facie* status to be impleaded as respondent; and that, as there existed no authority in the Court allowing the Court to hold an enquiry whether the father or the widow was the true legal representative of the deceased plaintiff-respondent, the Court should bring both upon the record as respondents and proceed to decide the appeal after hearing both. *Narain Dass* v. *Lajja Ram, I. L. R., 7 All., 693; Har Narain Singh* v. *Kharag Singh, I. L. R., 9 All., 447; Lukshmibai* v. *Bal Krishna, I. L. R., 4 Bom., 654; Rajmonee Dabee* v. *Chunder Kant Sandel, I. L. R., 8 Calc., 440; Naraini Kuar* v. *Durjan Kuar, I. L. R., 2 All., 738;* and *Athiappa* v. *Ayanna, I. L. R., 8 Mad., 300,* referred to. MUHAMMAD HUSAIN *v.* KHUSHALO . I. L. R., 10 All., 223

366. ——————————— *Civil Procedure Code, ss. 368, 582—Appeal—Abatement—Death of plaintiff-respondent—Application by defendants-appellants for substitution—Application presented after the 1st July 1888—Limitation—Civil Procedure Code Amendment Act (VII of 1888), ss. 53, 66—Act XV of 1877 (Limitation Act), sch. ii, art. 175C.*—The plaintiff-respondent in an appeal pending before the High Court died on the 17th September 1885. Subsequently *D* applied to the High Court to be brought on the record as legal representative of the deceased; on the 15th April 1886 he was referred to a regular suit to establish his title as such representative, and on the 25th February 1887 such suit was dismissed. On the 8th February 1886 the defendants-appellants applied to the High Court for judgment; but the application was dismissed under the decision of the Full Bench in *Chajmal Dass* v. *Jagdamba Prasad, I. L. R., 10 All., 260.* On 24th July 1888 they applied to the High Court to bring certain persons upon the record as the legal representatives of the deceased plaintiff-respondent. *Held* that the application, having been made subsequent to the 1st July 1888, when the Civil Procedure Code Amendment Act (VII of 1888) came into force, and being an entirely fresh application not in continuation of any former proceedings between the same parties, must be dealt with under that Act, and not under the Civil Procedure Code as it stood before the amendment, and that, as it was made more than six months after the

PARTIES—*continued.*

5. SUBSTITUTION OF PARTIES—*continued*

death of the deceased plaintiff respondent, the appeal abated with reference to s 368 of the Code and art 175C of the Limitation Act (XV of 1877) *Held* also that the petitioners had not shown "sufficient cause" within the meaning of s. 368 of the Code for not making the application within the prescribed period *Ram Jiwan Mal v Chand Mal, I. L. R., 10 All., 587*, referred to CHAJMAL DAS v JAGDAMBA PRASAD I. L. R., 11 All., 408

367. ———— Death of Hindu wife while respondent in appeal—Legal representatives —A Hindu wife obtained a decree against her husband for maintenance He appealed, and, while the appeal was pending, the wife died, leaving two daughters The question then arose whether her [illegible]

368 ———— *Devolution of interest during pendency of suit—Assignment of decree prior to appeal—Application to substitute name of assignee* [illegible] —*Civil Procedu* [illegible] cation was made [illegible] the name of the person originally named as respondent to the appeal the name of a person to whom the decree had been assigned before the filing of the appeal, such application being made more than two years after notice of the assignment had reached [illegible] Code of Civil Procedure does not apply to a case where the devolution of interest occurs between the time of the passing of a decree and the time of the filing of an appeal from that decree COLLECTOR OF MUZAFFARNAGAR v HUSAINI BEGAM [I. L. R., 18 All., 86

369 ———— *Devolution of interest pending appeal—Array of parties in appeal—Civil Procedure Code (1882), ss 372* [illegible] by a respondent to an appeal, whose interest had at one time been represented by an official receiver, to replace upon the record of the appeal as a party respondent the name of such official receiver, which had been struck off owing to a misrepresentation of fact, might be treated as an application for review of the order striking off the name of the official receiver IN THE MATTER OF THE PETITION OF

PARTIES—*continued*

5. SUBSTITUTION OF PARTIES—*concluded.*

SARAT CHANDRA SINGH GOKAL CHAND v SARAT CHUNDER SINGH . . I. L. R., 18 All., 285

370. ———— *Devolution of interest pending appeal—Array of parties in appeal —Civil Procedure Code (1882), ss 372, 582* —By virtue of the first portion of s. 582 of the Code of Civil Procedure, s 372 of the Code applies to appeals in cases of assignment, creation, or devolution [illegible] *I. L. R., 20 Bom., 167*, referred to. *Collector of Muzaffarnagar v Husaini Begam, I. L. R., 18 All., 86*, distinguished IN THE MATTER OF THE PETITION OF DURGA PRASAD [I. L. R., 22 All., 231

6. TRANSPOSITION OF PARTIES

[illegible] the Court for leave to withdraw the suit, or that the [illegible] BHOY . I. L. R., 7 Bom., 167

372. ————**Making parties defendants into plaintiffs against their consent.**—In a suit for arrears of rent certain parties intervened, alleging that they were co-sharers with the plaintiff They were placed by the first Court on the record as defendants, and the suit was dismissed The lower Appellate Court transferred the intervenors against their will to the side of the plaintiffs, and remanded [illegible]

373. ————**Making defendant a plaintiff**—*Civil Procedure Code, 1859, s 73—Adding parties after amendment of plaint*—A Court could, under s. 73, Act VIII of 1859, add parties to a suit, as well as transpose a party from his position as *pro forma* defendant, and array him amongst the plaintiffs after amendment of the plaint under s. 29. PITAMBUR PYNE v TOOLSEE DOSSEE [7 W. R., 30

See KRISHNA v. MEKAMPERUMA. KRISHNA v. COLLECTOR OF SALEM . I. L. R., 10 Mad., 44

PARTIES—*continued.*

7. PARTIES WITH VARYING RIGHTS.

374. ——— **Joinder of parties with varying rights, Effect of**—*Alteration of rights of parties.*—When two or more parties have been joined in a suit with rights various in degree and kind, the mere fact of such joinder cannot confer on any of the parties so joined new rights, or rights adverse to those of the others. PARBUTTEE *v.* KRISHAN PURTAB BAHADUR SAHIE [1 N. W., Ed. 1873, 44

8. PARTIES IN TWO CAPACITIES.

375. ——— **One person party both as plaintiff and one of the defendants**—*Objection, Validity of.*—The plaintiff, as heir of his mother, sued a firm in which he was himself a partner to recover the amount of certain loans which he alleged that his mother in her lifetime had made to the said firm. It was objected that the suit was improperly framed, inasmuch as the plaintiff was also made a defendant. *Held* that the objection was not maintainable, the plaintiff being a defendant in a different capacity. PREMJI LUDHA *v.* DOSSA DOONGERSEY . . . I. L. R., 10 Bom., 358

9. DISABILITY TO SUE.

376. ——— **Deaf and dumb person**—*Right to sue.*—A deaf and dumb person is not on that account alone to be deemed incompetent to sue or to be sued. BUGGEE RAM *v.* BULDEO SINGH [2 N. W., 414

10. OBJECTION AS TO DEFECT OF PARTIES.

377. ——— **Effect of omission to join necessary parties**—*Civil Procedure Code, 1859, s. 73.*—*Held* that it was opposed to the spirit of the Civil Procedure Code to dismiss a suit merely on account of there being defect of parties,—the Court, under s. 73 of the Code, being vested with the power of making the persons who seem to be interested in the subject-matter parties to the suit. RUCHPAUL *v.* JOHUREE . . . . . . 1 Agra, 147

By s. 31 of the Codes of Civil Procedure of 1877 and 1882 a suit is not to be dismissed for mere misjoinder of parties.

378. ——— **Objection by defendant to want of parties**—*Civil Procedure Code, 1877, s. 34.*—S. 34 of the Civil Procedure Code (Act X of 1877) limits the time within which a defendant may object for want of parties, but it does not so limit the right of the plaintiff to add parties. In some cases s. 34 would not prevent even a defendant from objecting to the want of a proper party after the first hearing,—*e.g.*, where, after the first hearing and before decree, a coparcener or remainder-man or reversioner is born, or where a woman (who is a party) is married to a man who is not a party to the suit. The objection did not exist at or before the first hearing, and therefore could not have been made or waived by the defendant; and if he made it at the earliest opportunity after it came into existence, he would have satisfied the spirit of s. 34. MODHE *v.* DONGRE . . . I. L. R., 5 Bom., 609

PARTIES—*continued.*

10. OBJECTION AS TO DEFECT OF PARTIES—*concluded.*

379. ——— **Special appeal, Objection taken on**—*Irregularity not affecting merits of case.*—By PRINSEP, *J.*—The objection as to the defect of parties after the case had passed through two Courts is not one affecting the merits of the case so as to be a ground of special appeal. BOYDONATH BAG *v.* GRISH CHUNDER ROY [I. L. R., 3 Calc., 26

But *see* SHIVRAM VITHAL *v.* BHAGIRTHIBAI [6 Bom., A. C., 20

11. PRIVILEGES OF PARTIES.

See CASES UNDER ARREST—CIVIL ARREST.

380. ——— **Non-attendance in Court**—*Appearance by agent.*—A Rajah instituted a suit under Act X of 1859 through an agent appointed in that behalf. The Deputy Collector cited the Rajah himself to appear and be examined. He excused himself on the ground of the privilege under Act VIII of 1850, s. 22, and at the same time petitioned that the evidence of his general agent might be taken. The Deputy Collector, without examining the general agent, dismissed the suit, on the ground that the suit ought to have been instituted by the general agent; and that the Rajah himself was bound to obey his citation. *Held* that the Deputy Collector was bound to receive the evidence of the general agent and to decide the case upon the evidence which was tendered; and that the refusal of the Rajah, who had the privilege which he claimed, and his appointment of a special agent or mukhtear for the purposes of the suit, instead of his general agent, were no grounds for dismissing the suit. JUGGUD INDUR BUNWAREE *v.* SOORJCOOMAR CHOWDHRY [Marsh., 627

381. ——— *Mahomedan lady of rank.*—Where a Mahomedan lady of position residing within the town in which a Court held its sitting was willing to admit the Court to an interview at her own residence, the Judge was held to have done wrong in insisting upon her personal appearance in Court. ZOHURUTOOLLAH CHOWDRY *v.* ASALOODDEEN CHOWDHRY . 15 W. R., 129

PARTIES TO CONVEYANCE.

See RECEIVER . 6 B. L. R., 492 note

——— **Mortgagor and mortgage**—*Sale of mortgaged properties in execution of decree—Purchase by mortgagee.*—Where a mortgagee becomes the purchaser of property sold under a decree for sale obtained by him on his mortgage, it is not necessary that the mortgagor should join in the conveyance of the property to the mortgagee. JALEERAM *v.* CHUNDER COOMAREE DOSSEE [12 B. L. R., Ap., 7

PARTITION

See Decree—Form of Decree—Partition

See Execution of Decree—Mode of Execution—Partition

See Cases under Hindu Law—Partition

See Cases under Jurisdiction of Civil Court—Revenue Courts—Partition

See Malabar Law—Partition [I L R., 17 Mad., 184

———— **Right to—**

See Cases under Hindu Law—Custom—Impartibility

———— **Suit for—**

See Costs—Special Cases—Partition [2 B L R., A C., 337
11 B L R., Ap., 35
1 Hyde, 122
I L R., 21 Calc., 904

See Jurisdiction—Suits for Land—Partition 6 B L R, 134
[I. L R., 4 Bom., 482

See Cases under Parties—Parties to Suits—Partition Suits for.

See Cases under Valuation of Suit—Suits—Partition

See Variance between Pleading and Proof—Special Cases—Partition [22 W R., 11
22 W R., 333

1 FORM OF PARTITION

1. ———— **Imperfect partition**—*Sanction to partition—Act XIX of 1863—Partition depending on consent of parties*—Courts in their judgments should bear in mind the very distinct character of the several kinds of partition and until it has been ascertained with what description of partition they have to deal the question of the sufficiency of the sanction or confirmation given to it cannot be determined In certain cases the Commissioner's sanction is required in others that of the Collector There are partitions known as imperfect partitions depending upon the conduct of the parties, and effected from first to last only with their consent Muhumdee Beg *v* Hossein Ali [2 N W, 26

2 **Informal partition** *Partition by finding of Court in suit*—Where plaintiff sued for certain land in dispute as his own and the lower Court found that it was his share and that defendant held his separately, no further formal partition was held to be necessary Modhoosoodun Chatterjee *v* Juddooputty Chuckerbutty [9 W. R., 115

3 ———— **Declaration of title to continue to enjoy separate possession of land**—*Suit for partition*—The plaintiffs having obtained a declaration of title to continue to enjoy separate possession of certain lands, sued the former defendants again for partition of the same lands *Held* that the suit was unnecessary and should be dismissed Andi *v* Thatha I L R., 10 Mad., 347

2 PRIVATE PARTITION

4. **Effect of private partition**—*Effect of on right of pre emption*—A private partition though not sanctioned by official authority will if full and final as among the parties to it have the same effect as the most formal partition on the right of pre-emption Gopal Sahi *v* Ojoodhea Pershad 2 W R., 47

5 ———— *Effect of on survey proceedings*—A private partition of a joint estate is not inconsistent with subsequent survey proceedings and does not take away their legal effect Hunooman Chowbay *v* Bindhoo Torabа [10 W R., 336

6 ———— *Effect of on parties—Government and purchasers at revenue sale*—A private butwarra though not binding against the Government or against a purchaser at a sale for arrears of Government revenue, who derives his title directly from Government is binding as between the parties to the butwarra and persons claiming title under them Tripoorah Soondaree Chowdhrainee *v* Kali Chundra Roy Chowdhry [18 W R., 327

7 ———— *Right to subsequent partition under Act XIX of 1814*—Where an estate was divided by private agreement more than fifty years ago and the division was subsequently maintained in a judicial decision since which the co-sharers had for many years exercised rights of ownership independently of each other a butwarra of the whole estate cannot afterwards be demanded even though a regular separation of one share has been intermediately obtained by a suit in a Civil Court. Premsiiye Dutt Sahee *v* Ajodh Sahajee . 5 W. R., 40

PARTITION—*continued.*

2. PRIVATE PARTITION—*continued.*

8. ———————— *Beng. Reg. XIX of 1814, s. 30.*—A private partition is no bar to proceedings in the Revenue Courts under s. 30 of Regulation XIX of 1814. JOYNATH ROY *v.* LALL BAHADUR SINGH

[I. L. R, 8 Calc., 126 : 10 C. L. R., 146

9. ———————— *Beng. Reg. XIX of 1814, s. 30—Power of Collector—Jurisdiction of Civil Court.*—It is not correct to say that, under s. 30 of Regulation XIX of 1814, the Collector is not at liberty to make any partition where the owners have already partitioned the lands amongst themselves. The true meaning of the section is that the Collector must be guided by the nature of the estate in applying the rules contained in the preceding sections of the Regulation; and that, where estates are not held in common tenancy, only a portion of those rules will apply. If the parties have divided the lands without agreeing as to the shares of the Government revenue to be paid by them, respectively, all the Collector has to do, when a partition has been applied for, is to make an assignment of the revenue in proportion to the interest of each shareholder. If they have divided the lands and arranged amongst themselves as to the portion of the Government revenue which each is to pay, it is open to the Collector to accept or reject that arrangement. The Civil Court has nothing to do with the matter. AJOODHIA LALL *v.* GUMANI LALL . . . 2 C. L. R., 134

10. - - *N.-W. Provinces Land Revenue Act (XIX of 1873), s. 125.*—S. 125 of Act XIX of 1873 does not apply to a partition by private agreement. *Gaya Singh* v. *Udit Singh, I. L. R., 13 All., 396,* referred to. *Ram Prasad* v. *Dina Kuar, I. L. R., 2 All., 515,* dissented from by KNOX AND BANERJI, JJ. KASHI PRASAD *v.* KEDAR NATH SAHU I. L. R., 20 All., 219

11. ——— - *Family arrangement among co-sharers—Partition among shareholders in zamindari villages—Construction of agreement—Custom.*—On a dispute among proprietors of shares in zamindari villages as to the respective amounts of the holdings till then undivided, to which they were entitled, a compromise made by their common ancestor's five sons, of whom the plaintiff's father was the eldest, had been filed in proceedings prior to this suit. This was construed to have assigned to the plaintiff's father an additional share, according to a custom recorded in the khewat at settlement, in virtue of which the eldest brother was entitled to a share greater than that allotted to the others,—a right termed "hakh jetharnsi." MANICK CHAND *v.* HIRA LAL

[I. L. R., 20 Calc., 45

12. ———————— *Patni of separate share—Subsequent partition under Beng. Act VIII of 1876, s. 128.*—The plaintiffs were co-sharers in a certain estate, *T* being another co-sharer. In 1818 a private partition took place between the co-sharers in the course of which certain specific lands were allotted to *T* in severalty, the rest remaining undivided. *T* granted a patni lease of her share to third parties who were thenceforth in possession; and subsequently there was a partition of the whole estate by the Collector under Bengal Act VIII of 1876, in the course of which the specific lands allotted to *T* in the private partition were allotted to the plaintiffs, who brought against the tenants of the land suits for rent to which they made the patnidars defendants. *Held* that the patnidars were properly made parties to the suits in order to try the question of the right to receive the rent as between the plaintiffs and the patnidars. *Kashee Ram Dass* v. *Sham Mohinee, 23 W. R., 227; Ahamudeen* v. *Girish Chunder Shamunt, I. L. R., 4 Calc., 850;* and *Madan Mohan Lal* v. *Holloway, I. L. R., 12 Calc., 555,* referred to. *Held* also that, assuming that the patnidars were not parties to the partition-proceedings by the Collector, they were entitled to retain possession of the lands allotted to their lessor *T* in the private partition, by which partition the plaintiffs were bound, notwithstanding the subsequent partition by the Collector. *Ahmedoolah* v. *Ashruff Hossein, 13 W. R., 447; Obhoy Churn Sircar* v. *Hari Nath Roy, I. L. R., 8 Calc., 72;* and *Juggessur Doyal Singh* v. *Bissessur Pershad, 12 C. L. R., 281,* approved. *Bujnath Lal* v. *Ramoodeen Chowdhry, L. R., 1 I. A., 106,* distinguished. S. 128 of Bengal Act VIII of 1876 does not apply to a case in which there has been a prior private partition, the estate in such a case not being "held in common tenancy" within the meaning of that section. HRIDOY NATH SHAHA *v.* MOHOBUTNESSA BIBEE

[I. L. R., 20 Calc., 285

3. RIGHT TO PARTITION.

(*a*) GENERAL CASES.

13. — ——— - Co-sharers—*Effect of partition.*—In cases of joint ownership each party has a right to demand and enforce partition. A shareholder of a patni talukh can claim and enforce a partition of such patni talukh as against his co-sharers, but such partition would not affect the liabilities of the parties under their contract with the zamindar. SHAMASUNDARI DEBI *v.* JARDINE, SKINNER & CO.

[3 B. L.R., Ap., 120 : 12 W. R., 160

14. ——————Joint owners in right of worship of idol—*Performance of worship by turns.*—The reasons for which one of several joint owners is entitled to a partition of the joint property apply also to the case of a joint right of performing the worship of an idol. The joint owners of such a right are entitled to perform their worship by turns. MITTA KUNTH AUDHICARRY *v.* NEERUNJUN AUDHICARRY . 14 B. L. R., 166 : 22 W. R., 437

MANOHARAM *v.* PRANSHANKAR

[I. L. R., 6 Bom., 298

15. ———— Patnidars—*Right to enforce partition—Patnidar of undivided share.*—One patnidar of an undivided share of a zamindari held by joint proprietors has no right to sue to enforce partition against another patnidar where there is no

PARTITION—*continued.*

3 RIGHT TO PARTITION—*continued.*

contract between the two, or between the patnidar and his zamindar, to divide. RIDAI NATH SANDYAL *v* ISWAR CHANDRA SAHA

[4 B. L. R., Ap, 57 note

16 ———— Co-parceners—*Joint possession—Suit by subordinate tenure holder for partition against superior landlord*—Joint possession alone is not a sufficient ground for compelling a partition. In order that persons may be co parceners, and so have a right to partition, not only must they be in joint possession, but that joint possession must be founded on the same title. A subordinate tenure-holder therefore has no right of partition as against his superior landlord. *Ridai Nath Sandyal v Iswar Chandra Saha, 4 B L R, App, 57 note,* and *Parbati Churn Deb v Ainuddeen, I L R, 7 Calc, 577 9 C. L. R, 170,* referred to. The plaintiffs were proprietors of a 12 annas share and dar talukdars of the other 4 annas share of taluk A,

one of the zamindars of estate No. 23, and a 7½-annas

No 23 and were separate from the other estates, to

17. ———— Estate held in separate possession—*Suit by one of several shareholders—Beng. Reg. XIX of 1814, s 30*—When an estate is held in separate possession, a batwara of the whole,

18. Separate holders under private partition—*Right to have partition by Collector after private arrangement and disagreement*—Parties holding separate portions of an estate according to a private arrangement previously made

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

are not in a condition to apply to the Collector for a batwara when unable afterwards to agree among themselves. AJOODHYA PERSHAD *v* KRISTO DYAL

[15 W R., 165

See KHOOBUN *v.* WOOMA CHURUN SINGH

[3 C L R., 453

19. ———— Joint proprietors—*Joint lands, each proprietor getting rent separately*—Lands held in joint possession, each proprietor receiving his proportion of the rent according to his interest in the land, cannot be divided under the batwara laws. DOORGA KANT LAHOORY *v* RADHA MOHUN GOOHO NEOGY . . . 7 W. R., 51

20 ———— Division between zamindars—*Beng. Reg XIX of 1814*—One of the co sharers of a joint estate suing conjointly with the others would, under Regulation XIX of 1814, be entitled to a separation of a mouzah from the rest of

neighbouring zamindaris that the line of boundary cannot be reasonably identified he cannot call upon the Collector to make a new line. But if the Collector has the means of ascertaining where the boundary lies he is bound to carry out a partition. BHURRUT THAKOOR *v* MURTAZA 21 W R., 225

21. Zamindars—*Separate liability for payment of revenue—Arrangement for separate payment—Assent to by maafidar*—A partition was made by the zamindars of their respective holdings and of their joint liability for the Government revenue, and though this partition was not carried out by the Revenue Court, but was acted upon by the zamindars and the assignee of Government revenue also consented to such partition by accepting revenue from individual zamindars, and by holding them to be individually responsible for the amount ... *Held* that

lity. SURNOMOYEE *v* RAMCHURN SINGH

[3 Agra, 251

22. ———— Purchaser of specific portion of estate—*Right to partition of whole estate*—The purchaser of a specific portion of the land of an estate separately registered with a separate jumma under s. 11, Act XI of 1859, is not entitled to claim a batwarra of the whole estate, and to obtain a share of the whole land proportioned to the amount of the sudder jumma paid by him. FUKEER CHUNDER SHAHA *v* NOBODEEP CHUNDER SHAHA

[W. R., 1864, 59

23. ———— Party with decree for partition which he fails to execute till barred—*Act XIX of 1853, s. 47.*—Where a person obtained

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

a decree from the Civil Court, declaring his right to certain shares in the village, and directing a partition, but did not execute his decree within the prescribed period of limitation,—*Held* that he was not entitled to partition under s. 47, Act XIX of 1863. KISHEN SINGH *v.* DABEER SINGH . . 2 Agra, 272

24. ———— **Right in suit where title has been declared to have precept to Collector to partition**—*Beng. Reg. XIX of 1814, s. 5.*—In a suit for declaration of title in which plaintiff also claimed an allotment of his share which had been refused him by the Collector in a batwarra then in progress,—*Held* that, as it was found that plaintiff's title was established, he was also entitled, under s. 5, Regulation XIX of 1814, to a precept to the Collector directing him to award to the plaintiff a share corresponding with that title. ABDOOL REZA *v.* JEBUNNISSA BIBEE . . . 16 W. R., 34

25. ———— **Shikmi tenure**—*Rights of Government, the zamindars, and the shikmidars.*—Partition of a shikmi tenure allowed on the ground that the order could not affect the rights of Government, of the zamindars, nor the plaintiff's co-shikmidars. OOMESH CHUNDER SHAHA *v.* MANICK CHUNDER BONICK . . . . 8 W. R., 128

26. ———— **Lakhiraj tenure**—*Beng. Reg. XIX of 1814.*—Though a partition of a lakhiraj tenure cannot be effected under the provisions of Regulation XIX of 1814, yet a Civil Court in effecting such a partition may well be guided by the rules laid down in that Regulation so far as they are applicable. JANOKEE BIBEE *v.* LUCHMUN PERSHAD [17 W. R., 137

27. ———— **Common lands of mirasi villages**—*Pungavaly tenure.*—*Semble*—The right to enforce a partition or allotment of the common lands of mirasi villages held in pungavaly tenure probably does exist. SITARAMAIYAR *v.* ALAGIRY IYER . . . . . . 4 Mad., 285

28. ———— **Co-parceners**—*Order binding whole estate.*—There is no statutory bar against a raiyat's right to partition as between himself and his co-parcener where he does not ask for such a distribution of the patni rent as would bind the zamindar, or limit the latter's right over the whole tenure as a joint one. GOUREE SUNKUR ROY *v.* ANUND MOHUN MOITRO . . . . . . 9 W. R., 487

See MOTHOOR CHUNDER KURMOKAR *v.* MANICK CHUNDER BUNGO . . . . 6 W. R., 192

29. ———— **Hindu widow**—*N.-W. P. Land Revenue Act, XIX of 1873, s. 108—Hindu widow—Reversioners.*—A childless Hindu widow, who has succeeded to her deceased husband's share of a mehal, such share having been his separate property, and is recorded as a co-sharer of such mehal, is as much entitled, under s. 108 of Act XIX of 1873, as any other recorded co-sharer is, to claim a perfect partition of her share. The circumstance that she may after partition alienate her share contrary to Hindu law will not bar her right as a co-sharer to partition. If she acts contrary to the Hindu law in respect of her share, the reversioners will be at liberty to protect their own interests. JHUNNA KUAR *v.* CHAIN SUKH . . . I. L. R., 3 All., 400

30. ———— *Revenue-paying estate—Beng. Act VIII of 1876, s. 10.*—A Hindu widow who has succeeded to a share in a revenue-paying estate as heir to her deceased husband is not a person having a proprietary interest in an estate for the term of her life only, within the meaning of s. 10, Bengal Act VIII of 1876. Even if she were, a Civil Court would not be debarred from decreeing partition of a revenue-paying estate at her instance if a proper case for the passing of such a decree be made out by her. *Jadomoney Dabee* v. *Sarodaprosono Mookerjee, 1 Boulnois, 120; Phool Chand Lall* v. *Rughoobuns Sahoy, 9 W. R., 108; Katama Natchiar* v. *Rajah of Shivagunga, 9 Moore's I. A., 539;* and *Bhagbutti Daee* v. *Chowdhry Bholanath Thakoor, L. R., 2 I. A., 256,* referred to. Principles on which Courts should order partition at the instance of a Hindu widow stated. MOHADEAY KOOER *v.* HARUK NARAIN . . I. L. R., 9 Calc., 244

31. ———— **Partition between owners of separate shares in permanently-settled estate**—*Effect of, as against Government.*—In the year 1226 F. (1819) a fourteen-anna eight-gunda share of a certain mouzah was permanently settled. The remaining one-anna twelve-gunda share was permanently settled in 1861. This share was sold for arrears of Government revenue in 1873, and purchased by the plaintiff, who subsequently applied to the Collector for partition under the Batwarra Act. The Collector refused to partition, upon the ground that the Act was not applicable to the partition of a mouzah held jointly by the proprietors of two separate estates. The plaintiff then brought the present suit, to which he made the Collector a party, to obtain a declaration that he was entitled to have his share separated from the fourteen-anna eight-gunda share by metes and bounds, and also for a decree directing a partition of the whole mouzah into two parts. *Held* that, so far as the plaintiff on the one hand and the owners of the fourteen-anna eight-gunda share on the other were concerned, the mouzah could be partitioned, but that such partition would not be binding upon the Government unless by consent. AJOODHYA PERSAD *v.* COLLECTOR OF DURBHUNGAH [I. L. R., 9 Calc., 419 : 11 C. L. R., 550

32. ———— **Grantees of inam village**—*Suit by co-sharer in melvaram of inam village for division of lands—Parties to suit—Liability to Government for quit-rent.*—Where the grantees of an inam village, subject to a favourable quit-rent, enjoy the rent payable by the permanent tenants in defined shares, any one of the grantees may sue his co-sharers for a partition of the lands of the village to enable him the more easily to recover his share of the rent, although he cannot, without the consent of Government, put an end to his joint liability for the entire quit-rent. It is not necessary for the plaintiff in such suit to implead any raiyat whose rights are

PARTITION—*continued*

3 RIGHT TO PARTITION—*continued*

unquestioned The partition in such a case must be *carried out by the Collector after a preliminary* decree, and, when partition is carried out by the Collector, a final decree should be passed RAMANUJA AYYANGAR *v* VIRAPPA TEVAN

[I. L. R., 6 Mad., 90

33 Civil Procedure Code, 1882, s 265—*Revenue paying estate—Beng Act VIII of 1876, Part II, and s 4, cls (8) and (9)—Civil Procedure Code (Act XIV of 1882), s 265* – In 1851 an estate was brought under butwarra under the provisions of Regulation XIX of 1814 At such butwarra a portion of the estate being covered with water and unfit for cultivation was not divided but

sharers to the Collector to partition the same under the provisions of Bengal Act VIII of 1876 but that officer refused to do so on the ground that the land "*did not bear an assessed revenue and was not shown in the towzi*" In a suit brought under the above circumstances to compel the Collector to make the partition and in the alternative to have it made by the Civil Court —*Held* that though the reason given by the Collector for refusing was an erroneous one, he was not bound to make the partition under the provisions of Bengal Act VIII of 1876 as the land in suit was not liable for the payment of one and the *same* demand of land revenue, and was therefore not a joint undivided estate within the terms of s 4 cl (9) of that Act *Held* also that the word "estate," as used in s 265 of the Civil Procedure Code must not be construed in the same limited and defective sense in which it is used in Act VIII of 1876 but must be taken to be there used in its ordinary signification and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section *Chundernath Nundy v. Hur Narain Deb I L R, 7 Calc, 153* approved SECRETARY OF STATE *v* NUNDUN LALL

[I. L. R., 10 Calc., 435

34 ——— *Suit in ejectment—Partition by Collector—Jurisdiction—Mortga*[illegible]
Possess[illegible]
and cer[illegible]
Hindu [illegible]
interest [illegible]
to *H* and *T*, who failing to pay rent were sued by *J*, who got a decree for possession This decree was transferred for execution to the Collector, who sold the land and rateably distributed the proceeds except to *T*, who declined to take the amount tendered as his share The plaintiff sued *T* and the purchasers under *K*'s decree to recover his mortgage-debt by a sale of the property mortgaged to him *Held* that *K*'s decree not being for partition of the family property or for the separate possession of a share, was not one contemplated by s. 265 of the Code of Civil Procedure The proceedings of the Collector were without jurisdiction and the plaintiff was entitled to ignore them, and assert his claim under the mortgage NARAYAN NAGARKAR *v* VITHU JAKHOJI

I L R, 8 Bom., 539

35 — *Raiyatwari land* —S 265 of the Code of Civil Procedure, 1877 does not apply to property held on raiyatwari tenure but to permanently settled estates MUTTU *v* KUDALAGA

I L R., 6 Mad., 97

36 *Partition of* [illegible]

Civil Procedure, 1882 *Muttu v Kudalaga I L R 6 Mad 97* confirmed. MUTTUCHIDAMBARA *v* KARUPPA

I L R, 7 Mad, 383

37 ——— Suit for partition by person in possession making a false claim – *B* a childless Hindu and a Brahmin adopted A his sister's son and subsequently apprehending that the adoption was invalid executed a will by which he left his estate to A After *B*'s death A obtained possession and remained in possession of the estate till his death which occurred before he had attained majority After this joint possession of the estate was obtained by *P* and S two widows of *B* who set up a right of inheritance from A as being in the position of mothers to him in consequence of his adoption by their deceased husband In a suit brought by *S* against *P* for partition of the estate —*Held* that inasmuch as the parties had set up a false claim to the estate, and had no estate in law which they could divide the suit for partition was not maintainable merely by reason of the fact that they were in possession *Armory v Delamirie Smith's L C 313* and *Asher v Whitlock L R 1 Q B 1*, referred to PARBATI *v* SUNDAR

[I. L. R., 8 All., 1

38 — Right of joint occupancy-tenants to partition—*Jurisdiction of Civil Court—Parties—Held* that a joint occupancy tenant is entitled to sue for and a Civil Court is competent to grant a decree for partition of the joint occupancy-holding though if the zamindar is not made a party to the suit for partition such decree will not affect the mutual rights and liabilities of the zamindar and the occupancy tenants as they stood prior to the partition *Sunder v Parbati I L R, 12 All, 51; L R 16 I A 186 Baring v Nash 1 V and B, 551 Omesh Chunder Shaha v Mani Chunder Bonick, 8 W R, 129;* and *Bhau v Girdhari Weekly Notes All (1895), 147*, referred to. MUHAMMAD BAKHSH *v* MANA

[I. L. R., 18 All., 331

39 ——— Mortgagee's right of partition "inter se"—*Mortgage of different shares*

PARTITION—*continued.*

3. RIGHT TO PARTITION—*continued.*

in an undivided area to different mortgagees by usufructuary mortgage.—Two mortgagees held separate usufructuary mortgages, the one of a two-thirds share, the other of a one-third share, in an undivided area of muafi land granted by the owners of those shares respectively. *Held* that one mortgagee could not, in a suit to which neither of the mortgagors was a party, obtain partition of the share mortgaged to him. MANGLI PRASAD *v.* ISHRI PRASAD

[I. L. R., 18 All., 476

40. ———— **Partition between zamindar and patnidars**—*Partition between parties, one of whom owns interest subordinate to the other.*—The plaintiff was proprietor of an entire estate paying an annual revenue to Government of R2,444. In 1854 his father gave a patni lease of an undivided six annas share of the estate to the defendants' predecessors in title. The plaintiffs alleged that the land being held ijmali, although he and the defendants collected separately from the tenants their respective shares of the rent, difficulty and inconvenience had arisen in the management of the property, and he therefore sued to have his ten annas share of the land divided by metes and bounds from the six annas share of the patnidars, the land of the entire estate remaining liable as before for the entire amount of the Government revenue payable in respect of it. *Held* by the Full Bench that the plaintiff was entitled to a decree for partition. HEMADRI NATH KHAN *v.* RAMANI KANTA ROY

[I. L. R., 24 Calc., 575
1 C. W. N., 406

41. ———— **Right of co-sharers**—*Inam village—Right of management by co-sharers.*—Property consisting of an ordinary inam village and a cash allowance payable out of the revenue of another village is liable to partition at the suit of a co-sharer, except when it is held on saranjam or other impartible tenure, or where the terms of the original grant impose a condition upon its enjoyment that the management shall rest with a particular branch of the family of the grantees; and possibly a long-continued practice from which a family custom may be inferred may operate to bring about the same result. GOPAL HARI JOSHI *v.* RAMAKANT RANGNATH JOSHI . . I. L. R., 21 Bom., 458

(*b*) PARTITION OF PORTION OF PROPERTY.

42. ———— **Partition of a portion of joint family property**—*Suit for partition of a portion of joint property.*—A suit will not lie for partition of a portion only of joint family property. JOGENDRO NATH MUKERJI *v.* JOGOBUNDU MUKERJI

[I. L. R., 14 Calc., 122

43. ———— **Suit for partition of portion of property**—*Civil Procedure Code, 1877, s. 265.*—A suit will not lie for partition of portion only of a joint estate. Accordingly, where the plaintiff sued for partition of a portion of a joint estate and for khas possession of the share which might on the partition be allotted to him, alleging that he had been deprived of possession of that portion by his co-sharers in collusion with others, it was held the suit would not lie. Although under s. 265 of Act X of 1877 a decree may be made for partition of revenue-paying land, yet that decree must be carried into execution solely by the Collector. RAMJOY GHOSE *v.* RAM RUNJUN CHUCKERBUTTY . . 8 C. L. R., 367

44. ———— **Partition of portion of joint estate without consent of co-sharers**—*Jurisdiction of Civil Court.*—Where a co sharer in a joint undivided estate sued to have his rights ascertained, and partition made in respect or an orchard which formed part of the joint estate,—*Held* that the Civil Court was not entitled to decree partition or give possession of a separate share in the orchard. and there is no law which entitles a shareholder to obtain partition of a portion of an undivided estate against the will of the other co-sharers. MITTHOO LALL *v.* GHOLAM NUSEER-OOD-DEEN . . 3 Agra, 276

45. ———— **Suit by mokurrari leaseholder of small part of estate**—*Suit against patnidars of whole estate.*—The owner of a 12 annas share in a joint zamindari granted to the plaintiff a mokurrari lease of his share in a small portion of land within the zamindari. The owner of the remaining 4 annas share granted a patni of his share in the whole zamindari to the defendants, In a suit brought for partition of the small plot of land,—*Held* that a partition could not be enforced of a part of the estate held by the defendants, who, if the plaintiff's claim was allowed, might, in respect of the same estate, be subjected to many claims for partition at the suit of persons in the plaintiff's position. PARBATI CHURN DEB *v.* AIN-UD-DEEN

[I. L. R., 7 Calc., 577 : 9 C. L. R., 170

46. ———— **Suit for partition of portion of joint property**—*Partial partition.*—The plaintiffs and the defendants being jointly entitled to and in possession of three khanabaris in a village and other immoveable property, the plaintiff sued for partition of one of the khanabaris only. *Held* that the suit would not lie. HARIDAS SANYAL *v.* PRAN NATH SANYAL . I. L. R., 12 Calc., 566

47. ———— **Portion of property out of, and portion within, jurisdiction**—*Parties.*—A person suing for partition is not obliged to include in his suit the whole of the property, but may confine his suit to the portion of the property which he is desirous of having partitioned; therefore where, in a suit for partition, it was shown that some portion of the property was out of the jurisdiction of the Court, objections that fresh parties would be necessary if the mofussil property were included, and that therefore the suit had not been properly brought, and that the leave of the Court had not been obtained previous to bringing the suit, were overruled. PADMAMANI DASI *v.* JAGADAMBA DASI . . 6 B. L. R., 134

48. ———— **Portion of property out of jurisdiction**—*Ancestral property—Rule as to property being brought into hotchpot—Property*

PARTITION—*continued.*

3 RIGHT TO PARTITION—*continued.*

out of jurisdiction.—No doubt, the rule that every partition suit shall embrace all the joint family property has been held to be subject to certain qualifications, as for instance, where different portions of it lie in different jurisdictions, or where a portion is not available for actual partition as being in the possession of a mortgagee; but there is no authority for the proposition that a member who sues for par-

[I. L. R., 7 Bom., 272

49. ———— Partial partition—*Jurisdiction of High Court, Original Side—Properties si-*

diction (there having been no leave granted under s. 12 of the Charter to sue concerning the portion outside the jurisdiction), is not liable to be dismissed on the ground that partial partition of a property cannot be granted, but may be decreed as far as the property within the jurisdiction is concerned. The ruling of JACKSON, J., in *Ruttun Monee Dutt v. Brojo Mohun Dutt, 22 W. R., 333,* explained. PUNCHANUN MULLICK *v.* SHIB CHUNDER MULLICK

[I. L. R., 14 Calc., 835

50. ———— *Property in different jurisdictions—Suit for partial par-*

51. ———— Portion of land held under

rately enjoyed, must be brought into account before the partition can be effected. LALLJEET SINGH *v.* RAJ COOMAR . . 25 W. R., 353

52. ———— Rectification of portion of property—*Suit to set aside partition.*—Where a property had been divided, and one of the sharers was dissatisfied with the result, he could bring a suit to have the division entirely revised, but was not at liberty to ask for a rectification of a small portion of

PARTITION—*continued*

3 RIGHT TO PARTITION—*concluded*

the divided property. TRIPOORA SOONDUREE *v.* GOPAL NATH ROY . . 25 W. R., 358

53 ———— Omission of property in possession of one party—*Ground for dismissal*—In a partition suit the fact that the plaintiff has not included, or has relinquished his share in property liable to division, affords no ground for dismissing

JANARDAN VITHAL *v.* ANANT MAHADEV

[I. L. R., 7 Bom., 373

4. APPOINTMENT OF COMMISSIONER.

54. ———— Procedure—*Civil Procedure Code, 1877, s. 396.*—*Per* PONTIFEX, J. (FIELD, J., doubting)—In a suit for partition it is competent

hearing of a suit, the Court shall determine whether the plaintiff is entitled to a partition, and shall ascertain who the several persons entitled in the property are, and shall direct by a preliminary decree or order that Commissioners be appointed to make the partition. GYAN CHUNDER SEN *v.* DURGA CHURN SEN I. L. R., 7 Calc., 318: 8 C. L. R., 415

5. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

55. ———— Suit to set aside partition—*Beng. Reg. XIX of 1814—Minor, Right of.*—A partition by the Collector under Regulation XIX of 1814, if consented to by all the parties, is final, and cannot be set aside by any party in the Civil Court; but where one of the parties was a minor at the time of partition the Court remanded the suit for an enquiry whether his guardian acted in the partition proceedings *bonâ fide,* and with a due regard to the interests of the minor. HARI PRASAD JHA *v.* MADDAN MOHAN THAKUR

[8 B. L. R., Ap., 72: 17 W. R., 217

confirmed by the revenue authorities, it seems that one shareholder cannot maintain a suit in the Civil Court to have it declared that he is entitled to a share larger than he claimed in the partition proceedings. RAMSAHAYA SINGH *v.* MUZHAR ALY

[2 B. L. R., Ap., 40

PARTITION—*continued.*

5. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*continued.*

57. —— Suit for larger share than that allotted by Collector—*Beng. Reg. XIX of 1814, ss. 4 and 20, cl. 2.*—S. 20, Regulation XIX of 1814, which says, "the determination of the Board of Revenue or Board of Commissioners on the paper of partition shall be final," refers to those questions only which can be legally determined by the revenue authorities, and will not prevent a regular suit being instituted to establish a right and title to the land, which a party has lost by a butwarra, notwithstanding that the plaintiff may have failed to make his objection before the Collector within fifteen days as required by cl. 2, s. 4, Regulation XIX of 1814. There is nothing in the butwarra law or in any other Regulation to prevent the Civil Court from entertaining a suit for a declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. Where a butwarra had been made, and the plaintiff had had a specific share allotted to him, but which share was less than his proper share in the estate, and the plaintiff brought his suit against the co-sharers generally, without specifying in whose share the quantity he had lost was included,—*Held* the Court could, in such suit, declare the plaintiff's title to the same, treating him as a shareholder to that extent only in the pattah in which it may have been included. SPENCER *v.* PUHUL CHOWDHRY

[6 B. L. R., 658 : 15 W. R., 471

See also KUNJ BEHARI SING *v.* NERU SING

[6 B. L. R., 663 note : 15 W. R., 291

SHEO PERSHAD SOOKOOL *v.* SHUNKUR SAHOY

[16 W. R., 190

58. —— Suit for declaration of title—*Beng. Reg XIX of 1814—Jurisdiction of Collector—Title.*—The Collector cannot try the question of title in butwarra proceedings under Regulation XIX of 1814. A suit for possession and declaration of mokurrari title to certain lands can be entertained in the Civil Court notwithstanding the butwarra proceedings. AHMEDULLA *v.* ASHRUFF HOSSEIN

[8 B. L. R., Ap., 73 note

S. C. AHMEDOOLLAH *v.* ASHRUFF HOSSEIN

[13 W. R., 447

59. —— Suit for partition—*Suit by purchaser of share of lakhiraj estate.*—The purchaser of a share in an undivided lakhiraj estate can sue his co-parceners for a partition of his share, and the Civil Court has jurisdiction to carry out the partition. FATTEH BAHADUR *v.* JANKI BIBI

[4 B. L. R., Ap., 55 : 13 W. R., 74

60. —— *Division to prevent encroachment where enjoyment is distinct.*—The Civil Court has jurisdiction in a suit between joint owners of talukhs, who have been occupying and using separate and distinct parts of premises within the estate, where the object is to prevent encroachment by defendants upon the part occupied by plaintiffs, without any division of the Government revenue or alteration of joint liability to pay that revenue. KALEE MOHUN SEN *v.* RAM SOONDER SEN

[24 W. R., 243

61. —— Dispute with regard to shares—*Parties.*—Where two or more proprietors of a joint estate held in common tenancy, desirous of having separate possession of their respective shares, apply each and all to have that estate divided in exactly the same proportionate shares, and no other sharers oppose the butwarra, the Collector may at once comply with the application; and if no objection is raised when the parties have opportunity of raising objection, the shares cannot again be re-united by a suit in a Civil Court. But if the Collector has judicial notice of a dispute with regard to a share, it is questionable whether he has jurisdiction to make a partition of that share. In any suit, however, to do away with the partition as regards that share, the Collector must be made a party. JOYMONEE DEBIA *v.* IMAM BUKSH TALOOKDAR . 13 W. R., 471

62. —— Suit for division of share of mouzah—*Civil Procedure Code, 1859, s. 225.*—A suit for division of a share of a mouzah appertaining to a talukh paying revenue to Government will, according to s. 225, Civil Procedure Code, 1859, lie in the Civil Court. SHOME DUTT CHOWDHRY *v.* SURB NARAIN CHOWDHRY . 24 W. R., 242

63. —— Partition of revenue-paying estate.—Partition of an estate paying revenue to Government cannot be effected in a Civil Court. BADRI ROY *v.* BHUGWANT NARAIN DOBEY

[I. L. R., 8 Calc., 649 : 11 C. L. R., 186

RUTTUN MONEE DUTT *v.* BROJO MOHUN DUTT

[22 W. R., 11

S. C. affirmed on appeal . . 22 W. R., 333

64. —— *Jurisdiction of Collector.*—Revenue-paying estates must be partitioned by the Collector; they cannot be partitioned by metes and bounds by the Civil Court Ameen; and if the shares in such an estate are not separate estates, but are mere fractional shares of integral estates, they cannot be partitioned in the absence of the other co-sharers. DAMOODUR MISSER *v.* SENABUTTY MISRAIN

[I. L. R., 8 Calc., 537 : 10 C. L. R., 401

65. —— *Partition of mehal—Application by co-sharer for partition—Notice by Collector to other co-sharers to state objections upon a specified day—Objection raised after day specified by original applicant—Question of title—Distribution of land—Jurisdiction—Civil and Revenue Courts—Act XIX of 1873, ss. 111, 112, 113, 131, 132, 241 (f)—Civil Procedure Code, s. 11.*—Reading together ss. 111, 112, and 113 of the North-Western Provinces Land Revenue Act (XIX of 1873), as they must be read, the objection contemplated in each of them is an objection to be made by the person upon whom the notice required by s. 111 is to be served, *i.e.*, a person who is a co-sharer in possession, and who has

PARTITION—*continued*

5 JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*continued*

not joined in the application for partition So far as ss 111, 112 113 114 and 115 are concerned, a Civil Court is the Court which has jurisdiction to adjudicate upon questions of title or proprietary right either in an original suit in cases in which the Assistant Collector or Collector does not proceed to inquire into the merits of an objection raising such a question under s 113, or on appeal in those cases in which the Assistant Collector or Collector does decide upon such questions raised by an objection made under s 112 The remaining sections relating to partition do not provide for or bar the jurisdiction of the Civil Court to adjudicate upon questions of title which may arise in partition proceedings or on the partition after the time specified in the notice published under s 111 S 132 is not to be read as making the Commissioner the Court of Appeal from the Assistant Collector or the Collector upon such questions nor does s 241 (*f*) bar the jurisdiction of the [illegible]

lector and the partition made and confirmed by the Collector under s. 131 —*Held* that the objection was not one within the meaning of s 113 that the remedy of the objectors was not an appeal from the Collector's decision under s 132 and that a suit by them in the Civil Court to establish their title to the land allotted to other co-sharers was not barred by s 241 (*f*, and with reference to s 11 of the Civil Procedure Code was maintainable *Habibullah* v *Kunji Mal I L R 7 All 447*, distinguished *Sudar* v *Khuman Singh, I L R, 1 All 613* referred to. MUHAMMAD ABDUL KARIM v MUHAMMAD SHADI KHAN I. L. R., 9 All, 429

66 —————— *Proceedings under Bengal Act VIII of 1876, s 31 Effect of* —The jurisdiction of the Civil Court in matters of partition of a revenue paying estate is restricted only in questions affecting the right of Government to assess and collect in its own way the public revenue *Held* accordingly that the pendency of partition pro- [illegible] s 31 of Bengal [illegible] for a declara- [illegible] ffected between [illegible] been separately allotted to the plaintiff ZAHRUN v GOWRI SUNKAR [I. L. R., 15 Calc, 198

67. —————— *Jurisdiction of Revenue Court—Suit for partition and possession of a share in a particular plot in a patti—N-W. P Land Revenue Act (XIX of 1873) ss 135 241 (f)* —A suit by a co-sharer in a joint zamindari estate for partition and possession of his proportionate share of an isolated plot of land is not maintainable in a Civil Court with reference to ss 135 and 241 of the N W P Land Revenue Act (XIX of 1873) *Ram Dayal* v *Megu Lal, I L R, 6 All, 452* distinguished IJRAIL v KANHAI [I. L. R., 10 All, 5

68 —————— *Partition by Civil Court of a portion of a revenue paying estate—Civil Procedure Code (Act XIV of 1882) s 265—Revenue paying estate, Partition of into several revenue paying estates* —The meaning of s 265 of the Code of Civil Procedure is that where a revenue-paying estate has to be partitioned into several revenue-paying estates such partition must be carried out by the Collector *Zahrun* v *Gowri Sunkar, I L R 15 Calc 198* approved DEBI SINGH v SHEO LALL SINGH [I. L R, 16 Calc, 203

69 —————— *Objection to partition—N-W. P. Land Revenue Act (XIX of 1873) ss 111 113 241* —The procedure provided by s 113 of Act No XIX of 1873 does not become obligatory on a Collector or an Assistant Collector in partition proceedings unless an objection to the partition has been made by a co-sharer in possession and unless such objection was made before the day specified in the notice which the Collector or Assistant Collector is bound to issue under s 111 and not even then unless such objection raises a question of title Unless, therefore such objection has been made a Civil Court is not empowered to exercise any jurisdiction in the matter of the distribution of the land or the allotment of the mehal by partition HARDEO SINGH v NARPAT SINGH I L R., 20 All, 75

70 —————— *Civil Procedure Code (Act XIV of 1882) s 265—Partition effected by Collector in execution of a decree*— [illegible]

SHRINIVAS HANMANT v GURUNATH SHRINIVAS [I. L. R., 15 Bom., 527

71. —————— *Sheri lands—Lease by Government for a certain number of years—Civil Procedure Code (Act XIV of 1882), s 265*—Under s 265 of the Civil Procedure Code a Civil Court cannot effect partition of lands paying revenue to Government The Collector alone is empowered under that section to do so. DATTATRAYA VITHAL v MAHADAJI PARASHRAM I. L. R., 16 Bom., 528

72. —————— *Claim for partition of share of property—Decree for partition of defendants' share inter se—Subordinate Judge, Jurisdiction of*—In a suit instituted in the Court of a Munsif by a member of a Mahomedan family to have her share of the family property partitioned, the value of the plaintiff's share was found to be less than R1,000, and the value of the whole family property exceeded R1,000. The lower Appellate Court decreed partition not only of the plaintiff's share but also of the shares of the defendants *inter se*,

PARTITION—*continued.*

5. JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*continued.*

though such partition was not asked for. *Held* that the lower Appellate Court had no jurisdiction to partition as amongst the defendants the residue of the property left after the partitioning off of the plaintiff's share. HIKMAT ALI *v.* WALI-UN NISSA [I. L. R., 12 All., 508

73. ——— *Suit for partition of lands in different estates—Assam Land and Revenue Regulation (I of 1886), s. 154, cl. (c), and s. 96.*—In a suit for partition, without division of revenue, of certain lands held jointly by the parties in four different estates governed by the Assam Land and Revenue Regulation (I of 1886)—*Held* that, although the decision asked for may not include all the lands of each of the four estates, still such division would result in a division of each of those estates, the lands left out forming one portion and the lands sought to be divided forming another. The suit therefore was one for an "imperfect partition" within the definition in s. 96 of the Assam Land and Revenue Regulation, and s. 154, cl. (*c*), of that Regulation barred the jurisdiction of Civil Courts in such a suit. ABDUL KHALIQ AHMED *v.* ABDUL KHALIQ CHOWDHRY [I. L. R., 23 Calc., 514

74. ——— *Suit for partition—"Perfect" and "imperfect" partition—Entire estate—Assam Land and Revenue Regulataion (I of 1886), ss. 96, 97, and 154.*—An estate does not cease to be an entire estate within the meaning of the Assam Land and Revenue Regulation (I of 1886) because a few plots of land are common to it and some other estate or because they are brahmutter or debutter or because they are held in some undefined way jointly with other persons. Where a suit was brought for the partition of an estate, excluding certain portions as being brahmutter or debutter, or as being held jointly by third persons, how or in what capacity not being stated,—*Held* that the jurisdiction of the Civil Courts was barred by s. 154 of the Regulation. SARAT CHANDRA PURKAYESTHA *v.* PROKASH CHUNDRA DAS CHOWDHURY . . I. L. R., 24 Calc., 751

75. ——— *Power of Civil Court to appoint Commissioner—Civil Procedure Code (1882), s. 265—Collector.*—In a suit brought in the Civil Court for a partition of the lands in a revenue-paying estate, the Court has no power to appoint a Commissioner to make the partition; it is bound under s. 265 of the Civil Procedure Code to have the partition made by the Collector according to the law for the time being in force for partition of estates. *Debi Singh* v. *Sheo Lall Singh, I. L. R., 16 Calc., 203,* distinguished. MEHERBAN RAWOOT *v.* BEHARI LAL BARIK . I. L. R., 23 Calc., 679

76. ——— *Estates Partition Act (Beng. Act VIII of 1876)—Code of Civil Procedure (1882), ss. 265 and 396.*—S. 265 of the Code of Civil Procedure does not apply to a suit for partition of a revenue-paying estate when no separate allotment of revenue is asked for. A Civil Court therefore has jurisdiction to decree partition in such a case; and a suit for possession, after partition of a share in part of an undivided estate, in which part alone the plaintiff has a share, is maintainable in a Civil Court if no division of revenue is sought. *Debi Singh* v. *Sheo Lal Singh, I. L. R., 16 Calc., 203,* approved and followed. *Meherban Rawoot* v. *Behari Lal Barik, I. L. R., 23 Calc., 679,* overruled. JOGODISHURY DEBEA *v.* KAILASH CHANDRA LAHIRY [I. L. R., 24 Calc., 725
1 C. W. N., 374

77. ——— *Transfer of decree for partition to Collector for execution—Partition by Collector—Civil Procedure Code (1882), s. 265—Jurisdiction of Civil Court to hear objections to the division ordered by Collector.*—Where a decree for partition of an estate has been transmitted by the District Court to the Collector for execution under s. 265, Civil Procedure Code, the Court that made the decree is not deprived of its judicial power to hear and decide objections to the division of the estate made by the Collector. CHINNA SEETAYYA *v.* KRISHNAVANAMMA . . I. L. R., 19 Mad., 435

6. QUESTION OF TITLE.

78. ——— **Power of Collector to try question of title**—*Beng. Reg. XIX of 1814.*—The Collector cannot try the question of title in butwarra proceedings under Bengal Regulation XIX of 1814. AHMEDULLA *v.* ASHRUFF HOSSEIN [8 B. L. R., Ap., 73 note

S. C. AHMEDOOLLAH *v.* ASHRUF HOSSEIN [13 W. R., 477

79. ——— **Decision by Collector of questions of title**—*Act XIX of 1863.*—Act XIX of 1863 contained no provision for the judicial decision by the Collecter of objections raising questions of title arising after the partition order in the course of partition. CHOWDHRY ZALIM SINGH *v.* SEETLOO [2 N. W., 404

80. ——— **Claim to right of occupancy for cultivation**—*Suit for partition under Act XIX of 1863—Partition of sir land.*—*Held* that a question involving a claim to cultivating right of occupancy was not one which could be properly decided in a suit for partition under Act XIX of 1863, under which only questions of conflicting proprietary title could be determined. AMAN SINGH *v.* JOYGOPAL SINGH . . . . . 3 Agra, 164

81. ——— **Dispute as to title**—*Beng. Reg. XIX of 1814.*—When, in the preparation of a butwarra under Regulation XIX of 1814, it is ascertained that the parties are at variance on a question of title, the Collector's proper course is to stay proceedings until all such questions are decided by a competent Court, the revenue authorities not having authority under the law to decide them finally. MUDDUN MOHUN *v.* KARTICK NATH PANDEY [14 W. R., 335

PARTITION—*continued*

7 MODE OF EFFECTING PARTITION

82 ———— **Joint property in sole possession of sharer**—*Protection of sharers from liability for debts*—In effecting a partition, account must be taken of any joint property in possession of any sharer, and before transfer of shares provision should be made for the protection of other sharers from an undue liability on account of debts ALLY HOSSEIN v ALLY HOSSEIN *alias* CHOTEY MIRZA [2 Agra, 96

83 —— **Mode of allotment of land**—*Land in exclusive possession of one party*—In a suit for partition the land in dispute being in the exclusive possession of a single co-sharer, should fall as a whole in the share of one or other of the co-owners, and not be subdivided among them PUDDOMONEE DOSSEE v DWARKANATH BISWAS [25 W R., 335

84 ———— **Land varying in value**—Each party to a butwarra need not have the same quantity of land nor should the land awarded be

though on more valuable land AFTABOODDEEN v SHUMSOODDEEN MULLICK 18 W. R., 461

85 — **Convenience**—*Ground for*

86 ———— **Compensation for expenditure by certain members of joint family on joint property**—In a suit for partition it appeared that the defendants who were members of a joint family had at their own expense enhanced the value of portion of the lands belonging to the joint estate *Held* that the partition should proceed on the basis of each co-sharer having an equal share of

87. —— **Principle of adjustment after partition between co-sharers**—*Beng Reg XIX of 1814*—After partition of an estate among shareholders under Regulation XIX of 1814 one shareholder *A* claimed from another shareholder *B* 2½ bighas of land as having been allotted to him by *B* under a prior agreement in lieu of certain lands originally held by him which fell into *B*'s putti The Collector left the parties to settle the matter between themselves and *A* brought a suit against *B* for his claim in the Civil Court *Held* that in a case of this kind the only principle that can be adopted is that the Court should ascertain the relative value of the lands originally made over by the defendant to the entire lands of the defendant, and that it should assign out of the present share of the defendant lands bearing the same relative value to the whole that the former lands bore this to be done without interference with the proceedings of the Collector under the butwarra law and the plaintiff (if successful) to be brought in as a co-sharer to a limited extent in the land assigned by the defendant OOMA DUTT CHOWDHRY v HUNOOMAN CHOWDHRY 22 W R., 453

88 ———— **Land in separate possession by consent**—*Right of co parceners on partition*—Co parceners may on partition retain possession severally of such joint lands as they may have taken separate possession of with the consent of at least a majority of the co-parceners SREENATH DUTT v NANDKISHORE DOSS 5 W R., 208

89 ———— **Family dwelling house**—*Consent of co parceners Execution of decree*—A decree directed partition of a family dwelling house with its appurtenances including a poojah dalan and courtyard adjoining it In execution of that decree the Civil Court Ameen at the request and with the consent of two out of three co parceners did not partition the poojah dalan and courtyard To this the

regard to the form of the decree it was not open to the Court executing it to order that any part of the property should remain joint except with the consent of all the co-parceners who were parties to the suit. *Semble per* MITTER J that the lower Courts were not precluded by the decree from dealing with the property in the mode in which they had d e RAJCOOMAREE DASSEE v GOPAL CHUNDER BOSE [I. L. R., 3 Calc., 514

90 ———— **Property consisting of several houses**—*Principle of partition—Commission of partition—Act XIV of 1882 s 396*—Where in a suit for partition possession was sought of a definite share of a property consisting of a number of houses—*Held* that the principle in such cases is that if a property can be partitioned without destroying the intrinsic value of the whole property or of the shares such partition ought to be made; but where partition cannot be made without destroying the intrinsic value of the property then a money compensation should be given ASHANULLAH v KALI KINKUR KUR I. L. R., 10 Calc., 675

PARTITION—*continued.*

7. MODE OF EFFECTING PARTITION —*continued.*

91. ——— **Power of Revenue Courts as to partition of buildings**—*N.-W. P. Land Revenue Act (XIX of 1873), ss. 107, 124.*—In a partition under the North-Western Provinces Land Revenue Act, 1879, neither buildings nor the materials thereof can be partitioned; what is partitioned is the land in the mehal. Where such land is covered with buildings, the Court making the partition has to follow the provisions of s. 124 of the Act; but it can decide no question of right to the buildings, nor can it partition them. ASHIQ HUSAIN *v.* MUHAMMAD JAN [I. L. R., 22 All., 329

92. ——— **Suit by transferee for partition**—*Partition Act (IV of 1893), s. 4—Suit for partition by sharer against transferee—Procedure.*—S. 4 of the Partition Act (IV of 1893) applies only where the transferee sues for partition. Where the suit is brought by the sharer against the transferee, s. 2 must be applied. In cases where s. 4 applies, the Judge should make a valuation of the share of the transferee only and direct its sale. BAISHET GOPALSHET SONAR *v.* MIRAN SAHEB [I. L. R., 23 Bom., 77

93. ——— **Dwelling-house belonging to undivided family**—*Partition Act (IV of 1893), s. 4—Application of section—Re-acquisition by members of such family after it has been sold to a stranger does not give any right under the section as against such stranger.*—A dwelling-house belonged to four brothers, *K*, *R*, *V*, and *P*, joint members of a Hindu family. In 1874 the shares of *K* and *P* were sold in execution of decrees against them, and in 1877 the remaining shares were sold, and finally the house became the property of the plaintiff and one *A* in equal moieties. The plaintiff sued *A* for partition and obtained a decree, but pending execution *A* conveyed his moiety back again to *R* and *V*. The brothers had continued to occupy the house notwithstanding the changes in ownership. *V* now applied under s. 4 of the Partition Act (IV of 1893) to be allowed to buy the plaintiff's moiety. *Held* that he was not entitled to the advantage given by the section. It is ownership, not occupation, that gives the right. After the sales in 1877, the house no longer belonged to an undivided family. *V* and his brothers were then either tenants in the house or trespassers. The question was whether the dwelling-house at the time the shares therein, which had not been sold to *A*, were transferred to the plaintiff belonged to an undivided family. When the plaintiff purchased his moiety, he and *A* became the owners in common of the house, and as between them s. 4 of the Partition Act had no operation. The subsequent purchase of *A*'s interest by *R* and *V* did not confer upon them any rights which *A* did not possess. It was in their hands re-acquired ancestral property, but not property belonging to an undivided family within the meaning of s. 4. VAMAN VISHNU GOKHALE *v.* VASUDEV MORBHAT KALE [I. L. R., 23 Bom., 73

94. ——— **Mortgage by one owner of undivided share of estate**—*Rights of mortgagee and other sharers on partition.*—Where the owner of an undivided share in a joint and undivided estate mortgages his undivided share, he cannot by so doing affect the interests of the other sharers, and the persons who take the security, *i.e.*, the mortgagees, take it subject to the right of those sharers to enforce a partition and thereby convert what is an undivided share of the whole into a defined portion held in severalty. Where such a partition is effected under the provisions of Regulation XIX of 1814 before the mortgagees have completed their title by foreclosure and the consequential decree for possession, the mortgagees of the undivided share of one co-sharer who has no priority of contract with the other co-sharers would have no recourse against the lands allotted to such co-sharers, but must pursue their remedy against the lands allotted to the mortgagor, and, as against him, would have a charge on the whole of such lands. BYJNATH LALL *v.* RAMOODEEN CHOWDHRY [21 W. R., 233: L. R., 1 I. A., 106

95. ——— **Easement**—*Partition of houses one of which has continuous easement over the other.*—Where two houses are held jointly by several owners deriving their title from a common source, and one of such houses enjoys a continuous as distinguished from an occasional easement over the other, such easement will, upon a partition of the premises, pass to the dominant tenement, both by implication of law and under the usual general words contained in the deed of partition. RATANJI HORMASJI *v.* EDULJI HORMASJI 8 Bom., O. C., 181

96. ——— **Partition of a joint family house**—*Effect of partition by a consent decree where the decree does not reserve any right to the use of light and air—Implied grant of easement upon severance of tenement.*—On partition of a family dwelling-house by a consent-decree, the plaintiff claimed a right to the passage of light and air necessary for the enjoyment of his share of the building in the way in which it was enjoyed at the time of the partition, though no such right was expressly reserved in the decree. The defence was that the principle of an implied grant of easement upon severance of the tenement should not be applied to the case, but that the rights of the parties should be determined solely with reference to the decree made in the partition suit. *Held* that the principles of justice, equity, and good conscience should be applied to the case, and that the plaintiff was entitled to the right claimed, even in the absence of any express provision in the decree reserving such right. *Quære*—Whether the principle of an implied grant of easement in severance of tenements would apply in the case where the partition was effected by a decree of the Court in a contested suit and not by a consent of parties. KADAMBINI DEBI *v.* KALI KUMAR HALDAR [I. L. R., 26 Calc., 516

97. ——— **Mode of division**—*Beng. Reg. XIX of 1814—Evidence of partition.*—Proceedings for partition having been instituted under Regulation XIX of 1814, it was proposed, in order to make

PARTITION—*continued.*

7. MODE OF EFFECTING PARTITION —*continued*

equality of partition, that three villages should be [illegible]

October 1864, directing the Nazir to require the raiyats to pay their rents according to the extent of the shares as set forth in the first mentioned column [illegible]

failed to prove any order for partition drawn out under s 13 of the Regulation, by the Collector, was not entitled to recover according to the quantity of the land, but, if at all, according to its value as ascertained in the column of the goshwara in which the assessed jumma was set forth HURRO SOONDARI DEBIA *v* KESHUB CHUNDER ACHARJEE [5 C. L. R., 257

98. ———— **Decree for partition referred to Collector**—*Civil Procedure Code, 1882, s 265—Execution—Collector bound to partition and deliver over possession to several allottees under decree—Practice* —The duty of the Collector, to whom a decree has been referred under s 265 of the Civil [illegible]

subsequently to the mortgage, by a decree in a [illegible] ot a party, [illegible] other pro- [illegible] *Held*, in a [illegible] of *A* to recover the sum due on the mortgage by sale of the mortgaged property, that the plaintiff could not proceed against the mortgaged property which had been allotted on partition to *B*, but should be allowed to proceed against that which had been allotted in substitution to *A*, his mortgagor *Byjnath Lall* v. *Ramoodeen Chowdhry, L R., 1 I. A , 106 : 21 W R , 233*, followed in principle HEM CHUNDER GHOSE *v* THAKO MONI DEBI [I. L. R., 20 Calc., 533

100. ———————— *Co-sharers—Mortgage by co-sharer of undivided share—Parti-* [illegible]

of such co-sharer—Partition re opened—Fraud of mortgagor and mortgagee —Four brothers, *viz* , *D*, *L*, *B*, and *P*, were joint owners of certain land. For purposes of convenience, each was in possession of a certain portion, but there was no formal partition. The particular land in question in this suit (plots Nos. 1 and 2 of Survey No 174) was a part of the land in possession of *B* In 1867, without the knowledge of his brothers, *B* mortgaged these plots of land to the first defendant for R280 In 1886 *D* sued for partition of the whole property, and in 1891 *L* brought a similar suit. By the decrees in these suits plot No. 1 was allotted to *D* and plot No. 2 was awarded to *L* The mortgagee was not a party to either suit, the plaintiffs in these suits (as found by the High Court) having had no notice of the mortgage *D* and *L*, on attempting to get possession of the lands allotted to them respectively by the partition decrees, were obstructed by the mortgagee, [illegible]

the mortgaged land given to *B*'s branch of the family (defendants Nos. 2—9) *Held* that the partition should be re-opened and the mortgaged land assigned to the defendants Nos 2—9 Where a co-sharer of joint property has mortgaged his share without the knowledge of his co sharers and there has subsequently been a partition suit to which, through the [illegible] latter [illegible] will [illegible] f his [illegible] perty [illegible] *Hem Chunder Ghose* v *Thako Moni Debi, I L R., 20 Calc , 533*, approved LAKSHMAN *v* GOPAL [I. L. R., 23 Bom., 385

[illegible]

incumbered fell exclusively into the share of another co-sharer.—On partition by Collector under the Estates' Partition Act (Bengal Act VIII of 1876) when any land of an undivided joint estate, which was incumbered by any co-sharer, is allotted to any other co-sharer, the latter takes it free from the incumbrance so created. *Khan Ali* v *Pestonji Eduljee Gazdar, 1 C. W N., 62*, distinguished. The cases of *Nathoo Lall Chowdhry* v *Saadat Lall, W. R., 1864, 271*, and *Ahmedoollah* v *Ashruff Hossein, 13 W R , 447 : 6 B L R., Ap , 73 note*, have been overruled in effect by the decision of the Privy Council in the case of *Byjnath Lall* v *Ramoodeen Chowdry, L R., 1 I A , 106* JOY SANKARI GUPTA *v*. BHARAT CHANDRA BARDHAN [I. L. R., 26 Calc., 434 3 C. W. N., 209

102. ———— **Lease granted by co-sharer pending partition suit**—*Land leased falling*

PARTITION—*continued.*

7. MODE OF EFFECTING PARTITION —*concluded.*

to share of another co-sharer—Lis pendens—Transfer of Property Act (IV of 1882), s. 52.—Plaintiff purchased a one-third share in an undivided estate and brought a suit for partition. During the pendency of the partition suit, the defendants, the two remaining co-sharers, granted a lease of a particular plot of land included in the undivided estate to the present defendant. By the decree for partition the plot of land under the lease was allotted to the plaintiff who brought the present suit to recover possession of the piece of land on the ground that he was not bound by the lease. *Held* that s. 52 of the Transfer of Property Act does not apply to cases where the shares of the parties and their rights to those shares are not disputed. The mode in which the lands should be allotted between the ascertained sharers does not affect the right to any specific property. *Held* also that the tenant, not having been a party to the partition suit, was not bound by the decree, and the plaintiff was only entitled to khas possession of the one-third share of the plot leased out by his co-sharers. KHAN ALI *v.* PESTONJI EDULJEE GUJDAR [1 C. W. N., 62

103. ———— Partition without new wajib-ul-arzes being framed—*N.-W. P. Land Revenue Act (XIX of 1873), s. 107.*—When a mehal is divided by perfect partition into two or more separate mehals, a separate record-of-rights should be framed for each of the new mehals. ABDUL HAI *v.* NAIN SINGH . I. L. R., 20 All., 92

8. EFFECT OF PARTITION.

104. ———— Decree for partition—*Nature and effect of decree in partition suit.*—A decree for partition is not like a decree for money or the delivery of specific property which is only in favour of the plaintiff in the suit. It is a joint declaration of the rights of persons interested in the property of which partition is sought, and such a decree, when properly drawn up, is in favour of each shareholder or set of shareholders having a distinct share. KHOORSHED HOSSEIN *v.* NUBBEA FATIMA [I. L. R., 3 Calc., 551: 2 C. L. R., 187

105. ———— *Effect of decree as creating severance —Appeal.*—A decree for partition does not operate as a severance so long as it remains under appeal. SHAKARAM MAHADEV *v.* HARI KRISHNA . . I. L. R., 6 Bom., 113

106. ———— Finality of proceedings—*Beng. Reg. XIX of 1814.*—A butwarra by revenue authorities under Regulation XIX of 1814 is final. ZAKER ALI CHOWDHRY *v.* JUGDESSUREE [1 W. R., 323

107. ———— *Under-tenure-holders.*—A butwarra is only conclusive between the shareholders themselves, but not between them and other parties holding under-tenures at the time. WOMESH CHUNDER MOJOOMDAR *v.* DWARKANATH ROY . . . . . . 4 W. R., 80

PARTITION—*continued.*

8. EFFECT OF PARTITION—*continued.*

108. ———— *Beng. Reg. XIX of 1814, s. 20.*—Butwarra proceedings under s. 20, Regulation XIX of 1814, are only final as to lands which are the subject of partition. HUREEE MOHUN THAKOOR *v.* ANDREWS . W. R., 1864, 30

109. ———— Extinguishment of title—*Effect of partition on others than allottees.*—The allotment of land to one person by partition extinguishes another's right altogether; his subsequent possession is either that of a trespasser or a tenant-at-will; his dispossession is not illegal, and he has no legal right of suit for recovery of possession. NOWAB BEGUM *v.* RUSTUM KHAN . . 2 Agra, 149

110. ———— *Effect of partition among co-sharers.*—By partition a co-sharer's proprietary right to the land which has fallen in another putti becomes extinguished, and he becomes a mere cultivator in respect to that land and liable to rent. ZALIM RAI *v.* DOORGA RAI [1 Agra, Rev., 69

111. ———— Extinguishment of rights—*Tenant rights, Effect of partition on.*—A butwarra does not extinguish rights of tenants, and the mere circumstance that one of the proprietors of the estate was himself the tenant does not destroy his tenant right, because another of the proprietors has had the land allotted as part of his share of the divided estate. NUTHOO LALL CHOWDHRY *v.* SAADAT LALL . . . . W. R., 1864, 271

112. ———— *Co-sharers—Raiyati and proprietary rights.*—Plaintiffs sued their co-heirs to recover huq-elagaun,—that is, the half share of the produce of trees planted on a portion of the land by their ancestor before his death,—on the ground that, although by a butwarra entered into by the heirs the trees fell to the share of the defendants, plaintiffs were entitled as succeeding to the raiyati rights of the person who planted them. *Held* that, as the ancestor was the only proprietor, his heirs were co-proprietors, and the butwarra was a division of the proprietary right; and that no raiyati right existed. AMEERUN *v.* SUNJEEDA . . 11 W. R., 226

113. ———— *Proprietary right in sir land.*—When an estate in which the proprietors have sír land is partitioned, such partition among the co-sharers is no way affected by any cultivating rights which may be possessed by cultivators not co-sharers in the estate; but it is also a well-understood effect and consequence of partition that co-sharers retain no right of occupancy in respect of any sír land which may have passed under the partition into the share of other co-sharers, as a sír-hold proprietor has no cultivating right distinct from, and independent of, his proprietary character. When, therefore, by partition he loses his proprietary title to any particular land, any cultivating right which he had in virtue of his proprietary character necessarily ceases. AMAN SINGH *v.* JEYGOPAL SINGH [3 Agra, 164

114. ———— *Right of holder of mokurari lease.*—A joint and undivided estate

PARTITION—*continued.*

8 EFFECT OF PARTITION—*continued.*

having been subjected to private partition, 4 bighas which were in the portion held by *A* were granted by him in mokurari. Subsequently, on the application of the parties, the Collector made a regular partition, by which two bighas of the mokurari land were allotted to the other sharers, who refused to recognize the grantee's mokurari rights for that portion of the land, contending that, as under the private partition all the 4 bighas were in the share of the grantor, the loss of rent should be on him, and that the Collector's butwarra could not transfer 2 bighas with the mokurari or smaller rental to the other sharers *Held* that the grantor's mokurari title could not be got rid of by the butwarra, and that he was entitled to recognition by the other sharers AHMEDOOLLAH *v.* ASHRUFF HOSSEIN

[13 W. R., 447: 8 B. L. R., Ap., 73 note

116. ———— **Redistribution by Collector after private partition**—*Right of mokuraridar of co-sharer* —Subsequently to a private partition by which the land in dispute was allotted to *A*, one of the co-sharers, a butwarra redistributing the shares was made by the Collector In the meantime *A* had granted a mokurari to *B* in respect of the land allotted to him under the private partition. *Held* that, although the co-sharers must be taken to have consented to the redistribution, yet *A* could not by his consent affect the right of *B*, his mokuraridar. *Bujnath Lal* v *Ramoodeen Chowdhry, I. L. R., 1 All., 106 21 W. R., 233,* and *Sharat Chunder Burmon* v. *Hurgobinlo Burmon, I. L. R., 4 Calc., 510,* distinguished *Ahmedoollah* v. *Ashruff Hossein, 8 B. L. R., Ap., 73 note 13 W. R., 447,* followed JUGGESSUR DOYAL SINGH *v.* BISSESSUR PERSHAD

[12 C. L. R., 281

117. [illegible]

rents claimed from a date subsequent to the butwarra SREENATH GHOSSAL *v.* JOY NARAIN KAYAR

[3 W. R., Act X, 11

117. ———— **Family dwelling-house—** *Partition wall—Open space of ground—Easement* —Upon partition of joint property in Calcutta by mutual conveyances whether under the direction of a Court of law or otherwise, it is implied that the parties take their respective shares with easements of light and air as between themselves in accordance with the existing state of the premises In a suit for the partition of a family dwelling-house it was directed that the parties should take their respective shares by mutual conveyances with liberty to the plaintiff to raise a partition wall The shares were allotted, but no conveyances executed. *Held* that in equity the parties must be deemed to have taken as if under mutual conveyances, in so far as concerned easements of light and air BOLYE CHUNDER SEN *v.* LALMONI DASI

[I. L. R., 14 Calc., 797

See DWARKANATH PAUL *v.* SUNDER LALL SEAL

[3 C. W. N., 407

PARTITION—*continued*

8 EFFECT OF PARTITION—*concluded*

and KADAMBINI DEBI *v.* KALI KUMAR HALDAR

[I. L. R., 26 Calc., 516
3 C. W. N., 409

118. [illegible]

into four several estates The rent of the tenure was thereupon allotted proportionately to each of the four estates thus formed, although the land forming the tenure remained undivided. In a suit for enhancement of the rent of the tenure brought by the proprietor of some of the estates,—*Held* that the effect of the partition of the parent estate was to create separate and distinct tenures out of the orig[illegible] the [illegible] esta[illegible] the [illegible]

and that therefore a suit for enhancement of rent would lie by a proprietor of one of the estates in respect of the rent allotted to his estate *Sarat Sooduree Debia* v *Someeroodeen Talookdar, 23 W. R., 530,* and *Sarat Soondury Dibea* v *Ananda Mohun Surma Ghuttack I. L. R., 5 Calc., 273,* followed HEM CHANDRA CHOWDHRY *v.* KALI PRASANNA BHADURI I. L. R., 26 Calc., 832

9 LIABILITY AFTER PARTITION

119. ———— **Liability to account for portion of property if in possession**—*Co-sharers* —Every one who is entitled to a share in a joint family property in a suit for partition must account for such portion as may have come into his hands GOUR PERSHAD MOOKERJEE *v.* KALEE PERSHAD MOOKERJEE 5 W. R., 121

10 MISCELLANEOUS CASES

120. — **Beng Reg XIX of 1814, s. 20**—*Case where no partition takes place.*—*Held* that s 20, Regulation XIX of 1814 had no reference to a case where no partition had been made and plaintiff was not a co sharer FOOLBASHEE KOWAR *v.* ARZUN SAHOO . . 12 W. R., 134

121. ———— **Suit for confirmation of possession**—[illegible]

the defendant's share In a suit for a declaration of his right to the share claimed by him, and for confirmation of possession thereof, both the lower Courts gave a decree for the plaintiff On special appeal, an [illegible]

PARTITION—*continued.*

10. MISCELLANEOUS CASES—*continued.*

plaintiff, who claimed to be in possession of his proper share, and sued only for a declaration of his title thereto, to include in his plaint an application for the renewal of the partition proceedings : and that those proceedings were final. INDRABATI KUNWARI *v.* MAHADEO CHOWDHRY . 1 B. L. R., S. N., 6

122. ——— Suit for house allotted on partition—*Agreement to pay rent for house—Onus of proof.*—Where on partition the defendant's house fell within the plaintiff's lot,—*Held* the plaintiff was entitled to sue for possession of the house, and that it lay on the defendants to prove that under s. 38, Act XIX of 1863, they were entitled to retain possession by having agreed to pay an equitable rent for the ground, which rent had been determined by the officer making the partition, and had been stated in the paper of partition. LAIKHRAM *v.* GHUMNEE [3 Agra, 298

123. ——— Beng. Reg. XIX of 1814, s. 9—*Dwelling-houses of co-sharers—Liability to assessment.*—Suit for khas possession of land made over to plaintiff on a butwarra. The defendant pleaded twelve years' adverse possession, and that he was entitled to retain possession on payment of rent, as the lands were occupied by gardens made by his ancestor. *Held* that s. 9, Regulation XIX of 1814, did not apply to the lands made over to the plaintiff under the butwarra ; that section referring to the dwelling-houses of co-sharers, and to offices, buildings, and ground immediately attached to those dwelling-houses, which the lands in suit were not proved to be. LULEET NARAIN *v.* GOPAL SINGH . 9 W. R., 145

124. ——— Mortgage by co-sharer—*Incumbrance—Cause of action—Beng. Reg. XIX of 1814.*—*A*, one of the shareholders of a talukh consisting of several mouzahs, mortgaged his share in one of the mouzahs named Kishoopore to *B*. Upon a partition being made under Regulation XIX of 1814, the mouzah Kishoopore was allotted to *C* and *D*, co-parceners in the talukh, and other mouzahs were allotted to *A*. In a suit by *C* against *B* for obtaining possession of his share in Kishoopore,—*Held* that there was no cause of action. Upon a partition of a joint property, a co-parcener is bound by the incumbrances created by another co-parcener in respect of a portion of the property, if such portion be allotted to him upon a partition between the co-parceners. NISHAN SING *v.* JUGDEO SING [4 B. L. R., Ap., 97

125. ——— Suit to set aside sale for arrears of revenue—*Sanction of Board of Revenue Completion of partition.*—Per BAYLEY, J.—The completion of the partition was not necessary under Act XI of 1838 before the amount of unpaid expenses could become an arrear realizable by sale. *Semble*—The Government need not give its sanction in each case, but a "general" sanction will be sufficient. HAR GOPAL DAS *v.* RAM GOLAM SAHI [5 B. L. R., 135 : 13 W. R., 381

126. ——— Objection to application for partition—*Act XIX of 1863—Procedure.*—When an objection was taken to an application for partition under Act XIX of 1863, the Collector might either decline the application until the question has been decided, or proceed to investigate it. If he adopted the latter course, he was bound to follow the procedure prescribed by Act VIII of 1859. But his failure to follow that procedure would not deprive the parties of their right of appeal to the Judge, who must dispose of the appeal in due course. RAMESHUR RAI *v.* SUBHOO RAI . 1 N. W., 81 : Ed. 1873, 134

127. ——— Application by co-sharer for partition—*Objection by co-sharer in possession—N.-W. P. Land Revenue Act (XIX of 1873), ss. 111-113.*—Reading together ss. 111, 112, and 113 of the N.-W. P. Land Revenue Act (XIX of 1873), as they must be read, the objection contemplated in each of them is an objection to be made by the person upon whom the notice required by s. 111 is to be served, *i.e.*, a person who is a co-sharer in possession, and who has not joined in the joint application for partition. MUHAMMAD ABDUL KARIM *v.* MUHAMMAD SHADI KHAN . . I. L. R., 9 All., 429

128. ——— Order for partition by Assistant Collector confirmed by Collector—*Objection subsequently made to mode of partition—Question of title—N.-W. P. Land Revenue Act (XIX of 1873), s. 113.*—Upon an application made under s. 108 of the N.-W. P. Land Revenue Act (XIX of 1873) for partition of a share in a mehal, no question of title or proprietary right of the nature contemplated by s. 113 was raised, nor any serious objection made by any of the co-sharers, and the Assistant Collector recorded a proceeding setting forth the rules which were to govern the partition, and this proceeding was confirmed by the Collector under s. 138. An Amin was ordered to carry out the partition, and, in taking steps to do so, stated the principle upon which he proposed to distribute the common land. An objection was then for the first time raised by two of the co-sharers in the Court of the Assistant Collector to the inclusion of a particular piece of land in the partition, on the ground that it appertained exclusively to their share. This objection was disallowed by the Assistant Collector, and, on appeal, by the District Judge. *Held* that, at the stage of the proceedings when objections were taken, it was too late to determine questions of title under s. 113 of the Act ; that accordingly the Assistant Collector could not be said to have done so ; that the objections could therefore only be regarded in the light of objections to the mode in which it was proposed to make the partition, and that consequently there was no appeal from the order of the Assistant Collector to the District Judge or from the District Judge to the High Court. TOTA RAM *v.* ISHUR DAS . I. L. R., 9 All., 445

129. ——— Suit to stay partition by Collector—*Bengal Act VIII of 1876, s. 26—Specific Relief Act (I of 1877), s. 42—Declaration of specific rights—Limitation.*—A person bringing a suit under s. 42 of the Specific Relief Act to stay a partition directed by the Collector under Bengal Act VIII of 1876, on the ground that a private partition

PARTITION—*concluded*

10 MISCELLANEOUS CASES—*concluded*

has already been come to, must prove not only that there has been a private partition, but also that, under that partition, he is entitled to, and was in possession of, in severalty, some specific portion of the property

does not bar the right to bring an action, but merely limits the effect of the decree unless the action is brought within a certain time KALUP NATH SINGH *v.* LALA RAMDEIN LAL . I. L. R., 16 Calc., 117

130. ———— Decree in suit for partition—*Code of Civil Procedure (1882), s. 396—Application for effecting partition—Limitation Act (XV of 1877), sch. II, arts 178 and 179*—Plaintiff obtained a decree for partition in 1885, and first made an application to have the partition effected by an arbitrator in 1886. This application was struck off, and a second application was made on the 23rd July 1888 The arbitrator then declined to act, and the application was struck off. The present application was made on the 1st August 1891, and an objection was raised that, more than three years having elapsed from the date of the previous application the present one was barred under art. 179 of sch. II of the Limitation Act. The lower Court of appeal held that art. 178, and not art 179, applied to the case, but that, the plaintiff having applied

applicable DWARKA NATH MISSER *v.* BARINDA NATH MISSER . I. L. R., 22 Calc., 425

See MUHAMMAD KHAN *v.* HANWANT SINGH [I. L. R., 20 All., 311

131. ———— *Partition Act (IV of 1893), s. 10—Partition—Offer by a party to a partition suit of compensation—Decree in partition suit when final—Civil Procedure Code, s. 396*—*Held* that s. 10 of Act IV of 1893 would apply to a suit for partition in the stage where an interlocutory decree for partition has been made, but that decree had not become final by the Court's acceptance of the lots prepared by the officer appointed for that purpose. *Muhammad Khan v. Hanwant Singh, I. L. R., 20 All., 311*, and *Zebaida Jan v. Muhammad Taeb, Weekly Notes, All., 1898, p. 99,* referred to. ABDUS SAMAD KHAN *v.* ABDUR RAZZAQ KHAN . . . I. L. R., 21 All., 409

PARTITION ACT (IV OF 1893), s. 10

See PARTITION—MISCELLANEOUS CASES [I. L. R., 21 All., 409

PARTNERS.

See CASES UNDER PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING

See CASES UNDER PARTNERSHIP.

See PLAINT—VERIFICATION AND SIGNATURE . 5 B. L. R., Ap., 89 [12 B. L. R., 35

See SUMMONS, SERVICE OF 1 Hyde, 97 [7 B. L. R., Ap., 58 11 B. L. R., Ap., 28

PARTNERSHIP.

See BOMBAY TOLLS ACT, s 7 [I. L. R., 20 Bom., 668

See CASES UNDER HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS

See CASES UNDER PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING

See CASES UNDER PLAINT—FORM AND CONTENTS OF PLAINT—FRAME OF SUITS GENERALLY—PARTNERSHIP SUIT

———— Assets of or share or interest in—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PARTNERSHIP PROPERTY.

— Books of—

See EVIDENCE—CIVIL CASES—ACCOUNTS AND ACCOUNT BOOKS [4 B. L. R., P C, 31 13 Moore's I. A., 365

See INSPECTION OF DOCUMENTS [I. L. R., 1 Bom., 406

———— Suit for account of—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—PARTNERSHIP ACCOUNT

———— Suit for adjustment of account of—

See CONTRACT ACT, s. 253 [I. L. R., 6 Calc., 251

See JURISDICTION OF CIVIL COURT—PARTNERSHIP . . 1 Agra, 220

———— Suit for dissolution of—

See CASES UNDER CONTRACT ACT, s. 265.

See JURISDICTION OF CIVIL COURT—PARTNERSHIP . I. L. R., 7 All., 227

PARTNERSHIP—*continued.*

——— Transfer of share in—

See STAMP ACT, 1879, SCH. I, ART. 21.
[I. L. R., 12 Calc., 383

1. WHAT CONSTITUTES PARTNERSHIP.

1. ——— Participation in profits—*Application of English law.*—*M M & Co.*, merchants in London, carrying on business with *W N W & Co.*, merchants in Calcutta, sought to make the defendant liable as a partner in the latter firm, under a particular memorandum of agreement between the members of the firm of *W N W & Co.* and the defendant. *Held* that such agreement did not constitute the Rajah a partner in or with the said firm. Participation in profits does not constitute a partnership. The question is, not whether the person sought to be made liable participated in the profits, but whether the trade has been carried on by persons acting on his behalf. There is no rule of law which imposes partnership liability upon a man who advances to others money for the purpose of carrying on their business, and in return secures to himself a share of the profits which may arise from the employment in the business of the money so advanced by him. PRATAB CHUNDRA SINGH *v.* MOLLOW, MARCH & CO.
[3 B. L. R., A. C., 238

S. C. COURT OF WARDS *v.* MOLLOW, MARCH & CO. . . . . . 12 W. R., 56

On appeal to the Privy Council,—*Held*, although a right to participate in the profits of trade is a strong test of partnership, and there may be cases where, from such participation alone, it may, as a presumption, not of law, but of fact, be inferred, yet whether that relation does or does not exist must depend on the real intention and contract of the parties. To constitute a partnership, the parties must have agreed to carry on business and to share profits in some way in common; but where a contract is entered into between partners and a third person for the protection of that person as a creditor, whereby it is agreed that he shall receive in consideration of advances commission on the net profits of the partnership business, and large powers of control over the business are given to him, but no power to direct transactions, the Court, if satisfied that the contract was one of loan and security, will not interpret it as constituting a partnership. In applying the English law of partnership to cases in India, the usages of trade and habits of business of the people of India, so far as they may be peculiar and differ from those in England, ought to be borne in mind. MOLLOW, MARCH & CO. *v.* COURT OF WARDS . 10 B. L. R., 312 : 18 W. R., 384
L. R., I. A., Sup. Vol., 86

2. ——— Agreement to share profits—*Money paid as rent to one party.*—The parties had entered into a contract of partnership to work certain supposed mines; plaintiff to receive a bonus and also six-monthly payments as "rent" for the land, both parties to share the profits and bear the losses; it being stipulated that in case coal should

PARTNERSHIP—*continued.*

1. WHAT CONSTITUTES PARTNERSHIP—*continued.*

not be discovered, the bonus and any sum paid as rent would be refunded. *Held* that this was a partnership arrangement, and the payment of the money which went by the name of rent was not as by a tenant to a landlord, but as consideration-money for land forming a portion of the capital. SREEMUNJUREE DOSSEE *v.* POORSUTTUN DOSS
[9 W. R., 499

3. ——— *Contract Act, ss. 239, 240—Loan of money.*—*Held*, on the construction of the agreement in this case, that such agreement did not create a "partnership" between the parties thereto, as defined in s. 239 of Act IX of 1872, but was an agreement of the kind mentioned in s. 240 of that Act. BHAGGU LALL *v.* DEGRUYTHER . . I. L. R., 4 All., 74

4. Joint Hindu family—*Separation among members of.*—Circumstances under which the Court will infer a partnership between members of a Hindu family alleged to have separated. MISSREELOLL *v.* RAMNARAIN Cor., 63

5. ——— *Account.*—There is no analogy in respect of the manager being liable to account between a joint Hindu family and a partnership. Where it was arranged amongst the members of a joint Hindu family that the accounts of a banking business carried on by them should be kept, on the understanding that the profits, when realized, should be divided amongst the individual members in certain proportions, and that the expenses of each member should be credited and charged in the name of each member,—*Held* that this was in the nature of a partnership, and an account was decreed. RANGANMANI DASI *v.* KASINATH DUTT
[3 B. L. R., O. C., 1

6. ——— *Ancestral business—Account.*—An ancestral trade may descend like other inheritable property upon the members of a Hindu undivided family. The partnership so created or surviving has many, but not all, of the elements existing in an ordinary partnership. For example, the death of one of the partners does not dissolve the partnership; nor, as a rule, can one of the partners, when severing his connection with the business, ask for an account of past profits and losses. SAMALBHAI NATHUBHAI *v.* SOMESHVAR
[I. L. R., 5 Bom., 38

But *see* ABHAY CHANDRA ROY CHOWDHRY *v.* PYARIMOHAN GUHO . . 5 B. L. R., 347

7. ——— Document creating partnership—*Determination of partnership.*—Where a document creating a partnership for a particular business is silent as to the date at which the partnership is to commence and end,—*Held* that the partnership is conterminous with the business for the purpose for which it was created. BUDDREENATH *v.* ISREE PERSHAUD . . Cor., 114

8. ——— Continuing firm—*Partnership for a fixed term—Death of partner—Power*

PARTNERSHIP—*continued.*

1 WHAT CONSTITUTES PARTNERSHIP —*continued.*

of partner to nominate a successor—General device not an exercise of power Effect of default in exercising power of nomination—Good-will—Valuable asset.—*V*, *J*, and *S*, being large shareholders in the Great Eastern Spinning and Weaving Mills Limited, entered into an agreement in October 1873 to cause the said company to be wound up and to form a new company to take over its assets and liabilities, and to cause themselves to be appointed agents of the new company under the firm of *V J S & Co*, and under that name to act as agents of the new company, subject to the terms of the agreement The agreement provided that the firm of *V J S & Co* should take the agency of the new company for a period of thirty years, that of the profits to be derived by the said firm out of the agency *V* should receive 39 cents, *J* 31 cents, and *S* 30 cents; that in case of a vacancy in the firm of *V J S & Co*, caused by the death or retirement of any of the partners, the nominee of the dying or retiring partner should be admitted into partnership and should receive the share of such partner, and should exercise all his authority In pursuance of this agreement, the Great Eastern Spinning and Weaving Mills, Limited, was wound up and a new company called "The New Great Eastern Spinning and Weaving Company, Limited" was formed and registered. Both the memorandum and articles of association of the said new company contained clauses providing that the firm of *V J S & Co*, or whatever member or members that firm for the time consist of, should be agents of the company so long as the said firm should carry on business in Bombay, or until they should resign. The firm of *V J S & Co*, having been constituted under the said agreement, became the agents of the said company, and continued to act as such down to the date of the present suit No other business was done by the firm and the three partners divided the profits realized by the firm out of the agency business in the shares specified in the agreement as above mentioned *V* died in 1874 leaving a will whereby, in exercise of the right vested in him by the agreement, he nomina [illegible]

became a partner and received 39 cents of the profits In November 1876 *J* assigned his interest in the [illegible]

profits and the latter 40 cents. In November 1882 *H* died, leaving a will whereby he appointed his wife *B* his executrix, and left all his property to her for life, and after her death to his son. The will did not refer to the firm or nominate any successor in the partnership In the present suit *B* as executrix claimed to be entitled to 61 cents or shares in the firm of *V J S & Co.* up to the date of the testator's death, and to a like share in the profits earned subsequently to his death, or to be earned by the firm so long as it continued to carry on the said agency business of the company The defendant admitted the right of the plaintiff to the share claimed in the profits earned prior to the testator's death, but resisted her claim to any portion of the subsequent profits. *Held* (1), on the authority of *Beamish* v. *Beamish, Ir Rep*, 4 *Eq*, 120, that the testator's will did not operate as an exercise of the power of nominating a successor in the firm so as to make the plaintiff a partner (2) That [illegible]

employed in the business it must have been intended that in default of nomination of a successor by a retiring or deceased partner, the agency should be carried on by the continuing or surviving partners in the name of the firm, and that the interest of the testator in the firm upon his death therefore survived to the defendant *Held* also that, although the plaintiff was entitled to an account up to the date of the testator's death she was not entitled to a share of the good-will as an asset of the firm. The good will of a firm is attached to the name and in the present case, by the partnership agreement itself the name was to be used by the surviving partners or partner for their own benefit That arrangement took away all value from the good will if indeed it was consistent with its being an asset at all BACHUBAI *v* SHAMJI JADOWJI I. L. R., 9 Bom, 536

2 RIGHTS AND LIABILITIES OF PARTNERS

9. ———Construction of deed of partnership—*Agreement to give managing partner commission—Dissolution of partnership—Loss of commission on dissolution*—By an agreement, made on the 10th of January 1857, between *K N* and several other persons it was agreed that they should form a co-partnership for the purpose of erecting a mill for the manufacture of yarn The capital of the partnership was fixed at R3 00 000, divided into 100 shares of R3 000 each. By the 4th clause of the agreement it was provided that, in return for the trouble *K N* had been at in establishing the factory "whatever cotton had to be purchased for the factory *K N* was to purchase, and whatever yarn should be made in the factory *K N* was to sell, and for whatever he should sell on account of the factory he was duly to receive from the co-partnership his commission at the rate of 5 per cent during his lifetime," and it was also provided that, though the purchases and sales by the co-partnership should not be made through *K N*, "yet upon the whole amount of the sales the co-partnership was duly to pay 5 per cent to *K N* during his lifetime" The factory was built, and its machinery procured and set up by *K N*, and both financially and otherwise the factory was wholly managed by him Shortly after it commenced to work, it was found that the co-partnership had expended all its capital and was heavily involved in debt—incurred by *K N* without the sanction of his co-partners,—and that the factory was

PARTNERSHIP—*continued.*

2. RIGHTS AND LIABILITIES OF PARTNERS—*continued.*

working at a loss; and at the suit of some of them, but against the consent of *K N* and a minority of the co-partners, the co-partnership was ordered to be dissolved. *K N* then claimed to be entitled to *compensation for the loss of the commission he* should have earned upon the sale of the yarn of the factory during his lifetime. *Held* that he was not so entitled; that as between his co-partners and *K N* there was no obligation on the former to subscribe more capital after the original capital of the co-partnership had been exhausted; and that there was no implied covenant on the part of co-partnership to continue to work the factory in order that *K N* should be in a position to earn his commission during his lifetime. Distinction between right to compensation for loss of fixed wages and right to compensation for loss of commission pointed out. When a partnership is wound up by the Court, all questions arising between the partners out of the partnership transactions should be disposed of in the winding-up suit. LALBHAI VALLABHBHAI *v.* KAVASJI NANABHAI . . . . . 8 Bom., O. C., 209

10. ———— Payments made by partners—*Presumption—Dissolution of partnership.*—Payments made by the different partners of a firm are presumed to have been made out of the funds of the firm where the contrary is not proved by any satisfactory evidence; and when a firm consisting of two members is dissolved by the death of one partner, the presumption is that the deceased was entitled to a moiety of the existing assets. KESHAV GOPAL GINDE *v.* RAYAPA . . . 12 Bom., 165

11. ———— Dormant partner, Liability of—*Bond executed by one of several partners—Right of creditor.*—The doctrine that a dormant partner, when discovered, is liable for every debt incurred for the partnership by the active partner, is not absolute in the Courts in England, and is not to be followed by the Courts of this country, unless found in particular cases to be consonant with justice, equity, and good conscience. Where money was lent on a bond to a "malik and mukhtear" of a factory on his personal credit and the security of the entire factory, and it was afterwards discovered that other parties had a share in the factory, it was held that the lender was not entitled to go beyond his contract and recover from those other parties personally. NUNDEEPUT MAHATAH *v.* URQUHART [9 W. R., 355

12. ———— *Bill drawn by one partner.*—Every one of the partners in a mercantile firm of ordinary trading partnership is liable upon a bill drawn by a partner in the recognized trading name of the firm for a transaction incident to the business of the firm, although his name does not appear upon the face of the instrument, although he be a sleeping and secret partner. In order to take a case out of these principles of the general law, it must be shown that the holder of the bill knew at the time he received it that the transaction was the private affair of a single partner. BUNARSEE DOSS *v.* GHOLAM HOSSEIN [13 W. R., P. C., 29: 13 Moore's I. A., 358

13. ———— Liability of partners on bond executed by managing partner.—Where a bond is executed by the managing partner in a firm within the ordinary scope of a manager's authority, to raise money for the joint purpose of the firm, it binds the remaining partners. AHMED HOSSEIN *v.* KURNEEDAN . . . . 24 W. R., 60

14. ———— Liability of partner for purchases made by co-partner out of the scope of partnership business—*Application of proceeds of sale to pay partnership debts.*—*C*, the managing member in Calcutta of a firm of which *B*, the other partner, was absent in England, made, unknown to *B* and without authority from him, various purchases from the plaintiff of articles not within the scope of the partnership business. The purchases were made as for the firm, and were delivered on the partnership premises by the plaintiff. Subsequently, the goods were taken to *C*'s house, and, together with certain private property belonging to *C*, were sold by auction, and the whole proceeds of the sale were paid by *C* to a bank in Calcutta to the partnership account with that bank, and were eventually remitted to *B* in England as from the partnership funds, and applied in payment of certain bills of the firm then due. *B*, on coming to Calcutta, took over the management of the business from *C*. In a suit brought against *B* and *C* for the price of the goods purchased from the plaintiff,—*Held* both in the Court below and on appeal that *B* was not liable. MARTIN *v.* BAKER [15 B. L. R., 372

15. ———— Liability of person joining firm as partner.—Where one person joins a firm as partner in place of one of the partners, he is only liable for the debts of the firm contracted after he joined it, unless by special agreement. GUJADHUR PERSHAD *v.* KUNHYA LALL . . 3 Agra, 27

16. ———— *Contract Act, s. 249.*—S. 249 of the Contract Act has no application in cases where by arrangement between the parties a person becomes entitled to the profits and liable for the debts accruing to and incurred by the firm before his admission as a partner. SHEWAK MAHTOON *v.* ST. JOSEPH . 9 C. L. R., 21

17. ———— Partner dealing with Hindu joint family—*Dealings among co-partners.*—A co-partner dealing with an undivided Hindu family is, with reference to its component members, in the same position that a partner according to English law is placed in with respect to his co-partners and their representatives. RAMLAL THAKURSIDAS *v.* LUCHMICHAND MUNIRAM . 1 Bom., Ap., 51

18. ———— Lien of banian on goods under agreement with firm—*Construction of agreement.*—The plaintiff became banian to the defendants, under an agreement by which he had a lien

PARTNERSHIP—*continued*

2. RIGHTS AND LIABILITIES OF PARTNERS—*continued*

upon all goods "belonging to" them in their godowns for balances that might be due by them. Some time after the date of the agreement, while there was a balance due, the defendants' firm took in a new partner. *Held* that the words "belonging to" included all goods in the possession of the new firm that came to them in the way of business *Held* also that the new firm, not having given notice to the contrary, must be taken to have engaged the plaintiff as banian upon the terms expressed in the agreement with the old firm, and to have taken over the balance due at the time when the new firm was constituted as a debt due by the new firm BALDEO DAS AGARWALLA *v* KAICH **3 B. L. R., O C., 80**

19. ———— **Power of partner to borrow money**—*Winding up—Account—Suit for dissolution—Power of partner to mortgage partnership land*—*T*, *B*, *R*, and *W*, the owners of a certain estate in equal shares, in 1863 entered into a partnership for "the cultivation of tea and other products" upon such estate In 1864 *H*, *F*, and *I* joined the firm In *1870 H* died, and in 1871 *T* purchased the shares of *F* and *I*, and in 1873 of *R*. In 1875 *T* gave the Delhi and London Bank a mortgage on such estate as security for the repayment of money which he had borrowed from the Bank ostensibly for the purposes of the estate. The Bank obtained a decree against him personally for the money, in execution of which his rights and interests in the estate were put up for sale on the 20th June 1877 and were purchased by the Bank, which obtained possession of the estate in August 1877 In August 1879 *B* and *W*'s executor sued *I* and the Bank, claiming a declaration that they were or had been partners with *T* in the estate, that if the partnership should be held to be subsisting, it might be dissolved or that if it had ceased to exist the date of its termination might be fixed and that in either event a liquidator might be appointed to take an account, and after realizing assets and discharging liabilities, might be ordered to pay them each one-[illegible]

[illegible]

made on behalf of the partnership; and therefore, at the time of the execution of the mortgage of the estate, *B*, *W*, and *T* were interested in the estate to the extent of one-third each: that, although *T* was not authorized, either actually or impliedly, by *B* and *W* to mortgage the estate, and the mortgage therefore was not binding on them, yet, as they allowed him to conduct the business of the estate in such a manner as to make it appear that the control and management of it rested with him, and he was for all ordinary business purposes their representative, *B* and *W* were bound, in any accounting that might take place, to recoup the defendant Bank for such advances as were made to *T* for the necessary purposes of the estate, in the same proportion as they must discharge debts due to other creditors; that *T* was entitled to be reimbursed such moneys of his own as he had expended within the legitimate scope and for the proper purposes of the partnership as originally contemplated by the parties. Directions to the liquidator appointed how to proceed HARRISON *v* DELHI AND LONDON BANK

[I. L. R., 4 All., 437

20. **Liability of partners**—*Joint contract—Joint liability—Judgment recovered against one partner*—The defendants were partners trading in the name of *V G & Co* On 6th July 1895, at Ahmedabad the first defendant borrowed from the plaintiff, for the purposes of the partnership business, a sum of R10 000 and passed a khata in the name of his firm On 25th April [illegible]

[illegible]

[illegible] October 189[illegible] plaintiff obtained a decree on an award against the first defendant in the Civil Court at Baroda for R13 909 4-0 and in execution of this decree he recovered a sum of R7 000 In 1897 plaintiff filed this suit in the Court of the First Class Subordinate Judge at Ahmedabad to recover the balance *viz* R 909-4-0 from all the partners (defendants Nos 1 to 8) The Subordinate Judge dismissed the suit the plaintiff appealed to the High Court *Held* that, the original liability of the part[illegible]

[illegible]

[illegible]KAR *v* VISHNURAM **I L R., 24 Bom., 77**

21. ———— **Payment to a partner in fraud of his co-partners**—*Discharge of debt—Constructive notice—Lease taken by agreement in name of one partner*—The defendants other than the first defendant, styling themselves the "agricultural association," entered into three rental agreements two of them dated April 23rd 1891 and the third dated June 21st 1891, with the plaintiffs and the first defendant, for the cultivation of certain lands belonging to an undivided family, of which the plaintiffs and first defendant were members and took possession of and cultivated the said lands. On the 17th June 1891, an agreement, of which the [illegible]

[illegible]

rent and give receipts for the same Subsequently, disputes arising between plaintiff and first defendant, the other defendants made payments of rent to first defendant alone. *Held* that these payments were not a valid discharge as against the claim of the plaintiffs on its being proved that second defendant had notice of the agreement of the 17th June, and that notice to him must be taken to be notice to his partners, the other defendants. By an agreement

PARTNERSHIP—*continued.*

2. RIGHTS AND LIABILITIES OF PARTNERS—*concluded.*

between the defendants any one partner was empowered to take a lease; such lease to be binding on all the partners as if executed by them. The leases were not signed by the 13th defendant (now represented by appellants 19, 20, and 21), who was admittedly a partner and took actual part in the management of the affairs of the firm after the leases were executed. *Held* that it was intended that the leases should operate as if all the members had executed them, and that the representatives of 13th defendant were bound. CHINNARAMANUJA AYYANGAR *v.* PADMANABHA PILLAIYAN; SORIMUTHU PILLAI *v.* PADMANABHA PILLAIYAN

[I. L. R., 19 Mad., 471

22. Authority of one partner to bind the firm by a submission to arbitration—*Specific Relief Act (I of 1877), s. 21.*—One partner, though entitled to bring a suit on behalf of the firm of which he is a member to recover a debt due to the firm, has no power, in the absence of special authority, to bind the firm by a submission to arbitration of the claim so brought. *Stead* v. *Salt, 3 Bing., 101,* and *Strangford* v. *Green, 2 Mod., 228,* referred to. RAM BHAROSE *v.* KALLU MAL

[I. L. R., 22 All., 135

3. SUITS RESPECTING PARTNERSHIPS.

23. ——— Suit for account without asking for dissolution—*Partnership dissoluble at will.*—A member of an ordinary trading partnership, dissoluble at will, cannot, except under special circumstances, seek an account without praying for a dissolution. GOLLA NAGABHU SHANAM *v.* KANAKALA GANGAYYA . . . . . 2 Mad., 28

24. ——— Liability of partners to account—*Suit for an account—Suit by partner to recover from co-partner share of losses and advances.*—It is only in exceptional cases that a suit can be brought by one partner against another, which involves the taking of partnership accounts prior to dissolution. A suit was brought by the widow of a partner in an indigo concern against her deceased husband's co-partner in respect of certain alleged losses of the concern, and to recover a moiety of moneys expended by her husband in advances made to indigo cultivators on behalf of the partnership. At the time when the suit was brought, the partnership had not been dissolved. *Held* that, the partnership not having been dissolved, the plaintiff was not entitled to an account, and the suit must therefore fail. *Brown* v. *Lapscott, 6 M. & W., 119,* and *Helme* v. *Smith, 7 Bing., 709,* distinguished. KASSA MAL *v.* GOPI . . . I. L. R., 9 All., 120

25. ——— Suit for dissolution and an account—*Partner seeking to remove attachment on partnership property.*—The proper course for a partner seeking to remove an attachment on partnership property in execution of a decree against one partner only is to sue for a dissolution of the partnership and an account, with a view to ascertain the amount due to the partner in execution against whom the partnership property is attached. KARIMBHAI *v.* CONSERVATOR OF FORESTS I. L. R., 4 Bom., 222

PARTNERSHIP—*continued.*

3. SUITS RESPECTING PARTNERSHIPS—*continued.*

26. ——— Suit by partner against co-partner—*Suit for share of profits.*—A member of a subsisting partnership is not in a position to sue his partner, still less one of his alleged partners, for the profits which had up to a particular time accrued, but he must, if he desires relief, sue in the ordinary way for an account. DOYARAM LUSKUREE *v.* SOOKHANUM . . . . 16 W. R., 141

27. ——— Suit for general adjustment of account.—In disputes between partners respecting their accounts, the plaintiff should so frame his suit that there may be a general adjustment of the partnership accounts. A particular item or claim should not be made the subject of a distinct suit. SOONDER BIBEE *v.* KHILLOO MULL *alias* RAM LALL . . . . . 2 N. W., 90

28. ——— Suit against co-partners for money deposited and profits—*Necessity for taking accounts.*—In a suit against co-partners in a joint firm to recover money deposited as plaintiff's share, and to have accounts rendered of the profits, before any order can be made to the effect that the plaintiff is entitled to be paid by any one of his partners or out of the assets of the firm the actual money advanced, the whole accounts of the firm ought to be taken, and the ultimate liability of each of the partners ascertained. KALEE CHURN SAHOO *v.* RAM LALL SAHOO . . . . 21 W. R., 300

29. ——— Suit for contribution among partners—*Transactions by some only of partners—Obligation to ask for account of partnership dealings.*—Four members of a partnership consisting of seven persons borrowed certain sums on account of the partnership for which they gave their joint and several promissory notes on which decrees were afterwards obtained against them. In a suit for contribution brought by one of the four members against the others, as having paid more than his share under the joint decrees,—*Held* that the giving of the promissory notes was not a partnership transaction so as to debar the plaintiff from a suit for contribution without asking for an account of the partnership dealings. DOYAL JAIRAJ *v.* KHATAV LADHA

[12 Bom., 97

30. ——— Partnership business—*Money borrowed by agreement by one partner and paid into partnership business—Decree against one partner—Suit for contribution by him against other partners—Adjustment of account whether necessary.*—In a partnership business entered into between the plaintiff and the defendants, it was agreed that each member, together with the gomashtas of the business, should be at liberty to borrow money upon his individual credit and to pay into the firm the money so borrowed to carry on the business. The plaintiff conjointly with defendants 4 and 6, in accordance with that agreement, borrowed several

PARTNERSHIP—*continued*

3 SUITS RESPECTING PARTNERSHIPS
—*continued*

sums of money upon promissory notes, and paid the amounts so borrowed into the business After the loan the partnership business came to an end, but no account was settled Afterwards decrees were obtained upon those promissory notes and the plaintiff was obliged to pay up the decretal amounts. To a suit for contribution by the plaintiff for money so paid, against the members of the firm the defence, *inter alia*, was that the suit was not maintainable, in the absence of adjustment of the accounts relating to the firm *Held* that the suit was maintainable inasmuch as the money secured by the promissory notes did not become an item of the partnership account *Doyal Jairaj* v. *Khatav Ladha, 12 Bom*, 97, and *Gada Kolita* v. *Joyram Das I L R*, 26 *Calc*, 262 *note* referred to DURGA PROSONNO BOSE *v.* RAGHU NATH DASS

[I. L. R., 26 Calc, 254
3 C W N, 299

31. ———————— *Whether a suit for contribution by a partner against a co partner would lie and in what cases—Adjustment of account whether necessary*—A suit for contribution by a partner against some of his co-partners on account of money paid by him for the satisfaction of a debt contracted by him jointly with the said co partners is maintainable in cases where the liability satisfied by the plaintiff is not a joint liability of the entire partnership or where the said partners were some only of several persons comprising the partnership and the bond was executed not in the usual course of business of the partnership, it is also maintainable in a case where the co-partners expressly promised to contribute their share of debt after a decree had been passed upon the bond *Doyal Jairaj* v. *Khatav Ladha, 12 Bom* 97, referred to. GUDA KULITA *v.* JOYRAM DAS

[I. L. R., 26 Calc., 262 note

32. ——— **Suit on agreement in nature of partnership deed**—*Suit by one party for his* [illegible]

[illegible]

deration of receiving a share in any sums which might be recovered by the other creditors. In a suit by one of the persons in whose favour the agreement was passed without making the others parties against the person who executed it to recover his share it was held that the suit was not maintainable as it could only be brought as a suit between partners for an account and the result of all the partnership transactions must be brought at once under the view of the Court. BHAGTIDAS BHAGWANDAS *v.* OLIVER

[9 Bom., 416

33 ———— **Suit based on rights of deceased partner**—*Adjustment of partnership accounts—Payments by partners Presumption as to—Partnership property*—A suit based on the right of a deceased partner cannot be limited to a demand for his share in the proceeds of property alleged to have come into the possession of the partnership during its existence The agreement on which the partnership was formed the amounts advanced and drawn out by the several partners, and the subsisting liabilities and assets, if any, must all be taken into account and the suit must demand such a sum, if any, as on a general account, and an account between the deceased partner and the co-partnership, being taken shall appear to be due Principle on which the account of a dissolved partnership should be adjusted explained. KESHAV GOPAL GINDE *v.* RAYAPA 12 Bom., 165

34. ———— **Suit against one of several partners for money lent**—*Form of suit*—*A was partner in an indigo concern in the name of his son* In his own name *A* lent moneys to the concern for the purpose of carrying on the business and each partner was to be separately liable for the moneys advanced in proportion to his share in the concern In a suit against one of the partners for his proportion of the moneys so lent—*Held* that the plaintiff could not sue for those moneys on the footing of a mere creditor, and that the suit should be so framed as to determine the profits or losses of the concern, and whether any and what assets would be available to each partner to liquidate the loan in proportion to his share CHUNDER SIKHUR BISWAS *v.* RAM BUKSH CHETLUNGEE 1 C L. R., 545

35 ———— **Suit by representative of a deceased partner for a share of a specific asset of the partnership recovered after the right to a general partnership account is barred.**—A suit may be brought by the representative of a deceased partner against the surviving partner of a firm to recover a share in a sum received by the surviving partner in respect of a partnership transaction within the period of limitation although a suit to take partnership accounts generally would be barred *H J, the plaintiff's father and the defendant P* were partners in the firm of Hormusji and Rustomji which carried on business in China. In the year 1862 the firm of N A & Co. was largely indebted to the firm of Hormusji and Rustomji. At the end of that year the latter firm ceased to do business but no formal dissolution of the partnership ever took place In 1869 the defendant *P* filed a suit (No. 161 of 1870) in the High Court of Bombay in his own name and that of *H J* his former partner against the firm of N A & Co for an account of the dealings of that firm with the firm of Hormusji and Rustomji and by a decretal order dated 19th March 1870 the suit was referred to the Commissioner to take the accounts as prayed for On the 17th December 1872 *H J* died at Hongkong intestate On 22nd February 1873 the defendant *P* assigned to the second defendant *W* for R20,000 the claim of the firm of Hormusji and Rustomji against the firm of N K & Co. The plaintiff did not know of this arrangement and he only became aware of it in 1880 The plaintiff alleged that of the said sum of R20,000 the second defendant *W* paid to the first

PARTNERSHIP—*continued.*

3. SUITS RESPECTING PARTNERSHIPS —*continued.*

defendant *R* R10,000 in 1878, and for the remaining R10,000 gave a promissory note payable in July or August 1881. The plaintiff took out letters of administration to his father *H J*, and brought this suit on 16th July 1880, claiming a moiety of the R10,000 already paid by the defendant *W* to the first defendant *R*, and praying that he might be declared entitled to a moiety of the remaining sum of R10,000 payable by the defendant *W*, and that the same might be paid over to him. The defendant *R* alleged that he had assigned the claim against the firm of *N K & Co.*, to the defendant *W*, and had received the consideration for such assignment in February 1873, and contended that if the plaintiff had ever any claim to any portion of the said money (which he denied), such claim was barred by limitation. *He also alleged that he had carried on the suit* No. 461 of 1869 without any assistance from the plaintiff's father *H J*, or from the plaintiff, who, although applied to, refused to assist him, and he submitted that under no circumstances was the plaintiff entitled to any of the moneys claimed by him without giving credit to the defendant for his (plaintiff's) share of the expense of prosecuting the said suit, and for the amount of proper remuneration to the defendant for the time and labour bestowed by him in the said suit. He also claimed that the partnership accounts of the firm of Hormusji and Rustomji should be taken, and alleged that on such accounts being taken a large sum would be found due to him from the partnership. The second defendant *W* paid into Court the R10,000 due on the promissory note above mentioned, and was dismissed from the suit. At the hearing the Judge found that, of the other moiety of the consideration for the assignment of February 1873, a sum of R1,000 was paid by the defendant *W* to the defendant *R* on January 23, 1878, and a sum of R6,000 on September 13, 1879. *Held* that the suit was not barred by limitation in respect of the said sums of R1,000, R6,000, and R10,000, and that the plaintiff was entitled to recover a half share of these sums from the defendant *R*, deducting all sums expended by the defendant in the prosecution of the suit No. 461 of 1869, no allowance, however, being made to him as remuneration for conducting the suit. *Held* also that the defendant might deduct the amount (if any) which might be found due to him on taking the partnership accounts, although a separate suit for such account would be barred by limitation. MERWANJI HORMUSJI *v.* RUSTOMJI BURJORJI

[I. L. R., 6 Bom., 628

36. ———— **Suit by sole surviving partner**—*Representatives of deceased partner—Contract Act (IX of 1872), s. 45—Civil Procedure Code, s. 26.*—The rule of English law that, in trading partnerships, although the right of a deceased partner devolves on his representative, the remedy survives to his co-partner, who alone must enforce the right by action, and is liable on recovery to account to the representative for the deceased's share, should be applied in India, in the absence of statutory authority to the contrary. The effect of s. 45 of the Contract Act (IX of 1872) is to extend the English law applicable to trading partnerships to all cases of partnership. There is nothing either in that section nor in s. 26 of the Civil Procedure Code, read with it, to show that the representatives of a deceased partner must be joined in an action for a partnership-debt brought by the surviving partner, though it may be that they might be joined in such an action. GOBIND PRASAD *v.* CHANDAR SEKHAR

[I. L. R., 9 All., 486

37. ———— **Suit by assignee of executors of deceased partner**—*Suit for declaration of right to share of partnerships and for an account.*—*R*, prior to his death, was a partner with defendants in the firm of *N C & Co.* He died on 8th November 1884. On the 9th November 1885, his executors passed a release to the defendants, which recited that *R*'s share in the firm and future business had ceased on his death; that the surviving partners had requested the executors to settle the account of their testator with the firm, and that, after examining the books and taking accounts, etc., a balance of R8,395-11-0 was found due, on payment whereof the executors released the defendants from all claims in respect of the share and interest of *R*. On the 7th April 1887, the executors assigned over to the plaintiff a one-anna share in the said firm, and the plaintiff, as assignee, brought the suit for a declaration of his right to the share and for an account. He alleged that there had been no accurate examination of the books at the time of the release; that the amount really due to the testator's estate by the firm had not been ascertained; and that it had been agreed on by the partners, at the time of the release, that in addition to the sum therein mentioned, the executors, as representing the testator's estate, should receive a one-anna share in the partnership. *Held* on the evidence that it had not been proved that all the partners consented to the alleged new partnership, and that on this ground alone the plaintiff could not succeed in his suit. COWASJI RUTTONJI LIMBOOWALLA *v.* BURJORJI RUSTOMJI LIMBOOWALLA . I. L. R., 12 Bom., 335

38. ———— **Partnership shares**—*Interest.*—The parties to the suit, the heirs and representatives of the original partners, a family carrying on a banking business, made and acted upon a new arrangement of their shares, the amounts of which were found in the first Court, and affirmed on appeal. A decree for an account, and an award of interest at 12 per cent. on the amounts found to be due upon the shares from the date of the closing of the business, was maintained. MUTIA CHETTI *v.* SUBRAMANIEM CHETTI . . . I. L. R., 18 Calc., 616

39. ———— **Alleged agreement as to shares in partnerships**—*Contract Act (IX of 1872), s. 253.*—In a partnership suit where one party does, but the other party does not, allege a specific agreement that the shares in the said partnership were unequal, the existing presumption as to the

PARTNERSHIP—*continued.*

3 SUITS RESPECTING PARTNERSHIPS —*continued*

equality of the partner's shares casts the burden of proof on those alleging the agreement who must therefore begin JADOBRAM DEY *v* BULLORAM DEY [I. L. R., 26 Calc., 281

40 ———— **Assignment by plaintiff's partners of their shares**—*Decree for winding up and for an account*—The plaintiff, as a partner … given, had … he first and … the plain… … him, had … sons The assignees were added as co-defendants after this suit had been filed, claiming a decree for a judicial winding up and for an account It was not proved that the plaintiff had ever relinquished his claim upon the assignors as a partner, though he might have been aware of the assignment The two added defendants appeared in the Court below, but not … before the com… obtained, before …

and severally liable to a count with the first and second defendants for what had been received by them from the adventure DOMATY NURSIAH *v* RAMEN CHETTY . . I. L. R., 26 Calc., 93 [L. R., 26 I. A., 202

41. **Suits by different partners for specific sums of money on adjustment of accounts**—*Accounts adjusted by Amin appointed in previous suits—Contract Act, s 265—Plaint, Amendment of, under s 53, Civil Procedure Code, 1882* After dissolution of a certain partnership two separate suits were brought in 1889 by different partners for specific sums of money due to them and in the alternative, for such other amount as might be found due on an adjustment of accounts. Objections were raised against these suits on the grounds, *inter alia*, (1) that the suits were barred by the provisions of s 265 of the Indian Contract Act; (2) that separate suits for the same matter were not maintainable; (3) that the suits would not lie in the Munsif's Court; and (4) that accounts having been already adjusted there was no cause of action The Munsif overruled the first three objections, and held, as regards the fourth, that the adjustment pleaded had been ratified by the plaintiffs; he appointed an Amin, who examined the accounts and ascertained the respective claims of the partners and the plaintiffs in those suits obtained decrees on the basis of the Amin's adjustment of account The present suits were brought in 1891 by certain other partners, who were defendants in the suits of 1889, on the allegation that the partnership account had been already adjusted by the Amin appointed in the suits of 1889 and that the debts and dues of all parties had been determined by the Court. The plaintiffs prayed for recovery of the amount due to them under the Amin's adjustment and in the alternative, for such other relief as might be deemed proper by the Court to grant them against any of the defendants *Held by* NORRIS and BANERJEE JJ (RAMPINI, J, dissenting), that the suits were correctly framed, and that such defects as there were in the plaint, *viz*, an incorrect statement as to the dues of all the partners having been determined in the former suit, and the omission of an alternative prayer for an account were no bar to the maintenance of the present actions *Taylor v Shaw, 2 Sim & St, 12 Stupart v Arrowsmith, 3 Sm & G, 176*, and *Lalla Sheoprosad v Juggarnath, I L R, 10 I A, 74*, referred to. *Prosad Doss Mullick v. Russick Lall Mullick, I L R, 7 Calc, 157*, distinguished *Held* also that an amendment of the plaint under s 53 of the Code of Civil Procedure should be allowed *Cropper v Smith, I R, 26 Ch. D, 700* followed. *Weldon v Neal L. R, 19 Q B D, 394, Mohummud Zahoor Ali Khan v Thakooranee Rutta Koer, 11 Moore's I A 468 Joseph v Solano, 9 B L R 441 18 W R 421, Ramdoyal Khan v. Ajhoodhia Ram Khan, I L R, 2 Calc, 4 25 W R 425* and *Kurtz v Spence, L R, 36 Ch D, 770* referred to. *Held* by RAMPINI, J, that the amendments proposed to be made in the plaint could not be allowed under s 53 of the Code of Civil Procedure DHANI RAM SHAHA *v* BHAGIRATH SHAHA I. L. R., 22 Calc, 602

42. ———— **Advance made by one partner to another in respect of the latter's share of partnership debt**—*Suit for contribution*—*A* and *B* were partners. A decree was passed against them for the payment of a certain debt, each partner being liable for the whole sum and being bound to indemnify the other against the payment of more than his share. *A* paid *B*'s share as well as his own and brought a suit against *B* for contribution *B* contended that *A*'s claim, being in respect of a partnership transaction, ought to be adjusted when the partnership account was settled, and that the suit did not lie *Held* that the advance made by *A* to *B* by paying his share was not an advance to the partnership but to the other partner in respect of what he had to contribute and that consequently *A* was entitled to contribution from *B* SUBBARAYUDU *v*. APPARAYUDU [I. L. R., 18 Mad., 134

4. DISSOLUTION OF PARTNERSHIP

43 ———— **Ground for dissolution**—*Adultery of partner with wife of co-partner*—

PARTNERSHIP—*continued.*

4. DISSOLUTION OF PARTNERSHIP —*continued.*

Adultery of one partner with the wife of his co-partner is a sufficient ground for dissolution of the partnership. ABBOTT *v.* CRUMP 5 B. L. R., 109

44. ——— Death of partner—*Deed of partnership—Contract Act, s. 253, cl. 10.*—Where one party (*A*) advanced money to others to carry on business, and an instrument was executed whereby the latter agreed and bound themselves to account yearly to the former for a share of the profits, the transaction was held to amount to an agreement that *A* should be a party to the business *pro tanto*. *Held* that by the operation of the Contract Act of 1872, s. 253, cl. 10, the partnership between *A* and the others was dissolved by the death of *A*, and that the representatives of *A*, by receiving, some six months after his death, an account with a portion of the money advanced and of the profits, did not reconstitute partnership, but rather indicated an opposite intention. PEER MAHOMED *v.* NEKJAN BIBEE [25 W. R., 49

45. ——— Assignment of share in partnership—*Contract Act, ss. 253, cl. 6, and 265—Introduction of a new member into firm—Suit for an account.*—The effect of cl. 6 of s. 253 of the Contract Act is not to render an assignment of a share in a partnership concern illegal or void as between the parties to the assignment, but only so far void as between those parties and the other partners as to cause an immediate dissolution of the partnership. If no assent is given by the other partners to the assignment, the assignee is on dissolution at liberty to sue for an account and for distribution, not as a partner, but as assignee of the right of his assignor in the partnership property. S. 265 of the Contract Act commented on. JUGGUT CHUNDER DUTT *v.* RADA NATH DHUR [I. L. R., 10 Calc., 669

46. ——— Right of co-partners to dissolve—*Renunciation of right.*—A contract between a partner and his co-partners for remuneration to the former for the management of the partnership business by a commission on the sale, during his lifetime, does not, in the absence of any express agreement to that effect, imply a renunciation of the right of the co partners to dissolve the partnership if they find that it cannot be carried on except at a loss; nor does it imply an obligation to pay the managing partner compensation in case the partnership is dissolved for that reason. *Rhodes* v. *Forwood, L. R., 1 Ap. Ca., 256,* referred to and approved. COWASJEE NANABHOY *v.* LALBHOY VULLUBHOY [I. L. R., 1 Bom., 468: 26 W. R., 78 L. R., 3 I. A., 200

47. ——— Notice of dissolution—*Liability of members for payment to partner retiring without notice.*—Partners must, on dissolution of partnership, give full and fair notice to their customers of such dissolution, or otherwise be liable to them for all payments made by them to one partner in the belief that he represented the firm. SHEWRAM *v.* ROHOMUTOOLLAH . . W. R., 1864, 94

PARTNERSHIP—*continued.*

4. DISSOLUTION OF PARTNERSHIP —*concluded.*

48. ——— *Contract Act (IX of 1872), s. 264.*—S. 264 of the Contract Act is not intended to be an exhaustive exposition on the question of notice of a dissolution of partnership. The mode of notification of dissolution required in the case of old customers, who are known to the firm as having dealt with it, is an express or specific notice by circular or otherwise. But in the case of the general public the most effectual public notice which can reasonably be given is requisite. *Roop Chund Pundit v. Madhub Chunder Bose, I. L. R., 8 Calc., 681 note,* overruled. CHUNDEE CHURN DUTT *v.* EDULJEE COWASJEE BIJNEE [I. L. R., 8 Calc., 678: 11 C. L. R., 225

49. ——— *Effect of dissolution as against party without notice.*—*Held* that dissolution between the members of a carrier's firm or exclusion of one of the members thereof by others in virtue of a partnership agreement would not operate against a third party (a consignor) who had no knowledge of it, and who in his dealing with the firm, in the absence of any notification of change, supposed that the partnership continued unaltered as to its members; and that such dissolution or exclusion would not exempt the retired member of the firm from liability to the consignor's claim, unless it be shown that the latter was aware of the fact of the former having ceased to be a member thereof. GUNGA RAM *v.* GUNGA DHUR . 1 Agra, 198

50. ——— *Contract Act s. 264—Sleeping partner.*—*A*, *B*, and *C* traded together in partnership as *B C & Co.*, *A* being a sleeping partner. After the partnership was dissolved, *B* and *C* continued to trade together under the same name and incurred debts to the plaintiffs, who sued to recover the amounts from *A*, *B*, and *C*. The plaintiffs had not dealt with the old partnership, nor received notice of its dissolution, and it was not alleged that they knew of *A*'s previous connection with it. *Held* that the suits did not lie against *A*. RAMASAMI *v.* KADAR BIBI [I. L. R., 9 Mad., 492

5. PROCEDURE.

51. ——— Suit to close partnership transactions—*Issues—Civil Procedure Code, 1877, sch. IV, forms 132, 133—Accounts, Decree for.*—In a suit for an account of partnership transaction the Subordinate Judge, in whose Court the suit was instituted, framed certain issues with the object of ascertaining who managed the business; with whom the partnership property was; whether the defendant ought to account; what was the capital, and what the expenditure and profits of the firm; and after taking evidence on these points, dismissed the suit. *Held* that the Subordinate Judge should have followed the course pointed out in forms 132 and 133 of sch. IV of the Civil Procedure Code, and at the first hearing should have determined whether there had been a partnership; what were its conditions; was it

PARTNERSHIP—*concluded.*

5 PROCEDURE—*concluded.*

dissolved, or ought it to be dissolved, and who were the parties interested, and in what shares, and upon determining these questions, should have directed accounts to be taken, and after the accounts had been taken should have made a final decree RAM CHUNDER SHAHA *v.* MANICK CHUNDER BANIKYA [I. L. R., 7 Calc, 428 9 C. L. R., 157

PARTNERSHIP PROPERTY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PARTNERSHIP PROPERTY.

See COURT FEES ACT, 1870 SCH, ART 12 [I. L. R, 1 Calc, 168

1. ——— Theft—*Fraudulent removal of —Penal Code, ss. 378, 405 and 421—Criminal misappropriation and breach of trust*—*K*, the servant of *A* and others partners, was coming out [illegible]

give them up The Magistrate found *A* guilty of theft under s 378 *Held* the conviction could not be sustained, the possession of *K* was the possession of *A* and the partners, and *A* could not therefore be convicted of theft QUEEN *v.* ALLAH BUKSH [6 B. L. R, Ap, 133: 13 B. L. R., 310 note

S. C. KEAMUDDIN *v* ALLAH BUKSH [15 W. R., Cr., 51

2. ——— Criminal misappropriation—*Misappropriation of partnership property —Penal Code, s 405*—A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which he is entrusted or which he has dominion over, is guilty of an offence under s. 405 of the Penal Code QUEEN *v.* OKHOY COOMAR SHAW IN THE MATTER OF THE PETITION OF NAGENDRA LAL CHATTERJEE [13 B. L. R., F B., 307: 21 W. R., Cr, 58

3. ——— Criminal breach of trust —*Removal of partnership property—Penal Code, s 421*—Also a partner who fraudulently removes partnership property is guilty of an offence under s 421, Penal Code QUEEN *v* GOUR BENODE DUTT [13 B. L. R, 309 note: 21 W R, Cr., 10

PARTY-WALL.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY — ERECTION OF BUILDINGS. [I. L. R., 10 Mad, 38

See EXECUTION OF DECREE—MODE OF EXECUTION—PARTITION [I. L. R., 10 All, 104

———Liability of adjoining owner for costs of—

See BUILDINGS ERECTED BY ADJOINING OWNERS . I. L. R., 9 Bom., 183

PASSENGER.

——— by rail.

See RAILWAYS ACT, 1871, s 2 [I. L. R, 1 Bom., 25

See RAILWAYS ACT 1879 ss 17 31 [I. L. R., 12 Calc., 192

——— infected with disease.

See CONTRACT ACT s 56 [I. L. R., 14 Bom, 147

PASTURAGE, RIGHT OF—

See ENGLISH LAW [I. L. R., 14 Bom., 213

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS—BOMBAY. [I. L. R., 21 Bom., 684

See LIMITATION ACT, 1877, s 26. [I. L. R., 14 Bom, 213

See WASTE LANDS [I. L. R., 10 All., 172

——— Grazing—*Bom Act I of 1865 s 32—"Village cattle"*—Plaintiff erected a hut on public ground in a village in the district of Thana and lived there annually for a few months while his cattle grazed on the public grazing ground in that village He was not the owner or lessee of any land in the village On being prevented by the Collector of Thana from thus grazing his cattle plaintiff [illegible]

titled to any such right The phrase "village cattle" in s. 32 of Bombay Act I of 1865 does not include the cattle of any roving grazer who may choose to squat for a few months on the public ground of a [illegible]

missioner, whose consent must be obtained COLLECTOR OF THANA *v* BAL PATEL [I. L. R., 2 Bom, 110

PATENT.

——— Infringement of—

See INJUNCTION—SPECIAL CASES—TRADE MARK . I. L. R., 17 Bom, 584

See LIMITATION ACT, 1877, ART 40 (1871, ART 11) . I L. R, 3 Calc, 17

——— Suit for account of profits of—

See LIMITATION ACT, 1877, ART 40 (1871, ART 11) I. L. R., 3 Calc, 17

1. ——— Licensee, Application by, under s. 21 of Patent Act—*Act XV of 1859, s 21—Petitioner under Patent Act and licensee having no separate interest*—A licensee under a patent cannot, as between himself and the patentee, challenge the soundness of the patent during the continuance of his license. Case in which the petitioners

PATENT—*continued.*

on the record in a proceeding under s. 24 of Act XV of 1859 was found to have had no real interest in the matter apart from that of the licensee; and in which the petition, having been taken to be in reality that of the licensee, was dismissed accordingly. IN THE MATTER OF ACT XV OF 1859. IN THE MATTER OF MOSES . . . I. L. R., 15 Calc., 244

2. ——— Suit for infringement of patent—*Act XV of 1859, s. 25—Substantial difference in machinery—Injunction—Damages and account of profits.*—The fact that a machine has been several times improved since the original patent was obtained is no argument against its being a useful invention within s. 25, Act XV of 1859. *Cannington* v. *Nuttal, L. R., 5 H. L., 205,* followed as to the test of "novelty" in an invention. In deciding whether a machine, patented as an entire invention, is an imitation and piracy of another machine previously patented as an entire invention, the question is,—Is the later patented machine substantially the same as the earlier one? The fact of considerable differences existing in the several parts of the two machines will not prevent the latter machine from being, as a whole, a copy of the earlier one; even where an exclusive privilege might have been acquired had the alterations in the later machine been claimed as improvements on the earlier one. *Clark* v. *Adie, 2 App. Cas., 315,* followed. Where a patent has been obtained for a machine which the patentee subsequently somewhat improves, a subsequent specification claiming the improved machine as a novel combination is bad, though the improvement might be claimed and protected as such. Where a new arrangement of the parts of a machine is claimed as an improvement, the arrangement must be clearly described in the specification. The mere substitution of one mechanical equivalent for another already in use will not protect it. Where a case of infringement of a patent has been made out, an injunction will follow as a matter of course. A plaintiff cannot pray for an account of profits and for damages He must elect between the two remedies. If the plaintiff elects to take an account of the profits, such accounts will only be carried back to the period of one year before the filing of the plaint, in accordance with Act IX of 1871, art. 11. KINMOND *v.* JACKSON. KINMOND *v.* LAWRIE [1 C. L. R., 66

3. ——— *Act XV of 1859, s. 23—Measure of damages—Evidence of particulars.*—*Held* by the Court, in a suit under Act XV of 1859 for the infringement of a patent, where the plaintiff had been in the habit of licensing the use of his invention, that the loss of the amount paid for such license was the measure of damages. *Per* SPANKIE, J—The meaning of the words "publicly or actually used" in s. 23 of Act XV of 1859 discussed. *Held per* SPANKIE, J.—That where the defendant did not allege in his written statement that the invention was publicly used at certain places prior to the date of the petition for leave to file the specification, but was allowed to give evidence that the invention was so used at such places, the plaintiff was not bound before trial to have called upon the defendant to supply the particulars as to such places, and such evidence was not admissible. SHEEN *v.* JOHNSON [I. L. R., 2 All., 368

PATENT—*concluded.*

4. ——— *Particulars of infringements, Sufficiency of—Practice—Act XV of 1859, s. 34—Stat. 15 & 16 Vict., c. 95 (Patent Law Amendment Act, 1852), s. 41.*—In a suit for the infringement of certain inventions the plaintiff did not, as required by s. 34 of Act XV of 1859, deliver with his plaint particulars of the breaches complained of in the suit. In his plaint, after describing his inventions, he alleged generally that the defendant had made and used them at a certain place without his license. *Held* that, as required by s. 34 of Act XV of 1859, the plaintiff should have delivered with his plaint particulars of the breaches complained of; that the general allegation as to infringement contained in the plaint did not amount to such particulars; and that under these circumstances the plaintiff came into Court with a case which could not be tried. PETMAN *v.* BULL . I. L. R., 5 All., 371

In the same case, on appeal to the Privy Council,—*Held* the sole object of Act XV of 1859, s. 34, corresponding with s. 41 of the English Patent Law Amendment Act, 1852, is to give the defendant fair notice of the case which he has to meet, and it is quite immaterial whether the requisite information be given in the plaint itself or in a separate paper. *Talbot* v. *La Roche, 15 C. B., 310,* and *Needham* v. *Oxley, 1 H. & M., 248,* approved. Particulars of breaches must be distinguished from particulars of objections for want of novelty. In the latter case the particular instances may not be within the knowledge of the patentee and must be specified: in the former the defendant must know whether and in what respect he has been guilty of infringement. Where three patents of the plaintiff all related to one article,—a kiln for burning bricks,—and the second and third in date were for improvements upon the invention specified in the first, and the plaintiff alleged a particular kiln constructed and used by the defendant, and in his plaint not only referred to his patents, but indicated in the case of each of them the infringements of which he complained,—*Held,* reversing the decision of the High Court, that this was a sufficient compliance with the Act. LEDGARD *v.* BULL [L. R., 13 I. A., 134
I. L. R., 9 All., 191

PATENT ACT, 1859.

See LIMITATION ACT, 1877, ART. 40 (1871. ART. 11) . I. L. R., 3 Calc., 17

PATIL.

See ILLEGAL GRATIFICATION. [I. L. R., 21 Bom., 517

See SUBORDINATE JUDGE, JURISDICTION OF. [I. L. R., 21 Bom., 773

——— Duties of—

See BOMBAY VILLAGE POLICE ACT. [I. L. R., 19 Bom., 612

PATIL—*concluded*

——— **Suit for declaration of right to officiate as**—

See PENSIONS ACT 1871
[I L R, 1 Bom, 531

PATNI TENURE

See CASES UNDER SALE FOR ARREARS OF RENT

1 ——— **Hereditary interest**—*Construction*—The words patni tenure *prima facie* convey an hereditary and transferable interest in land TARINI CHARAN GANGULI *v* WATSON
[3 B L R., A C, 437 12 W R, 413

2 ——— **Division or transfer of patni talukh**—A patni talukh cannot be divided except by an act of the zamindar or by an act recognizing the entirety or the rights of the zamindar JUDOO NATH SHAHANA *v* JADUB CHURN THAKOOR
[11 W R, 294

3 ——— **Transfer of patni right over a specific area, whether valid**—*Regulation VIII of 1819 ss 3 and 6—Transfer of Property Act (IV of 1882) s 6*—Patni right over a specific area lying within a patni talukh is transferable Sub s 1 of s 12 of the Bengal Tenancy Act does not require that the notice therein contemplated should be given in any particular manner MADHUB RAM *v* DOYAL CHAND GHOSE. I L R, 25 Calc, 445

4 ——— **Suit by grantor of patni pottah as ijaradar of share in zamindari**—*Suit to set as de patni*—One of several grantors of a patni pottah cannot get rid of the patni as to a share in the zamindari.

5 ——— **Separate payments of rent and separate registration by patnidar**—*Cancellation of lease*—The fact of a patnidar having made separate payments of rent of having registered his name with each of the sharers and of being prepared to enter into a fresh engagement with one of them does not amount to a cancellation of the original lease and substitution of a new lease SHAM CHAND MITTER *v* JUGGUT CHUNDER SIRCAR
[22 W R, 50

MOHADEB MUNDUL *v* COWELL 15 W R, 445

6 ——— **Suit by zamindar to set aside patni lease**—*Effect as between patnidar and under-tenants of setting it aside with mesne profits*—Where a landlord (patnidar) and his tenant were defendants in a suit by the zamindar for setting aside the patni and both were by the decree made liable for the mesne profits which the tenant eventually paid out of his own pocket—*Held* that the effect was to cancel all relation of landlord and tenant between them and to give the tenant a right to receive back what he had paid RAKHAL MONEE DOSSEE *v* BROJENDRO GOPAL ROY 23 W R, 303

7 ——— **Refusal of patnidar to give security**—*Inability to collect rents owing to zamindar in consequence withholding amaldastak*—If by reason of the patnidar not giving security, the zamindar withholds his amaldastak and also abstains from availing himself of the power which the law gives him of collecting the rents himself it would be inequitable to allow him to recover from the patnidar the rent which the withholding of the amaldastak has prevented his collecting BIDHOO MOOKHI DEBI *v* NILMONEY SING DEO
[1 C L R, 464

PATNIDAR, RIGHT OF—

See ABATEMENT OF RENT
[B L R, Sup Vol, 70
1 W R, 299
2 W R, Act X, 30, 47

See LAND REGISTRATION ACT s 38
[I L R 24 Calc, 404

See PARTITION—RIGHT TO PARTITION
[I L R, 24 Calc, 575

PATWARI

See EVIDENCE ACT s 74
[I L R, 18 Calc, 534

PAUPER SUIT

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—LEAVE TO APPEAL
[7 W R., P C, 29 4 Moore's I A, 114
8 W R, 4

See COMPROMISE—CONSTRUCTION ENFORCING EFFECT OF AND SETTING ASIDE DEEDS OF COMPROMISE
[7 W R P C, 29 4 Moore's I A, 114

See LIMITATION ACT 1877 s 4 (1871, s 4)

See LIMITATION ACT 1877 ART 171
[I. L R., 7 Bom, 373

See REVIEW—ORDERS SUBJECT TO REVIEW 5 B L R., Ap, 29
[5 B L R 318 note
I L R, 4 Bom, 414

1 SUITS

1 ——— **Continuation in forma pauperis of suit commenced in ordinary form**—*Civil Procedure Code 1859 ss 297 310*—The power of the Court to allow a suit to be instituted *in formâ pauperis* includes the power to allow a suit to

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

be continued as a pauper suit after it has been commenced in the ordinary form. NIRMUL CHANDRA MOOKERJEE *v.* DOYAL NATH BHUTTACHARJEE [I. L. R., 2 Calc., 130

REVJI PATIL *v.* SAKHARAM [I. L. R., 8 Bom., 615

2. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 401-415.*—A Court has power under Ch. XXVI of the Code of Civil Procedure to allow a suit instituted in the ordinary form to be continued *in formâ pauperis.* THOMPSON *v.* CALCUTTA TRAMWAY COMPANY [I. L. R., 20 Calc., 319

3.———— Pauper defendant—*Civil Procedure Code, 1877, Ch. XXVI, ss. 401-415.*—Although Ch. XXVI of the Civil Procedure Code only provides for suits to be brought by a pauper, the Court has power to allow a defendant to defend *in formâ pauperis.* DOORGA CHURN DOSS *v.* NITTOKALLY DOSSEE . . I. L. R., 5 Calc., 819 [6 C. L. R., 120

4. ———— Suit by next friend—*Next friend a pauper—Infant.*—A suit can be brought *in formâ pauperis* by a next friend who is also a pauper. GOLAUPMONEE DOSSEE *v.* PROSONOMOYE DOSSEE . . . . 11 B. L. R., 373

5. ———————— *Minor—Next friend a pauper.*—The rule of English practice which prevents a minor from instituting a suit *in formâ pauperis* through his next friend, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from, the provisions of the Civil Procedure Code. VENKATANARASAYYA *v.* ACHEMMA . . I. L. R., 3 Mad., 3

6. ———— Representative of pauper—*Right to carry on suit.* There is no necessity for an inquiry whether an alleged representative of an admitted pauper is a pauper or not. The Court, if satisfied that he is the legal representative, ought to admit him to carry on the suit. BHAGBUT DOSS *v.* BULORAM DOSS . . 3 W. R., Mis., 20

7. ——— Pauper administrator—*Civil Procedure Code, 1882, s. 401.*—The administrator of the estate of a deceased person may apply to sue *in formâ pauperis* under the provisions of Ch. XXVI of the Code of Civil Procedure, 1882. IN RE BILL [I. L. R., 7 Mad., 390

8. ———— Presentation of petition to sue in forma pauperis—*Civil Procedure Code, 1859, s. 301, and s. 17.*—*Held* that s. 301 of Act VIII of 1859, requiring the petition for permission to sue *in formâ pauperis* to be presented by the petitioner in person, is imperative, and must be held to control the provisions of s 17 of the same Act. EX PARTE DEVGIR GURU SUMBHAGIR [4 Bom., A. C., 91

9. ———— Authorized agent—*Vakil—Civil Procedure Code, 1859, s. 301.*—A vakil may be a "duly authorized agent" within the meaning of s. 301 of the Code of Civil Procedure. KISHOREE MOHUN BOSE *v.* GOUR MONEE DOSSEE [15 W. R., 198

10. ———— Presentation of plaint—*Limitation—Suit when to be considered as commenced.*—In calculating the period of limitation in a case where it is sought to extend the time by reason of a pauper suit having been commenced, the suit is commenced for this purpose when the plaint is presented to the Court, and not merely at the date of its allowance. SEETARAM GOWER *v.* GOLUCKNATH DUTT [Marsh., 174

GOLUCKNATH DUTT *v.* SEETARAM GOWER [W. R., F. B., 53: 1 Ind. Jur., O. S., 66 1 Hay, 378

VINAYAK K. DHAVLE *v.* BHAU B. SAMVAT [4 Bom., A. C., 39

11. ———————— *Civil Procedure Code, 1859, s. 308—Limitation.*—Where an application for permission to sue *in formâ pauperis* is numbered and registered, and deemed to be the plaint in the suit, not in consequence of proof of the plaintiff's pauperism, but in consequence of his abandoning his claim to sue as a pauper and paying for the stamps required for the institution of the suit, the date of such payment, and not the date of the application, must be taken, in computing the period of limitation, to be the date of the presentation of the plaint and the institution of the suit. SKINNER *v.* ORDE . . . . I. L. R., 1 All., 230

12. ———————— *Enquiry into pauperism—Civil Procedure Code, 1859, s. 310—Limitation Act, 1859, s. 14—Deduction of time—Presentation of plaint in wrong Court—Institution of suit.*—The plaintiff applied by petition, on 20th February 1873, to the Subordinate Judge of Meerut for leave to sue *in formâ pauperis.* The petition contained a statement of the claim and such particulars as are required in a plaint, and a prayer that, as part of the immoveable property claimed was situated in the Punjab, the Subordinate Judge would seek the necessary sanction to give him jurisdiction. The Subordinate Judge, considering that the suit should be instituted in the Delhi district, rejected the application. On 3rd March the plaintiff presented the petition to the Deputy Commissioner of Delhi, and was admitted by that officer to sue as a pauper. The Deputy Commissioner having applied for sanction to try the suit, the High Court, North-Western Provinces, and the Chief Court of the Punjab considered it advisable that the suit should be tried at Meerut; and on 10th June 1873 the Deputy Commissioner returned the petition for presentation in the proper Court in the North-Western Provinces. On 19th July the plaintiff presented it to the Subordinate Judge of Meerut, who received and registered it as a plaint. On 10th November the defendants filed written statements, wherein they urged that the plaintiff ought not to be allowed to sue *in formâ pauperis* until he had proved his pauperism in the

PAUPER-SUIT—*continued*

1 SUITS—*continued*

Subordinate Judge's Court Upon this the Subordinate Judge threw out the suit holding that he had no jurisdiction to admit it *Held* that the Subordinate Judge if he regarded as ineffectual the order of the Deputy Commissioner admitting plaintiff to sue as a pauper should himself have entered into an inquiry into the plaintiff's pauperism and not have thrown out the suit *Held* also that the provisions of s 340 of Act VIII of 1859 were not applicable to the order of the Subordinate Judge refusing to allow the plaintiff to sue as a pauper as he pronounced no opinion on the point *Held* also

returned by that Court and that it became the duty of the Meerut Court when the petition was again presented to it to pass orders *de novo* on the subject SKINNER *alias* MIRZA v ORDE 6 N W, 225

13 ———— Inquiry into pauperism—*Civil Procedure Code 1859 ss 305 306*—Inquiry under ss 305 and 306 of the Civil Procedure Code should be made by the Judge himself and not by the sheristadar of the Court IN THE MATTER OF EKNATH BIN MADOBA I Bom, 102

14 ———— *Civil Procedure Code 1859 s 306*—When a pauper petition comes on for hearing under s 306 of the Code of Civil Procedure the Judge has no power to inquire into any other circumstances than the pauperism of the petitioner DIPSANGJI JITSANGJI v FATTLESANGJI JASVATSANGJI 5 Bom, A C 59

15 ———— *Civil Procedure*

the defendant other than on the single question of the pauperism of the plaintiff SHIPONESSA BIBEE v KAMINEE BIBEE 2 Ind Jur, N S, 121

16 ———— *Civil Procedure Code, 1859 ss 304 306—Procedure*—Where a petition in a suit *in formâ pauperis* had been admitted the usual order made under s 305 Act VIII of 1859 and the case came on for hearing under s 306 it was proposed for the defendant to show by examination of the plaintiff that on the facts stated in the petition she had no cause of action and it was objected that no question except the pauperism of the plaintiff could be gone into under s 306 The Court allowed the plaintiff to be examined to show that on her own evidence she had no cause of action but refused to allow other witnesses to be called upon From the plaintiff's evidence the defendant failed to show that there was no cause of action TARAMONEY DABEE v HURRO MOHUN CHATTERJEE [11 B L R, Ap 23

But *see* IN GUNGA DASS ADHIKAREE [11 B L R, Ap, 23 note 14 W R, 281

PAUPER-SUIT—*continued*

1 SUITS—*continued*

where it was held that where on the day fixed for hearing evidence on the question of pauperism the defendant brings to the notice of the Court any ground on which it would have been bound to refuse to admit the petition it is in the discretion of the Court to admit or refuse to receive evidence of such ground

The Judge was held not to have been justified in finding on evidence other than that of the petitioner that the claim was barred by limitation PARKASH OJHA v DUSRUTH OJHA 25 W R, 74

17 ———— *Civil Procedure Code s 401 Explanation and s 407*—On an application to sue *in formâ pauperis* the Court is required to deal with the question of the applicant's pauperism with reference to the definition of that word as given in the explanation to s 401 of the Code of Civil Procedure and in deciding it to ascertain the exact property its market value and the title thereto and then to deal with the case under s 407 of the Code irrespective of any sums as to the reason why the applicant has valued his claim at a high figure MUHAMMAD HUSAIN v AJUDHIA PRASAD I L R, 10 All, 467

18 ———— *Application for leave to sue as a pauper—Property admitted by*

prayed to be allowed as paupers to sue the respondent for certain property specified in the schedule annexed to their petition At the hearing of the

The inquiry into pauperism under ss 408 and 409 takes place before any suit is in existence for until an application to sue as a pauper is granted there is no plaint and consequently no suit (see s 410) Any property therefore found at such inquiry not to

reach and cannot be made use of by him to carry on his litigation In the present case the articles deposited in Court were freely at the disposal of the petitioners and could not therefore be excluded from consideration DWARKANATH NARAYAN v MADHAVRAV VISHVANATH I L R, 10 Bom, 207

PAUPER SUIT—*continued.*

1. SUITS—*continued.*

19. ——— **Ground for rejecting petition**—*Civil Procedure Code, 1882, s. 407—Rejection of application to sue as a pauper.*—The terms of s. 407 (*e*) of the Code must not be read as limiting the Court's discretion to merely ascertaining whethe the "right to sue" arose within its jurisdiction, but have a more extended meaning, namely, that an applicant must make out that he has a good subsisting cause of action, capable of enforcement in Court, and calling for an answer, and not barred by the law of limitation or any other law. Also *per* MAHMOOD, *J.*—The provisions of s. 407 must be interpreted strictly, inasmuch as they operate in derogation of the right possessed by every litigant to seek the aid of the Courts of Justice; and an exercise of jurisdiction under that section, when such exercise of jurisdiction is open to the objection of illegality or material irregularity, would form a proper subject of revision by the High Court. *Har Prasad* v. *Jafar Ali, I. L. R., 7 All., 345*, and *Ammal* v. *Nayudu, I. L. R., 4 Mad., 323*, referred to. CHATTARPAL SINGH *v.* RAJA RAM

[I. L. R., 7 All., 661

20. ——— *Civil Procedure Code, 1877, ss. 403, 407—Procedure.*—The Code of Civil Procedure does not authorize the rejection of an application for leave to sue *in formâ pauperis* for want of merits when the applicant is found to be a pauper and his allegations disclose a right to sue. When an application for leave to sue *in formâ pauperis* is made, the Court should not go into evidence as to the merits of the claim. RANGANAYAKA AMMAL *v.* VENKATACHELLAPATI NAYUDU

[I. L. R., 4 Mad., 323

21. ——— *Civil Procedure Code (Act XIV of 1882), s. 407, cl. (d)—Vakil—Agreement—Subject-matter.*—Two persons, being about to sue to redeem a certain jaghir village which they had mortgaged, applied for permission to sue as paupers. It appeared that they entered into an agreement with a vakil to pay him, as remuneration for his services as vakil in the case, a lump sum of R1,500 as soon as the case was decided. In default of payment, the vakil was authorized to recover the money out of the revenues of the said village. *Held* that such an agreement was within the scope of cl. (*d*) of s. 407 of the Civil Procedure Code (XIV of 1882), and their application to sue as paupers was rejected. MANOHAR RAMCHANDRA *v.* LAKSHMAN MAHADEV . I. L. R., 9 Bom., 371

22. ——— *Obligation to try and raise funds to sue—Civil Procedure Code, 1877, s. 401.*—A person who applies for permission to sue as a pauper is not bound to try and raise funds by mortgaging his claims. Notwithstanding that he might do so, he may be a pauper under s. 401 of the Civil Procedure Code. VEDANTA DESIKACHARYULU *v.* PERINDEVAMMA . I. L. R., 3 Mad., 249

23. ——— *Civil Procedure Code, ss. 404, 406—Application for permission to sue as paupers, presented by several paupers jointly.*—The mere fact that several persons jointly present an application for permission to sue as paupers does not authorize the Court to entertain it on behalf of applicants who do not appear in person. BURGESS *v.* SIDDEN . . I. L. R., 10 Mad., 193

24. ——— *Petition for leave to sue as a pauper—Practice—Requisites for success of application—Civil Procedure Code (Act XIV of 1882), s. 407.*—The plaintiff applied for leave to sue as a pauper. She stated as her cause of action that a young girl had been left in her charge and had been maintained by her for a number of years; that in January 1888 arrangements had been made with a Bhatia to get this girl married, and that she (the plaintiff) was to receive R2,500 on the marriage; that the defendant had also agreed to pay her (the plaintiff) R2,000 if she would give the girl to him in marriage; that before the marriage ceremony could be performed, the defendant had induced the girl to quit the plaintiff's house for immoral purposes. She claimed R2,500 as damages, and prayed leave to sue as a pauper. *Held*, following *Chattarpal Singh* v. *Raja Ram, I. L. R., 7 All., 661*, that the facts being clear and the law evident, the case might be finally disposed of on the plaintiff's application to sue as a pauper. DULARI *v.* VALLABDAS PRAGJI

[I. L. R., 13 Bom., 126

25. ——— *Civil Procedure Code (1882), s. 407—Application for leave to sue in formâ pauperis—Applicant to make out that he has a good subsisting cause of action.*—Cl. (*c*) of s. 407 of the Code of Civil Procedure does not refer solely to a question of jurisdiction, but the applicant must make out that he has a good subsisting *primâ facie* cause of action capable of enforcement in Court and calling for an answer. *Chattarpal Singh* v. *Raja Ram, I. L. R., 7 All., 661; Dulari* v. *Vallabdas Pragji, I. L. R., 13 Bom., 126*; and *Vijendra Tirtha Swami* v. *Sudhindra Tirtha Swami, I. L. R., 19 Mad., 197*, referred to. *Koka Ranganayaka Ammal* v. *Koka Venkatachellapati Nayudu, I. L. R., 4 Mad., 323*, dissented from. *Venkubai* v. *Lakshman Venkoba Khot, I. L. R., 12 Bom., 617*, distinguished. KAMRAKH NATH *v.* SUNDAR NATH

[I. L. R., 20 All., 299

26. ——— *Civil Procedure Code (1882), ss. 409 and 413—Application for leave to sue as pauper—Rejection of application—Extension of time granted for payment of Court-fees—Payment of fees after period of limitation for suit has expired—Limitation Act (XV of 1877), s. 4.*—On the 2nd February 1890 the plaintiff applied for leave to sue *in formâ pauperis*. After investigation, the Court, on the 15th July 1890, refused leave, but on the plaintiff's application granted him time to pay the Court-fees. He paid the fees on the 12th August 1890. At this date the suit was barred, and the defendant pleaded limitation. The plaintiff contended that the suit should be taken as instituted at the date of his application for leave to sue as a pauper. The lower Court held the suit barred, and dismissed it. *Held*, confirming the decree, that the plaintiff's application to sue as a pauper having been

PAUPER SUIT—*continued.*

1 SUITS—*continued*

the actual date thereof The plaintiff could not then be regarded as a pauper, and s 4 of the Limitation Act (XV of 1877) would have no application KESHAV RAMCHANDRA v KRISHNARAO VENKATESH
[I L R, 20 Bom, 508

NABAINI KUAR v MAKHAN LAL
[I L R, 17 All., 526

ABBASI BEGAM v NANHI BEGAM
[I L R, 18 All., 208

27 ———— *Civil Procedure Code (1882) s 409—Procedure—Res judicata—Limitation* —On hearing a petition under s 409 for leave to sue *in forma pauperis,* the Court must decide whether the petitioner has at the date of the petition a subsisting cause of action capable of enforcement, and where the cause of action is barred by *res judicata* or limitation the petition must fail VIJENDRA TIRTHA SWAMI v SUDHINDRA TIRTHA SWAMI I L R., 19 Mad, 197

28 ———— *Civil Procedure Code (1882), ss 409 and 413—Application for leave to sue in forma pauperis—Refusal of such application a bar to subsequent application in the* ... *first*
to
As
was
On
for

nearly to the end the Government pleader intervened and applied that it should not be allowed to proceed further until the plaintiff had paid the costs incurred

that the order rejecting plaintiff s first application was an order under s 409 of the Code of Civil Procedure (2) that both the applications were made in respect of the same right to sue (3 that the order rejecting the first application operated as a bar under s 413 of the Code to the entertainment of the second application and (4) that such bar being one to the jurisdiction of the Court the Subordinate Judge was not only competent but bound to take notice of it at any stage of the suit RANCHOD MORAR v BEZANJI EDULJI
[I. L R, 20 Bom, 86

PAUPER SUIT—*continued.*

1 SUITS—*continued*

29. ———— Revival of application—*Act VIII of 1859 s 310* —Where there has been no refusal of the application to sue as a pauper under s 310 Act VIII of 1859 the applicant may revive his application for leave to sue BHOJ SINGH v MAHA KONWER 3 Agra, Mis, 1

30 ———— Costs—*Pauper suit in the mofussil—Pauper appeal—Unsuccessful plaintiff—Successful defendant—Civil Procedure Code 1882 ss 220 412* —S 412 and Ch XXVI of the Code of Civil Procedure, of which s 412 forms a part do not deal with the costs of a successful defendant in a pauper suit *The costs of a defendant in such a case are to be dealt with under s 220 of the Code,*

[I L R, 6 Bom, 6..

32 ———— *Claim of Government for costs of suit—Stamps in pauper suit* —

order by which it secures the chance of any surplus arising from such sale it cannot afterwards when the sale is found to yield no surplus be heard to say as *against the purchaser that the decree was sold* subject to its claim for stamps The amount of

SHEDABAD 10 W R, 205

33 ———— *Civil Procedure Code, 1859 s 309—Right of Government—Court fees* —The Crown has the first claim to the proceeds of a pauper suit to the extent of the amount of the Court fee that would have been payable at the institution of the suit had the plaintiff not been a pauper and s 309 of the Code of Civil Procedure does not preclude the Crown or its representative from urging its prerogative GANPAT PATAYA v COLLECTOR OF KANARA I. L R, 1 Bom, 7

COLLECTOR OF MORADABAD v MUHAMMAD DAIM KHAN I L R, 2 All, 196

34 ———— *Civil Procedure Code 1859 s 309 and s 270—Attachment and sale in execution of decree—Right to proceeds—Right of Government—Court fees* —N was allowed to bring a suit as a pauper His suit was dismissed the decree directing that he should pay the costs of

PAUPER-SUIT—*continued.*

1. SUITS—*continued.*

the defendant. On the defendant's application, certain immoveable property belonging to *N* was attached in execution of this decree, and was sold. *Held* that the Crown was entitled to be paid first, out of the proceeds of such sale, the amount of the Court-fees *N* would have had to pay if he had not been allowed to sue as a pauper. The principle of the ruling in *Ganpat Pataya* v. *Collector of Kanara, I. L. R., 1 Bom., 7*, followed. GULZARI LAL *v.* COLLECTOR OF BAREILLY . **I. L. R., 1 All., 596**

35. ———— *Civil Procedure Code, 1877, s. 412—Order for costs—Jurisdiction.*—A Subordinate Judge admitted a plaint *in formâ pauperis*, but, holding that he had no jurisdiction to try the suit, returned the plaint to the plaintiff for its presentation in the proper Court, and ordered each party to pay his own costs. After the presentation of the plaint in another Court and before the termination of the suit, the Collector applied to the Subordinate Judge for execution of the order as to costs, by seeking to recover the amount of the stamp duty from the plaintiff. The Subordinate Judge refused to execute the order, on the ground that the pauper suit was still pending in another Court. His order was affirmed by the District Judge on appeal. On second appeal to the High Court,—*Held* that, under s. 412 of Act X of 1877, the Subordinate Judge had no jurisdiction to make the order for payment of Court-fees by the plaintiff. The High Court accordingly, in the exercise of its extraordinary jurisdiction, annulled the Subordinate Judge's order about costs and all the subsequent proceedings consequent upon that order. COLLECTOR OF RATNAGIRI *v.* JANARDAN KAMAT . . **I. L. R., 6 Bom., 590**

36. ———— **Right of Government to recover stamp fees**—*Limitation Act (XIV of 1859), s. 20—Civil Procedure Code, 1859, s. 309.*—A decree had been obtained by a party suing *in formâ pauperis* against the appellant. The Government now sought to recover against the appellant the amount of stamps which would have been paid by the plaintiff if he had not been permitted to sue as a pauper. *Held* that the right of Government to recover the stamp fees in question, under s. 309 of Act VIII of 1859, was not affected by the law of limitation laid down in s. 20 of Act XIV of 1859. SHAMI MOHAMMED *v.* MOHAMMED ALI KHAN

[2 B. L. R., Ap., 22 : 11 W. R., 67

37. ———— **Liability of pauper to pay stamp duty**—*Civil Procedure Code, 1859, ss. 308, 309—Defective stamp duty.*—Under ss. 308 and 309 of Act VIII of 1859, a pauper cannot claim exemption from liability to pay any further stamp duty or penalty in respect of a document on which he relies, and which, owing to a defect in the stamp, is inadmissible as evidence in the suit. GOLAM GUFFOOR *v.* EKRAM HOSSEIN CHOWDHRY

[10 W. R., 358

38. ———— **Court fees, Recovery of, by Government**—*Civil Procedure Code, s. 411—Subject-matter of suit—Cross-decrees under same decree.*—A plaintiff suing *in formâ pauperis* to recover property valued at R60,000 obtained a decree for R1,439. The Court, with reference to the provisions of s. 411 of the Civil Procedure Code, directed that the plaintiff should pay R1,196 as the amount of Court-fees which would have been paid by him if he had not been permitted to sue as a pauper. The Collector having applied under s. 411 to recover this amount by attachment of the R1,439 payable to the plaintiff, the defendant objected that (i) certain costs payable to her by the plaintiff under the same decree, and (ii) a sum of money payable to her by the plaintiff under a decree which he had obtained in a cross-suit in the same Court, should be set off against the R1,439 payable by her to him, with reference to ss. 246 and 247 of the Code, and that thus nothing would remain due by her which the Government could recover. No application for execution was made by the plaintiff for his R1,439 or by the defendant for her costs. On appeal from an order allowing the Collector's application, it was contended that the 'subject-matter of the suit' in s. 411 of the Code meant the sum which the successful pauper-plaintiff is entitled to get as a result of his success in the suit; but that in the suit and the cross-suit taken together, the plaintiff ultimately stood to lose a small sum, the defendant being the holder of the larger sum awarded altogether. *Held* that the contention had no force, as execution had not been taken out by the plaintiff or the defendant or both, and it could not be said that the Government had been trying to execute the plaintiff's decree, or was a representative of the plaintiff as holder of the decretal order in his favour for R1,439, so as to bring into operation the special rules of ss. 246 and 247 of the Code between him and the defendant. *Held* also that the plaintiff was one who, in the sense of s. 411, had succeeded in respect of part of the "subject-matter" of his suit, and on that part therefore a first charge was by law reserved and secured to the Government, which was justified in recovering it in these proceedings from the defendant, who was ordered by the decree to pay it in the same way as costs are ordinarily recoverable under the Code. *Held* that the decrees in the suit and the cross-suit not having reached a stage in which the provisions of ss. 246 and 247 of the Code would come into play, no questions of set-off and consequent reduction or other modification of the "subject-matter" of the suit decreed against the defendant as payable by her to the plaintiff had arisen or could be entertained. JANKI *v.* COLLECTOR OF ALLAHABAD

[I. L. R., 9 All., 64

39. ———— **Court's authority to make an order for payment of Court-fees**—*Civil Procedure Code, 1882, ss. 412, 622—Withdrawal and dismissal of suit—Power of Collector, though not a party to the suit, to move under s. 622—Superintendence of High Court.*—The plaintiff, after having filed his suit *in formâ pauperis*, came to an amicable arrangement with the defendants and asked the Court that the suit should be dismissed. The Court granted this application, but made no order as

PAUPER SUIT—*continued*

1 SUITS—*continued*

to the payment of Court fees Thereupon the Collector applied to the High Court under s 622 of the Code of Civil Procedure (Act XIV of 1882) to direct the lower Court to make an order for the payment of Court fees under s 412 of the Code *Held* that the Collector though not a party to the suit was enti

therefore be said to have failed in the suit The Subordinate Judge had therefore no jurisdiction to

missed under s 97 or s 98 COLLECTOR OF KANARA *v* KRISHNAPPA HEDGE I L R, 15 Bom, 77

40 ———— Liability of plaintiff for Court fee—*Civil Procedure Code (Act XIV of 1882) ss 412 622—Dismissal of suit in formâ pauperis without trial*—A plaintiff who sues *in formâ pauperis* is liable to pay the stamp duty if his suit is dismissed without trial and he may be ordered to do so under s 62? COLLECTOR OF VIZAGAPATAM *v* ABDUL KHARIM

[I L R, 21 Mad, 113

41 ———— Recovery of Court fees by Government—*Civil Procedure Code s 411—Sale of decree—Semble*—The provisions of s 411 of the Code of Civil Procedure do not justify the Court in selling a decree upon the application of the Collector inasmuch as that section provides that persons who have been successful as paupers shall so far as the subject matter of their success is concerned be liable to satisfy out of what they recover the amount of the fees which have been for a time pending the decision of their suit remitted to them *Sultan Koer* v *Gulzari Lal I L R 2 All 290* ... *Pillai I L* ... ATH CHOW

...) Calc, 111

42 ———— Stamp duty on a pauper's plaint—*Civil Procedure Code s 411—Decree for less than the amount of claim—Disreputable defence*—A pauper sued his sister for the partition of property valued at a large sum The parties belonged to the Bogam caste residing in the Godavari district The defendant pleaded that the property had been acquired by her as a prostitute and denied the plaintiff s claim to it The plaintiff obtained a decree for R100 being a moiety of the property found to have been left by their mother *Held* that the defendant was liable to pay Court-fees only on the sum decreed CHANDRAREKA *v* SECRETARY OF STATE FOR INDIA

[I L R, 14 Mad., 163

43 ———— Application for review of judgment in pauper suit—*Court fee—Court fees Act (VII of 1870) sch I, cl (5)—Civil Procedure Code, 1882 s 410*—*Held* that, when an application for review is presented in a suit *in formâ pauperis* that application like the plaint in the suit, is not liable to any Court fee LINDA BIBI *v* NAIMA BIBI I L R, 20 All, 410

44 ———— Court fee payable out of the subject matter of the suit—*Civil Procedure Code (1882) s 411—Suit in formâ pauperis—Mode of realization of Court-fee by Government—Execution of decree*—In a suit brought *in formâ pauperis* the plaintiff was successful and the decree directed that the Court fee which would have been payable had the suit not been *in formâ pauperis* should be the first charge on the property the subject-matter of the suit and should be recoverable from the defendant in the same manner as the costs of the suit *Held* that it was not necessary for Govern-

[I. L R, 18 All., 419

2 APPEALS

45 ———— Application for leave to appeal—*Decision in suit in formâ pauperis—Civil Procedure Code 1859 ss 367 371—Inquiry into pauperism*—An appeal lies from a decision in a suit heard *in forma pauperis* A separate formal application for inquiry into the pauperism of the applicant need not precede an application for leave to appeal *in formâ pauperis* KAMOD POORY *v* SHEO POORY

[1 N W, 167 Ed 1873, 246

46 ———— *Admission of appeal—Authorized agent to sign and present petition*—The Court rejected a petition of appeal presented on behalf of a pauper by a vakil who was retained under an ordinary retainer but was not duly authorized to sign as attorney for the appellant BHUGOBUTTY KOOER *v* GUNESH DUTT

[21 W R., 308

47 ———— *Civil Procedure Code, 1882 ss 592 and 404—Application by party, not by pleader necessary*—An application for leave to appeal *in formâ pauperis* under s 592 of the Code of Civil Procedure must be made by the party in person subject to the exemption contained in s 404 of the Code of Civil Procedure IN RE NARISI I. L R., 8 Mad., 504

48 ———— *Civil Procedure Code ss 411 412—Right of appeal—Right of Government to appeal in respect of Court fee on portion of plaintiff's claim dismissed*—In a suit *in formâ pauperis* the District Judge decreed the plaintiff's claim in part and dismissed it in part but omitted to make any provision for payment

PAUPER-SUIT—*continued.*

2. APPEALS—*continued.*

though the more suitable procedure would have been for the Government to have applied, through the Collector, to the Court of first instance to review its judgment and to repair the omission in its decree. *Janki* v. *Collector of Allahbad, I. L. R., 9 All., 64,* referred to. SECRETARY OF STATE FOR INDIA v. BHAGWANTI BIBI . . I. L. R., 13 All., 326

49. ———— *Right of appeal by Government—Costs of plaintiff—Decree omitting to order plaintiff to pay Court-fees—Power of Collector to apply under the extraordinary jurisdiction of High Court—Amendment of decree.*—The plaintiff's suit *in formâ pauperis* was rejected by the Subordinate Judge. The decree, however, omitted to order the recovery from the plaintiff of the Court-fees payable on the plaint. The Collector applied to the High Court under its extra ordinary jurisdiction for the rectification of the decree. It was contended that, as the omission might have been remedied by an appeal or on review, the Collector could not apply under the extraordinary jurisdiction of the Court. *Held,* on the authority of the *Collector of Ratnagiri* v. *Janardan, I. L. R., 6 Bom., 590,* that no appeal by Government would lie in the case, and that, in the exercise of its extraordinary jurisdiction, the High Court would rectify the decree by directing the plaintiff to pay the costs of Government. COLLECTOR OF KANARA v. RAMBHAT

[I. L. R., 18 Bom., 454

See COLLECTOR OF TRICHINOPOLY v. SIVARAMARA KRISHNA SASTRIGAL . I. L. R., 23 Mad., 82

where it was held that s. 440 does not apply to the case of an order passed under s. 412.

50. ———— Security for costs—*Civil Procedure Code, 1859, ss. 342, 370.*—An Appellate Court has no power under s. 370, Act VIII of 1859, to annex to its order the condition that the party allowed to appeal should give security for costs. The provisions in s. 342, which make it discretionary in the Appellate Court to demand security for costs, is not applicable to appeals *in formâ pauperis;* and therefore the order of the Judge in this case requiring security for costs from the petitioner after his appeal had been admitted, and after the Judge on inquiry had found that the appellant was a pauper, was set aside. NUSSEEROODDEEN BISWAS v. UJJUL BISWAS . . . . . 17 W. R., 68

51. ———— *Civil Procedure Code, 1877, s. 549.*—A suitor *in formâ pauperis* may be called on to give security for costs under s. 549 of the Civil Procedure Code, but very special grounds must be shown to support such an application. *Nusseerooddeen Biswas* v. *Ujjul Biswas, 17 W. R., 68,* dissented from. SESHAYYANGAR v. JAINULAVADIN . . . . I. L. R., 3 Mad., 66

See also MANECKJI v. GOOLBAI

[I. L. R., 3 Bom., 241

52. ———— Ground of appeal—*Suit after rejection of claim to attached property.*—*N* sued to set aside the sale of property which *M* had attached in execution of a decree against *N*'s husband's brother, plaintiff alleging that it belonged to her husband (though the latter's objections under s. 246, Civil Procedure Code, had been rejected) and asking for a declaration of her right and title. *N* obtained a decree, and both *M* and the auction-purchaser appealed to the Judge *in formâ pauperis. Held* that *M* had good ground of appeal if he could prove that the property belonged to the judgment-debtor. IN THE MATTER OF MOSHAOLLAH KHAN

[14 W. R., 445

53. ———— Pauper respondent—*Respondent allowed to proceed as a pauper—Power of High Court.*—Where a respondent is allowed in the lower Court to sue *in formâ pauperis,* the High Court will not set aside that order on motion, on the ground that it has been improperly obtained. IN THE MATTER OF THE PETITION OF KHODEJOONISSA

[7 W. R., 486

54. ———— *Filing objections—Payment of stamp duty—Court Fees Act, s. 16—Civil Procedure Code, 1859, s. 348.*—A pauper respondent is not entitled to present objections at the trial of an appeal without payment of stamp duty. BABAJI HARI v. RAJARAM BALLAL

[I. L. R., 1 Bom., 75

55. ———— *Civil Procedure Code, 1882, s. 561.*—Objections by a respondent to a decree under s. 561 of the Code of Civil Procedure cannot be filed *in formâ pauperis. Babaji Hari* v. *Rajaram Ballal, I. L. R., 1 Bom., 75,* followed. NARAYANA v. KRISHNA . I. L. R., 8 Mad., 214

BROJESHWARI DASI v GUROO CHURN DAS

[I. L. R., 11 Calc., 735

56. ———— *Civil Procedure Code (1882), ss. 412 and 414—Costs—Appeal in formâ pauperis—Withdrawal of appeal—Right of Government to costs—Compromise of suit pending appeal.*—The plaintiffs filed a suit *in formâ pauperis* to recover possession of certain property. The Court of first instance dismissed the suit. Thereupon the plaintiffs preferred an appeal *in formâ pauperis* to the High Court. Pending the appeal, the parties entered into a compromise, under which it was agreed (*inter aliâ*) that the appeal should be withdrawn. and that the respondent should pay to Government the Court-fees which the plaintiffs were liable to pay both in the first Court and in the Court of appeal. When the appeal came on for hearing, the appellants informed the Court of their intention to withdraw from the appeal. Thereupon the Government pleader intervened, and applied for an order directing the respondent to pay, in accordance with the terms of the compromise, all the costs payable to Government on account of institution fees, etc., in the first Court as well as in the Appellate Court. This application was opposed by both parties. The Government pleader then moved the Court to dispauper the appellants under s. 414 of the Code of Civil Procedure (Act XIV of 1882). *Held* that, the appeal having been withdrawn, no order could be made either under s. 412 or under s. 414 of the Code of Civil Procedure. *Held*

PAUPER SUIT—*concluded.*

2 APPEALS—*concluded*

also that it was not open to the Court to order the respondent to pay any fees on the strength of any agreement between the parties BAI CHANDABA *v* KUVER SAHEB BAPU SAHEB [I. L R., 18 Bom , 464

PAWNEE

——— of medal or military decoration

See DISCIPLINE—ARMY ACT, 1881 s 156 [I L R , 10 Mad , 108

PAWNOR AND PAWNEE

See CONTRACT ACT s 178 [I. L R , 3 Calc., 264
I L R. 4 Calc , 497
I L R., 24 Bom , 458

PAYMENT

——— Evidence of—

See BOND I L R., 1 Bom , 45
[8 W R , 316
3 W. R., Mis , 23

——— in consideration of releasing person from prison

See CONTRACT ACT s 23—ILLEGAL CONTRACTS GENERALLY [9 B L R , Ap , 38

——— of whole debt by one debtor

See CASES UNDER CONTRIBUTION SUITS FOR—PAYMENT OF JOINT DEBT BY ONE DEBTOR

——— on account of debt

See CASES UNDER LIMITATION ACT ART 20

——— Specified time for—

See LIMITATION ACT 1877 ART 66 (1871 ART 65) I L R , 5 Calc , 21

See LIMITATION ACT 1877, ART 179—ORDER FOR PAYMENT AT SPECIFIED DATES

PAYMENT INTO COURT.

See BENGAL RENT ACT, 1869 s 31 [I. L R., 4 Calc , 714
I. L R , 20 Calc , 498
L. R., 20 I A , 25

See CIVIL PROCEDURE CODE, s 257 [I. L R., 12 Mad , 121

See COSTS—SPECIAL CASES—PAYMENT INTO COURT . 1 Bom , 70
[14 W R., 387
I. L. R., 21 Bom , 502

PAYMENT INTO COURT—*continued*

See DECREE—CONSTRUCTION OF DECREE—PAYMENT INTO COURT [I L R , 8 Calc , 528
I. L R , 3 All , 775

See INTEREST—MISCELLANEOUS CASES—PAYMENT INTO COURT [3 B L R Ap , 105 12 W R , 50
2 C L R , 183
16 W R., 297, 304

See PRACTICE—CIVIL CASES SALE BY REGISTRAR I L R , 21 Calc , 566

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE I L R , 13 All , 195

See TENDER I L R , 16 Bom , 141

1 ——— Payment of charge on estate under decree—*Authority to make deposit*—Where a decree treats an estate as primarily liable to discharge a debt with interest, the proprietor (or his heir) has a right to pay the money into Court to protect himself from being made responsible to indemnify the sureties and if the money is deposited for the purpose of satisfying the decree it is unnecessary for the Court to inquire whether it was deposited under authority from the proprietor or his heir BISSESSUR SINGH *v* NIM CHAND BOSE [12 W R , 505

2 ——— Voluntary payment *Arrest under writ of attachment—Objection by judgment debtor to money being taken out* Payment of money

to those objections only which h raised to the right of the decree-holder at the time of paying the money in PARESNATH MOOKERJEE *v* BINADIRAM SEN [4 B L R , Ap., 25 13 W R , 29

3 ——— *Legal necessity* — Where a person in order to save his indigo factory from sale in execution of a decree against a third person paid the amount of the decree into Court,—*Held* that the payment was not a voluntary payment but one made under legal necessity PUMZAN ALI *v* SOORUJBHAN 7 W R., 403

4

of the defendant as mortgagee and states that he has an objection to the sum being appropriated to the payment of that lien he has no cause of action against the defendant TOOLSEE DUTT MISSER *v* BROJO MOHUN THAKOOR . . 9 W R , 323

5. ——— *Money paid under wrong order of Court* Money paid over at the instance of a judgment creditor or under a wrongful order of Court may be recovered by means of a suit in the Civil Court OMANATH ROY CHOWDHRY *v* SUROOP CHUNDER BOSE . . 10 W. R , 485

6. ——— *Payment to stay sale in execution of decree—Suit to recover.*—Certain property which had been mortgaged to the plaintiff by a bond executed by *J D* on 25th February 1867 was sold to him in execution of a decree passed upon that bond on 3rd September 1868. Before such sale, but after the above mortgage, the property was attached by the first defendant, in execution of a decree of 1865 (*i.e.*, *J D's* equity of redemption was attached), and a part of the property was sold. The sale was set aside for irregularity, but the attachment remaining, the first defendant resumed proceedings in execution and got an order for sale, when the plaintiff released it from liability to such sale by paying into Court the money due, which he now sought to recover. *Held* that the first defendant had a right to sell the right and interest of *J D* in the property, and was therefore entitled to keep the money which saved the sale. GOSSAIN MUNRAJ POOREE *v.* DEEN DYAL LALL . 20 W. R., 20

7. ——— *Payment by auction-purchaser of mortgage-decree against his purchase.*—Auction-purchasers with notice of a mortgagee's lien are liable to pay off the mortgage, and to satisfy any decree which the mortgagee may obtain in regard to the property in a suit pending at the time of the purchase. Such decree cannot be satisfied by payment into Court, unless the mortgagee has the means of immediately taking the money out of Court, or acquiesces in such payment as payment to himself. LAND MORTGAGE BANK *v.* RAM RUTTUN NEOGY . . . 21 W. R., 270

8. ——— *Payment to protect property from sale.*—*P* lent money to *S* upon a specially registered tumsook pledging immoveable property, and afterwards obtained a decree under Act XX of 1866, s. 53, for principal and interest. More than four years later, he brought a further suit against *S* to recover the interest due under the same bond. Meanwhile plaintiffs also lent money to *S* under a bond by which the same property was pledged, and also recovered a decree in execution of which the property was sold. *P* then proceeded to attach the same property in execution of his second decree, when plaintiffs objected under Act VIII of 1859, s. 246, but ineffectually; and after that, to protect the property which they had purchased, they paid a sum of money into Court which was subsequently taken out by *P*. They now sued to recover that money. *Held* that, under the circumstances, the payment of the money into Court was not a voluntary payment, and the plaintiffs were entitled to recover it. MUTHOORA MOHUN ROY CHOWDHRY *v.* PEAREE MOHUN SHAHA . . . . 23 W. R., 344

9. ——— **Payment into Government treasury**—*Purchase-money—Civil Procedure Code, s. 309—Purchase in execution of decree—Rules of High Court of 1st June 1882.*—Under the Rules of the High Court, dated 21st June 1882, a payment into the Government treasury is equivalent to a payment into Court for the purposes of s. 308 of the Code of Civil Procedure, 1882. SRINIVASA BHATTA *v.* MALAYACHAN MANNADI

[I. L. R., 7 Mad., 211

PAYMENT INTO COURT—concluded.

10. ——— **Payment by purchaser into the Post Office within time**—*Money not received by the Court until after expiration of time allowed by section—Civil Procedure Code (1882), s. 307.*—A purchaser at an execution sale was bound under s. 307 of the Civil Procedure Code (Act XIV of 1882) to pay the balance of the purchase-money into Court on the 19th June 1896. On the 17th June he paid in the amount to the Post Office at Yellapur, and obtained a money order which he sent to the Nazir of the Court. The Nazir did not receive the money until the 22nd June. *Held* that the payment was not in time. The Post Office is not the agent of the Court, and the purchaser was bound to see that the money reached the Court in time to satisfy the requirements of s. 307. RAMCHANDRA KRISHNAPA *v.* BELYA . I. L. R., 22 Bom., 415

11. ——— **Order in execution that defendant pay money into Court**—*Appeal by plaintiff against order—Payment into Court by defendant—Refusal of plaintiff pending appeal to take money out of Court—Attachment of the money so paid in by another creditor of defendant and payment to him—Subsequent application by plaintiff in execution for payment—Effect of his previous refusal.*—In execution of a decree against the defendant obtained by the plaintiff, an order was made, directing the defendant (*inter alia*) to pay into Court the sum of R140-8-0. Both parties appealed against this order, but pending the appeals the defendant paid the amount into Court. The plaintiff, however, refused to take it, on the ground that he had appealed against the order under which it was paid in; and the Court subsequently passed an order that the money should be returned to the defendant. But before this could be done, the money was attached by a third person, in execution of his decree against the defendant, and a few days afterwards the money was paid over to him. Shortly afterwards the appeal against the order directing the defendant to pay R140-8-0 to the plaintiff was heard and the order was confirmed. Thereupon the plaintiffs applied in execution (*inter alia*) for payment of the sum of R140-8-0. The defendant contended that he had already paid it. The Subordinate Judge directed the defendant to pay this sum into Court within one month. The defendant appealed to the District Court, who confirmed the order of the Subordinate Judge. The defendant then appealed to the High Court. *Held* that the orders of the lower Courts should be reversed. When the defendant paid the R140 8-0 into Court in execution of the decree, the Court held the money on account of the plaintiff, and the plaintiff, who had not obtained a stay of execution, could not refuse to take it, because an appeal was pending. The plaintiff's refusal, therefore, to take the money out of Court did not justify the Subordinate Judge in treating the money as the defendant's and in ordering it to be paid to another judgment-creditor of the defendant without his having in any way expressed his assent to the money being so treated. LAKSHMAN DADAJI *v.* DAMODAR AMBADAS

[I. L. R., 15 Bom., 68]

PAYMENT TO STAY OR SET ASIDE SALE.

See CASES UNDER CONTRIBUTION, SUITS FOR—VOLUNTARY PAYMENTS

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . 14 B L R., 155
[I. L. R., 9 Calc., 377
I L. R, 22 Calc, 800

See MONEY HAD AND RECEIVED
[8 B. L. R., 418

See CASES UNDER SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE

See CASES UNDER SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE

See VOLUNTARY PAYMENT
[I. L. R., 25 Calc, 305
1 C. W. N, 458

PEDIGREE.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—PEDIGREE
[I. L R., 10 Mad., 362

———— Proof of—

See EVIDENCE ACT s 9
[I. L. R., 18 All, 98

See EVIDENCE ACT, s. 32
[4 C. L. R, 173
I. L R, 9 All., 467
I. L R, 12 Calc, 219
I. L R. 13 Calc, 42
I L. R, 24 Calc, 265
I L R., 26 Calc, 233
L R, 27 I. A. 183
I. L R., 17 All, 456
L. R, 22 I. A, 139

PENAL CODE (ACT XLV OF 1860).

See WHIPPING I L. R., 16 Bom., 357

———— Exceptions in—

See CHARGE—FORM OF CHARGE—GENERAL CASES . I L. R., 4 Calc, 124

See EVIDENCE ACT, 1872, s. 105.
[I. L. R., 4 Calc., 124

———— ss. 1, 2.

See CRIMINAL PROCEEDINGS
[I. L. R, 13 Mad., 353

———— s. 19.

See SANCTION FOR PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE . I. L R., 23 Mad, 540

———— s. 21.

See CASES UNDER PUBLIC SERVANT.

PENAL CODE (ACT XLV OF 1860) —*continued*

———— ss. 22—24.

See THEFT I. L. R., 10 Mad., 186, 255
[I. L R 15 Bom. 702
I. L. R, 22 Calc, 669, 1017
I L. R, 27 Calc, 501

———— ss. 23, 24.

See CHEATING 22 W. R., Cr., 83

———— s. 24

See RIOTING I L R, 15 All, 22

———— ss. 24, 25.

See FORGERY I. L R, 8 All., 653
[I. L R, 10 Calc, 584
I. L R., 5 All. 217, 221
I L R, 7 All. 403, 459
I L. R, 19 Calc, 380
I L. R, 16 All, 210
I. L. R., 25 Calc., 512

———— ss 29 30

See FORGERY 2 B L R. A Cr, 12
[4 Bom, Cr, 23
2 Mad., 247
11 W. R., Cr, 15

———— s. 34

See ACCOMPLICE I. L. R., 14 Bom., 115

See UNLAWFUL ASSEMBLY
[I. L. R, 8 Calc, 739

———— s 41.

See PLEADER—REMOVAL SUSPENSION, AND DISMISSAL I. L R., 17 All., 498
[L. R., 22 I. A., 19

———— s. 52

See CULPABLE HOMICIDE.
[I L. R., 14 Calc., 566

See WRONGFUL RESTRAINT
[I. L R., 12 Bom., 377

———— s 59.

See CASES UNDER SENTENCE—TRANSPORTATION.

———— s 62.

See FORFEITURE OF PROPERTY
[8 W. R., Cr., 35
13 W. R., Cr., 17

———— ss. 64, 65, 67.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE

PENAL CODE (ACT XLV OF 1860) —*continued.*

——— ss. 65, 67.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—BENGAL ACT III OF 1863 . . . 10 W. R., Cr., 30

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY. [I. L. R., 1 All., 461

——— s. 70.

See FINE . . 5 Bom., Cr., 63 [I. L. R., 20 Calc., 478

——— s. 71.

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

——— s. 72.

See SENTENCE—CUMULATIVE SENTENCES. [I. L. R., 12 Mad., 36

See SENTENCE—GENERAL CASES. [7 W. R., Cr., 13

——— ss. 73, 74.

See SENTENCE—SOLITARY CONFINEMENT. [I. L. R., 6 All., 83 3 B. L. R., A. Cr., 49

——— s. 75.

See CHARGE—FORM OF CHARGE—GENERAL CASES . I. L. R., 9 Mad., 284

See SENTENCE—CUMULATIVE SENTENCES. [I. L. R., 11 All., 393

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

——— s. 78.

See ARREST—CIVIL ARREST. [3 W. R., Cr., 53

——— s. 79.

See TRESPASS—GENERAL CASES. [23 W. R., Cr., 40

See WRONGFUL RESTRAINT. [I. L. R., 12 Bom., 377 I. L. R., 24 Calc., 885

——— s. 81 and s. 323—*Act likely to cause harm, done without a criminal intent and to prevent other harm—Causing hurt.*—The accused was a sepoy in a native infantry regiment. On the occasion of a fire in the city of Ahmednagar, he and the rest of his company turned out to assist in extinguishing it. He with other sepoys was stationed by their officer with orders to keep clear a space in front of the burning house, and not to allow any one not in uniform to intrude on that space. The police under the city chief constable were also engaged at the fire, and on some one of them coming round from the rear, they were warned off by the sentries. A fracas between the soldiers and the police took place, and the chief constable was kicked by the accused. For this he was charged before the Magistrate, and fined for voluntarily causing hurt under s. 323 of the Penal Code. In evidence it appeared that the police attempted to force the military guard, which had been posted as above stated, and it was further proved that the chief constable was not in uniform, and that the accused did not know who he was. It was not alleged that the kick was unnecessarily violent. *Held* that the conviction was bad. The Magistrate having found that the chief constable was not in uniform, and that the accused did not know who he was, the kick was justifiable as given in good faith for the purpose of preventing much greater harm under s. 81 of the Indian Penal Code, and as a means of acting up to the military order. QUEEN-EMPRESS *v.* BOSTAN . . . I. L. R., 17 Bom., 626

——— s. 83.

See STOLEN PROPERTY—OFFENCES RELATING TO . I. L. R., 6 Mad., 373

1. ——— *Capacity for doing wrong—Malice.*—In construing s. 83 of the Penal Code, the capacity of doing that which is wrong is not so much to be measured by years as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim *malitia supplet ætatem.* QUEEN *v.* AIMONA [1 W. R., Cr., 43

2. ——— *Capacity of understanding to commit offence.*—An objection that the accused is of such an age as not to have attained sufficient maturity of understanding to judge of the nature and consequences of his conduct is not one of a preliminary character, but rather a matter of defence to be considered with the other issues arising in the case. Where the accused is over seven years of age and under twelve, the incapacity to commit an offence only arises where the child has not attained sufficient maturity, etc.: such non-attainment would have apparently to be specially pleaded and proved. The "consequences of his conduct" mentioned in s. 83, Penal Code, are not the penal consequences to the offender, but the natural consequences which flow from a voluntary act. QUEEN *v.* LUKHIM AGRADANNIE [22 W. R., Cr., 27

——— s. 84.

See INSANITY . I. L. R., 10 Bom., 512 [I. L. R., 12 Mad., 459 I. L. R., 14 Bom., 564 I. L. R., 22 Calc., 817 I. L. R., 23 Calc., 604

——— s. 88.

See CULPABLE HOMICIDE. [I. L. R., 14 Calc., 566

——— s. 94.

See ACCOMPLICE. [I. L. R., 14 Bom., 115

See OFFENCE UNDER THREAT. [10 W. R., Cr., 48

PENAL CODE (ACT XLV OF 1860)
—*continued*

———— s 95

See Hurt—Causing Hurt
[24 W R, Cr, 67

See Offence relating to Documents
[I L R, 12 Mad., 148

See Theft 5 Bom, Cr, 35

———— ss 96, 104

See Private Defence Right of
[20 W R, Cr, 36

———— ss 97, 99

See Cases under Private Defence Right of

See Rioting I. L R., 24 Calc, 686

———— s 99

See Wrongful Restraint
[I L R, 12 Bom, 377

———— s 105

See Private Defence Right of
[13 W R, Cr 64
I L R, 14 Bom, 441
I L R, 16 Calc, 206

See Unlawful Assembly
[12 W R, Cr, 43

———— ss. 107, 108, 109

See Cases under Abetment

———— s 108A

See Jurisdiction of Criminal Court—Offences committed only partly in one District—Abetment
[I L R, 24 Bom., 287

———— s 109

See Jurisdiction of Criminal Court—Offences committed only partly in one District—Abetment
[I L. R, 19 Bom, 105

See Kidnapping I L R, 8 Calc, 969

See Nuisance—Public Nuisance under Penal Code I L. R, 14 Mad, 364

See Sanction for Prosecution—Where Sanction is necessary or otherwise
[I. L R, 20 Mad, 8

———— s 114

See Abetment 4 Mad., Ap, 37
[7 W R., Cr, 49
8 Bom, Cr, 164
10 Bom., 497
2 C W N., 49
I. L. R., 27 Calc, 566
4 C W N, 309

See Theft 8 W R., Cr, 59

PENAL CODE (ACT XLV OF 1860)
—*continued*

———— s 116

See Kidnapping I. L R, 1 Mad, 173

See Police Magistrate
[1 B L R., O Cr, 39

See Public Servant 21 W R., Cr., 9

———— s 118

See Information of Commission of Offence 1 Agra, Cr, 37

———— s 120

See False Evidence—Fabricating False Evidence 1 Ind. Jur, O S, 105

———— s 121

See Forfeiture of Property
[8 B L R., 63

See Waging War against the Queen
[7 B L. R, 63

1 ———— s 124A—*Exciting disaffection towards Government—Disapprobation of doings of Government Expression of*— Disaffection' and disapprobation' explained and s 124A referred to and explained to the jury Queen Empress v Jogendra Chunder Bose I. L. R., 19 Calc., 35

2 ———— *Evidence—Writings showing intention or animus—Letters of contributors published in newspapers—Disaffection*—The accused who was the editor proprietor and publisher of the Kesari newspaper was charged under s 124A of the Penal Code with exciting and attempting to excite, feelings of disaffection to Government by the publication of certain articles etc in the Kesari' in its issue of the 15th June 1897 In order to show the intention of such publications counsel for the prosecution tendered in evidence a certain letter signed Ganesh which appeared in the issue of the Kesari of May 4 1897 Objection was taken that it was not admissible inasmuch as letters to newspapers often express opinions which are not the opinions of the editor and publisher *Held* that the letter was admissible to show intention and animus S 124A of the Penal Code explained Meaning of the word disaffection" Queen Empress v Bal Gangadhar Tilak I. L. R, 22 Bom, 112

3 ———— *Seditious publication—Disaffection*—The word disaffection" in s 124A of the Penal Code is used in a special sense as meaning political alienation or discontent a spirit of disloyalty to the Government or existing authority An attempt to excite feelings of disaffection to the Government is equivalent to an attempt to produce political hatred of Government as established by law to excite political discontent and alienate the [illegible]

Indian Penal Code cannot be construed as meaning an absence of or the contrary of, affection or love, that is to say dislike or hatred, but is used in its special

PENAL CODE (ACT XLV OF 1860)
—*continued.*

sense as signifying political alienation or discontent, that is to say, a feeling of disloyalty to the existing Government which tends to a disposition not to obey, but to resist and subvert the Government. *Per* RANADE, *J.*—"Disaffection" is not a mere absence or negation of love or good-will, but a positive feeling of aversion which is akin to disloyalty, a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people and weaken the bond of allegiance and prepossesses the minds of the people with avowed or secret animosity to Government,—a feeling which tends to bring the Government into hatred or contempt by imputing base and corrupt motives to it, and makes them indisposed to obey or support the laws of the realm, and which promotes discontent and public disorder. QUEEN-EMPRESS *v.* RAMCHANDRA NARAYAN

[I. L. R., 22 Bom., 152

4. ———— *Exciting disaffection—Meaning of the term "disaffection" explained.*—Any one who, by any of the means referred to in s. 124A of the Penal Code, excites, or attempts to excite, feelings of hatred, dislike, ill-will, enmity, or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of "disaffection" as that term is used in s. 124A. Such feelings are necessarily inconsistent with and incompatible with a disposition to render obedience to the lawful authority of Government and to support that Government against unlawful attempts to subvert or resist it. The term "disaffection" may be taken as synonymous with "disloyalty." The ordinary meaning of the term "disaffection" as used in s. 124A is not varied by the explanation appended to that section. When a person is charged with having committed the offence punishable under s. 124A of the Penal Code, his intention may be inferred from one particular speech, article, or letter, or from that speech, article, or letter considered in conjunction with what such person has said, written, or published on another or other occasions. Where it is ascertained that the intention of such person was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written, or published could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or were false, and, except on the question of punishment, or in a case in which the speaker, writer, or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did in fact excite such feelings of disaffection. *Queen-Empress* v. *Jogendra Chunder Bose, I. L. R., 19 Calc., 35 ; In* [illegible] *petition of Bal Gangadhar Tilak, I. L. R.,* [illegible] 1?, referred to. QUEEN-[illegible] s *v.* AMB[illegible] [illegible] L. R., 20 All., 55

———— s. 14[illegible]

See BENGA[illegible]

———— s. 143.

See UNLAWFUL ASSEMBLY.

[I. L. R., 9 Calc., 639
7 N.-W., 209
I. L. R., 14 Mad., 126

———— ss. 143, 144, 147, 148, 149.

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

———— s. 146.

See RIOTING . I. L. R., 13 Mad., 148

———— s. 147.

See PRIVATE DEFENCE, RIGHT OF.

[I. L. R., 16 Calc., 206

See RIOTING . I. L. R., 16 Calc., 206
[I. L. R., 26 Calc., 574
I. L. R., 15 All., 22
I. L. R., 24 Calc., 686
W. R., 1864, Cr., 61

———— ss. 147, 148, 149.

See CASES UNDER UNLAWFUL ASSEMBLY.

———— s. 148—*"Deadly weapon"—Lathi.*—The question whether or not a lathi is a "deadly weapon" within the meaning of s. 148 of the Penal Code is a question of fact to be determined on the special circumstances of each case as it arises. QUEEN-EMPRESS *v.* NATHU . I. L. R., 15 All., 19

———— s. 151.

See UNLAWFUL ASSEMBLY.

[I. L. R., 7 Bom., 42

———— s. 152.

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R., 19 Calc., 105

———— *Assaulting or obstructing public servant in discharge of his duties—Charge, Form of—General charge.*—S. 152 of the Penal Code contemplates an assault or obstruction to some particular public servant, and where the charge against accused persons as framed was merely to the effect that they assaulted and obstructed "members of the Police force" in the discharge of their duties, etc.,—*Held* that a conviction under that section could not be supported. FERASAT *v.* QUEEN-EMPRESS

[I. L. R., 19 Calc., 105

———— s. 153—*Wantonly giving provocation with intent to cause riot—Abetment of riot by the public—Penal Code, s. 117.*—In August 1893 a riot took place in Bombay between Hindus and Musalmans. The excitement caused by the riot had not entirely subsided, when the accused composed and published a poem, giving an account of the outbreak, and incidentally, extolling certain classes of the Hindu community, namely, the Ghatis and Kamatis, for the brave resistance which they had [illegible]ered to the Mahomedan rioters. The poem extol[illegible] the Ghatis and Kamatis, and then followed these [illegible]: "May God give glory to you, confer joy [illegible] night and day! Fight again for your

PENAL CODE (ACT XLV OF 1860)
—*continued*

country's good! Brave, brave are the Kamatis! Why fear for dying, brother, why fear for dying? Sooner or later, but only once a man has to die" The poem was written in Gujarati, a language not ordina-[illegible]
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not take place subsequently to the publication of the work The accused were prosecuted and convicted under ss 117 and 153 of the Penal Code (XLV of 1860) on the ground that the lines quoted above, specially the words "Fight again," were a direct instigation to the Ghatis and Kamatis to renew the disturbances *Held* that the meaning of the passages complained of was to be gathered from the whole poem The general spirit of the poem was clearly in favour of peace and reconciliation It consisted from beginning to end of a lamentation over the riots and the destruction and death they had caused, and of repeated counsel to peace and harmony between Hindus and Mahomedans And there was nothing to indicate that the author's intention was to instigate the Hindus or provoke the Mahomedans to renew the disturbances The words "Fight again" were no doubt objectionable but it would not be a proper construction of the words to allow them to override the whole context of the work The composition could not be regarded as an "illegal act" and its publication was not "malignant" or "wanton" within the meaning of s 153 of the Penal Code QUEEN EMPRESS *v* KAHANJI
[I L R, 18 Bom, 758

———— ss 154, 155, 157.

See RIOTING 7 C L R, 289
[4 C. W N, 691
I L R, 12 All, 550

———— s 156

See RIOTING . I L R, 13 Calc, 338

———— ss 159 and 160—*Affray—Public place—Chabutra*—*Held* that a chabutra which was neither a place to which the public had a right of access nor a place to which the public were ever permitted to have access was not though it adjoined a public road a "public place" within the meaning of s 159 of the Penal Code QUEEN EMPRESS *v* SRI LAL I L R, 17 All, 166

———— s 160

See SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF FINE
[I. L R., 1 Mad., 277

———— s. 161.

See ACCOMPLICE I. L R., 27 Calc., 144

See CHARGE—FORM OF CHARGE—GENERAL CASES . 1 Ind. Jur, N S, 43

———— ss 161, 162, 165

See ILLEGAL GRATIFICATION
[I. L R., 3 All, 353
2 N. W, 148
3 W. R., Cr, 10, 19
I. L. R., 21 Bom., 517

PENAL CODE (ACT XLV O
—*continued*

———— ss. 161, 165, 168.

See PUBLIC SERVANT
[I. L. R, 4 C
I. L. R., I
I. L. R., 15 I

1 ———— s. 172—*Absconding to* [illegible] *vice of summons—Evidence*—In order to [illegible] commission of an offence under s. 172 of [illegible] Code, the prosecutor must show that a [illegible] notice or order has been issued and that t[illegible] knew, or had reason to believe, that it [illegible] issued To abscond to avoid the service [illegible]

[illegible] at a person, having concealed himself bef[illegible] issues continues to do so after it has [illegible] absconds SRINIVASA AYYANGAR *v* QUEE[illegible]
[I. L. R., 4 M

2 ———— *Warrant of a*[illegible] *sconding offender*—A warrant addressed [illegible] officer to apprehend an offender and bring [illegible] the Magistrate is not a summons notice [illegible] within the meaning of s 172 of the Penal [illegible] the offence of absconding by an offender [illegible] whom a warrant has been so issued is not [illegible] under that section QUEEN *v* WOMESH [illegible] GHOSE 5 W R

QUEEN *v* AMIR JAN . . 7 N.

QUEEN *v* HOSSEIN MANJEE 9 W R

3 ———— *Warrant add*[illegible] *Nazir—Warrant of arrest in execution*—A warrant addressed to a Nazir by a Civ[illegible] the arrest of a defendant in execution o[illegible] is not a notice summons or order within [illegible] ing of s 172 of the Penal Code QUEEN [illegible] ALI KHAN . 4 I

1 ———— s 173—*Refusal to gi*[illegible] *for summons*—A refusal to give a receipt [illegible] mons is not an offence under s 173 of [illegible] Code IN RE BHOOBUNESWAR DUTT
[I. L. R., 3 Calc, 621; 2 C

REG *v* KALYA BIN FAKIR . 5 Bom.

QUEEN EMPRESS *v* KRISHNA GOBINDA [illegible]
[I. L. R., 20 C

2 ———— *Refusal to receive* [illegible]—A refusal to receive a summons is no[illegible] under s 173 of the Penal Code QUEEN [illegible] MALAI . . . I. L. R., 5 M

QUEEN *v* ARUMUGA NADAN
[I L R., 5 Mad.,

———— s 174.

See CASES UNDER CONTEMPT OF PENAL CODE s. 174

See HOLIDAY . 8 B. L R.

See MAGISTRATE JURISDICTION POWERS OF MAGISTRATES
[I. L. R., 18 B

PENAL CODE (ACT XLV OF 1860)
—*continued.*

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[I. L. R., 22 Bom., 152

4. ———— *Exciting disaffection—Meaning of the term "disaffection" explained.*—Any one who, by any of the means referred to in s. 124A of the Penal Code, excites, or attempts to excite, feelings of hatred, dislike, ill-will, enmity, or hostility towards the Government established by law in British India, excites or attempts to excite, as the case may be, feelings of "disaffection" as that term is used in s. 124A. Such feelings are necessarily inconsistent with and incompatible with a disposition to render obedience to the lawful authority of Government and to support that Government against unlawful attempts to subvert or resist it. The term "disaffection" may be taken as synonymous with "disloyalty." The ordinary meaning of the term "disaffection" as used in s. 124A is not varied by the explanation appended to that section. When a person is charged with having committed the offence punishable under s. 124A of the Penal Code, his intention may be inferred from one particular speech, article, or letter, or from that speech, article, or letter considered in conjunction with what such person has said, written, or published on another or other occasions. Where it is ascertained that the intention of such person was to excite feelings of disaffection to the Government established by law in British India, it is immaterial whether or not the words spoken, written, or published could have the effect of exciting such feelings of disaffection, and it is immaterial whether the words were true or were false, and, except on the question of punishment, or in a case in which the speaker, writer, or publisher is charged with having excited such feelings of disaffection, it is immaterial whether or not the words did in fact excite such feelings of disaffection. *Queen-Empress* v. *Jogendra Chunder Bose, I. L. R., 19 Calc., 35 ; In re the petition of Bal Gangadhar Tilak, I. L. R., 22 Bom., 112,* referred to. QUEEN-EMPRESS *v.* AMBA PRASAD . **I. L. R., 20 All., 55**

———— **s. 141.**

See BENGAL EXCISE ACT, s. 4.
[I. L. R., 24 Calc., 324

See RIOTING . **I. L. R., 16 Calc., 206**

See CASES UNDER UNLAWFUL ASSEMBLY.

———— **s. 143.**

See UNLAWFUL ASSEMBLY.
[I. L. R., 9 Calc., 639
7 N.-W., 209
I. L. R., 14 Mad., 126

———— **ss. 143, 144, 147, 148, 149.**

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

———— **s. 146.**

See RIOTING . **I. L. R., 13 Mad., 148**

———— **s. 147.**

See PRIVATE DEFENCE, RIGHT OF.
[I. L. R., 16 Calc., 206

See RIOTING . **I. L. R., 16 Calc., 206**
[I. L. R., 26 Calc., 574
I. L. R., 15 All., 22
I. L. R., 24 Calc., 686
W. R., 1864, Cr., 61

———— **ss. 147, 148, 149.**

See CASES UNDER UNLAWFUL ASSEMBLY.

———— **s. 148**—*"Deadly weapon"—Lathi.*—The question whether or not a lathi is a "deadly weapon" within the meaning of s. 148 of the Penal Code is a question of fact to be determined on the special circumstances of each case as it arises. QUEEN-EMPRESS *v.* NATHU . **I. L. R., 15 All., 19**

———— **s. 151.**

See UNLAWFUL ASSEMBLY.
[I. L. R., 7 Bom., 42

———— **s. 152.**

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 19 Calc., 105

———— *Assaulting or obstructing public servant in discharge of his duties—Charge, Form of—General charge.*—S. 152 of the Penal Code contemplates an assault or obstruction to some particular public servant, and where the charge against accused persons as framed was merely to the effect that they assaulted and obstructed "members of the Police force" in the discharge of their duties, etc.,—*Held* that a conviction under that section could not be supported. FERASAT *v.* QUEEN-EMPRESS
[I. L. R., 19 Calc., 105

———— **s. 153**—*Wantonly giving provocation with intent to cause riot—Abetment of riot by the public—Penal Code, s. 117.*—In August 1893 a riot took place in Bombay between Hindus and Musalmans. The excitement caused by the riot had not entirely subsided, when the accused composed and published a poem, giving an account of the outbreak, and incidentally, extolling certain classes of the Hindu community, namely, the Ghatis and Kamatis, for the brave resistance which they had offered to the Mahomedan rioters. The poem extolled the Ghatis and Kamatis, and then followed these lines: "May God give glory to you, confer joy on you, night and day! Fight again for your

PENAL CODE (ACT XLV OF 1860)
—*continued*

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[I L R, 18 Bom, 758

———— ss 154, 155, 157

See RIOTING 7 C L R., 289
[4 C W N, 691
I L R, 12 All, 550

———— s 156

See RIOTING I L R., 13 Calc, 338

———— ss 159 and 160—*Affray—Public place—Chabutra*—*Held* that a chabutra which was neither a place to which the public had a [illegible] [illegible]ublic were [illegible] though it [illegible] within the [illegible] QUEEN EMPRESS *v* SRI LAL [illegible], 1 All., 166

———— s 160

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE
[I L R., 1 Mad., 277

———— s. 161.

See ACCOMPLICE I. L R, 27 Calc., 144

See CHARGE—FORM OF CHARGE—GENERAL CASES . 1 Ind. Jur, N S, 43

———— ss 161, 162, 165

See ILLEGAL GRATIFICATION
[I. L R., 2 All, 353
2 N W, 148
3 W. R., Cr, 10, 19
I L. R., 21 Bom., 517

PENAL CODE (ACT XLV OF 1860)
—*continued*

———— ss 161, 165, 166.

See PUBLIC SERVANT
[I L R, 4 Calc, 376
I. L. R., 1 All., 530
I L. R., 15 Mad., 127

1 ———— s 172—*Absconding to avoid service of summons—Evidence*—In order to prove the commission of an offence under s 172 of the Penal Code the prosecutor must show that a summons notice or order has been issued and that the accused knew, or had reason to believe, that it had been issued To abscond to avoid the service of process [illegible] absconds SRINIVASA AYYANGAR *v* QUEEN
[I. L. R., 4 Mad, 393

2 ———— ———— *Warrant of arrest—Absconding offender*—A warrant addressed to a police [illegible] whom a warrant has been so issued is not punishable under that section QUEEN *v* WOMESH CHUNDER GHOSE 5 W R, Cr, 71

QUEEN *v* AMIR JAN . . 7 N W, 302

QUEEN *v* HOSSEIN MANJEE 9 W R, Cr, 70

3 ———— ———— *Warrant addressed to Nazir—Warrant of arrest in execution of decree*—A warrant addressed to a Nazir by a Civil Court for the arrest of a defendant in execution of a decree is not a notice summons or order within the meaning of s 172 of the Penal Code QUEEN *v* ZAHOOR ALI KHAN . 4 N W., 97

1 ———— s 173—*Refusal to give receipt for summons*—A refusal to give a receipt for a summons is not an offence under s 173 of the Penal Code IN RE BHOOBUNESWAR DUTT
[I L R., 3 Calc, 621 2 C L R., 80

REG *v* KALYA BIN FAKIR . 5 Bom., Cr, 34

QUEEN EMPRESS *v* KRISHNA GOBINDA DAS
[I. L R., 20 Calc., 358

2 ———— ———— *Refusal to receive summons*—A refusal to receive a summons is not an offence under s. 173 of the Penal Code QUEEN *v* PINA MALAI . . . I. L. R., 5 Mad., 199

QUEEN *v* ARUMUGA NADAN
[I L R., 5 Mad., 200 note

———— s 174.

See CASES UNDER CONTEMPT OF COURT—PENAL CODE s. 174

See HOLIDAY . 8 B. L R., Ap., 12

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES
[I. L. R., 18 Bom., 360

PENAL CODE (ACT XLV OF 1860)—*continued.*

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE.
[8 W. R., Cr., 61

See WITNESS — CRIMINAL CASES — SUMMONING WITNESSES.
[I. L. R., 24 Calc., 320

——— *Escaping from custody of peon.*—Complainant, a batta peon, arrested defendant on a warrant and asked him to follow him. Defendant promised to do so, and went into his house on the pretext of getting a turban, and absconded. *Held* that a conviction under s. 174 of the Penal Code was illegal. ANONYMOUS . . 7 Mad., Ap., 44

——— s. 175.

See CONTEMPT OF COURT—PENAL CODE, s. 175 . . I. L. R., 12 Bom., 63
[I. L. R., 13 Mad., 24

See PRODUCTION OF DOCUMENTS.
[I. L. R., 12 Bom., 63

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES I. L. R., 12 Bom., 63

——— s. 176.

See CASES UNDER INFORMATION OF COMMISSION OF OFFENCE.

——— s. 177.

See COMPLAINT — INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.
[I. L. R., 27 Calc., 985

1. ——— *Giving false information to police.*—S. 177 of the Penal Code does not apply to the case of any person who is examined by a police officer making a false statement, but to cases where, by law, landholders or village watchmen are bound to give information, and to other analogous cases of the same description. QUEEN *v.* LUCKHEE SINGH . . . . . 12 W. R., Cr., 23

2. ——— *Giving false information—Legally bound—False entry in diary—Obeying departmental order.*—To make a false entry in a diary kept by a Government servant and sent to his official superior in pursuance of a departmental order is an offence within the meaning of s. 177 of the Penal Code. VIRASAMI MUDALI *v.* QUEEN
[I. L. R., 4 Mad., 144

3. ——— *Furnishing false information for the purpose of preventing the commission of an offence, Meaning of.*—The information which, under the second branch of s. 177 of the Penal Code, a person is legally bound to give "for the purpose of preventing the commission of the offence" relates not to the commission of offences generally, but to the commission of some particular offence. IN THE MATTER OF THE PETITION OF PANATULLA. PANATULLA *v.* QUEEN-EMPRESS I. L. R., 15 Calc., 386

4. ——— and s. 43—*Giving false information to police—"Legally bound."*—On 22nd November 1890 the accused, who was a Deputy Tahsildar, submitted to his official superior a false "nil" return of lands in his enjoyment, and also on 5th December 1890 made a false statement to the same effect in a revenue enquiry before the Principal Assistant Collector. He was convicted of an offence under Penal Code, s. 177. *Held* that, inasmuch as he was not "legally bound" within the meaning of s. 43 of the Code to give the information, the conviction was wrong. *Virasami Mudali* v. *Queen, I L. R., 4 Mad., 144,* dissented from. QUEEN-EMPRESS *v.* APPAYYA . I. L. R., 14 Mad., 484

5. ——— *False information—Police officer according a false report.*—*Held* that a police officer at a police station, who, being as such officer bound to enter all reports brought to him of cognizable or non-cognizable offences in the station diary, refused to enter a report made to him concerning the commission of an offence, and entered instead in the diary a totally different and false report as that which was made to him, had thereby committed the offence punishable under s. 177 of the Penal Code. QUEEN-EMPRESS *v.* MUHAMMAD ISMAIL KHAN
[I. L. R., 20 All., 151

6. ——— and ss. 182, 415—*Furnishing false information—Cheating.*—A person attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under s. 177 or s. 188 of the Penal Code, or the offence of attempting to "cheat" within the meaning of s. 415 of that Code. EMPRESS *v.* DWARKA PRASAD . . I. L. R., 6 All., 97

7. ——— *False returns furnished by vaccinators.*—Certain vaccinators were charged with furnishing false returns to their official superior. The Magistrate found as a fact that the returns furnished were false, but acquitted the defendants on the ground that they were not "legally bound" to furnish information within the meaning of s. 177 of the Penal Code. *Held* that s. 177 embraces every case in which a subordinate may seek to impose false information upon his superior. The defendants in the present case were public servants, and part of the duties which they undertook was to make true returns to their official superior. To make false returns was therefore an offence. ANONYMOUS
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8. ——— *Duty of police officer—Police Act (V of 1861), s. 44.*—Under Act V of 1861, a police officer is bound to communicate information to his superior officer regarding the commission of a raiyat affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 of that Act to keep; and the omission to give such information brings him within the purview of s. 177 of the Penal Code. IN THE MATTER OF THE PETITION OF FUTTEH MAHOMED
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9. ——— and s. 416—*Cheating by false personation.*—*A* gave *B* four annas to purchase a stamp for him (*A*). When the stamp vendor asked *B* his name, he gave *A*'s name instead of his

PENAL CODE (ACT XLV OF 1860)
—*continued*

own *Held* not to be cheating by personation under s 416, Penal Code, but giving false information under s 177 REG v RAGHOJI BIN KANOJI
[3 Bom, Cr, 42

1 ——— s 179 — *Evidence — Witness — Evidence Act (I of 1872), s 165.*—Under s 165 of the Evidence Act (I of 1872), a Judge has the power of asking irrelevant questions to a witness, if he does so in order to obtain proof of relevant facts, but if he asks questions with a view to criminal proceedings being taken against the witness the witness is not bound to answer them, and cannot be punished for not answering them, under s 179 of the Penal Code EMPRESS v HARI LAKSHMAN
[I. L R, 10 Bom, 185

2 ——— *Witness refusing to answer —Complainant—Criminal Procedure Code, 1882, s 485 —Semble*—A complainant is not a witness punishable for refusal to answer under s 485 of the Code of Criminal Procedure, or under s 179 of the Penal Code IN RE GANESH NARAYAN SATHE
[I. L. R, 13 Bom, 600

3 ——— *Criminal Procedure Code, 1898, s 161—Refusal to answer questions of police officer*—A refusal to answer questions asked by a police officer under s 161 of the Criminal Procedure Code (V of 1898) is not punishable under this section. QUEEN-EMPRESS v. SANKARALINGA KOUR
[I. L R, 23 Mad., 544

1. ——— s 180—*Refusal to sign statement made before Magistrate—Code of Criminal Procedure (X of 1872), ss 122 and 346*—An accused person who refuses to sign a statement made at his trial in answer to questions put by the Court commits no offence punishable under s 180 of the Penal Code EMPRESS v SIRSAPA
[I. L. R., 4 Bom, 15

2. ——— *Criminal Procedure Code (Act X of 1882), ss 69, 71—Criminal Procedure Code (Act X of 1872), s 154—Refusal to sign receipts for summons*—A mere refusal to sign a receipt for a summons is not an offence under s 180 of the Penal Code QUEEN EMPRESS v KRISHNA GOBINDA DAS I. L. R., 20 Calc, 358

——— s 181.

See FALSE EVIDENCE—GENERAL CASES
[I. L. R., 6 Mad., 252
8 Bom, Cr., 21
4 Mad, Ap, 18
I. L. R., 5 All., 17

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY
[4 Mad., Ap, 18

——— s. 182.

See BENGAL MUNICIPAL ACT, 1884 s 133
[I. L. R., 22 Calc, 131

PENAL CODE (ACT XLV OF 1860)
—*continued.*

See FALSE CHARGE 8 W. R., Cr., 67
[I L. R., 5 All., 36, 387
I. L. R., 7 Bom, 184
I. L R., 5 Calc., 184
4 C L R, 134
7 C L R, 382

See MALICIOUS PROSECUTION
[I L. R, 19 Bom., 717

See SANCTION TO PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION
[I. L. R., 20 Calc., 474

See SANCTION TO PROSECUTION—POWER TO GRANT SANCTION
[I. L. R., 27 Calc., 452
4 C. W. N, 366

See SANCTION TO PROSECUTION—POWER TO QUESTION GRANT OF SANCTION
[I L. R., 4 Calc., 860

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
[I L. R., 8 All, 382
13 W R., Cr, 67

1. ——— *False information to the* [illegible]

[illegible]

upon information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done had they known the truth of the matter laid before them IN THE MATTER OF THE PETITION OF GOLAM AHMED KAZI
[I. L R, 14 Calc., 314

2 ——— *Giving false information to a public servant*—Under s 182 of the Penal Code (Act XLV of 1860), the giving of false information to a public servant is penal, when either of two [illegible]

[illegible]

nacular Sixth Standard Examination *A* passed the examination, and obtained a certificate from the educational authorities in *B*'s name *B* there- [illegible]

[illegible]

PENAL CODE (ACT XLV OF 1860) —*continued.*

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE. [8 W. R., Cr., 61

See WITNESS — CRIMINAL CASES — SUMMONING WITNESSES. [I. L. R., 24 Calc., 320

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PENAL CODE (ACT XLV OF 1860)
—*continued*

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[3 Bom, Cr, 42

1 ———— s 179—*Evidence—Witness—Evidence Act (I of 1872), s 165*—Under s 165 of

not answering them under s 179 of the Penal Code EMPRESS v HARI LAKSHMAN
[I L R, 10 Bom, 185

2 ———— *Witness refusing to answer—Complainant—Criminal Procedure Code 1882, s 485—Semble*—A complainant is not a witness punishable for refusal to answer under s 485 of the Code of Criminal Procedure or under s 179 of the Penal Code IN RE GANESH NARAYAN SATHE
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———— s 181

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[I. L R., 23 Calc., 131

PENAL CODE (ACT XLV OF 1860)
—*continued*

See FALSE CHARGE 8 W. R, Cr, 67
[I. L. R., 5 All, 36, 387
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[I. L R., 20 Calc, 474

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[I. L. R., 27 Calc, 452
4 C. W N, 366

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[I. L. R., 4 Calc., 869

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE
[I. L R., 8 All, 382
13 W R., Cr, 67

1. ———— *False information to the police—Charge made against no specific person—*

MATTER OF THE PETITION OF GOLAM AHMED KAZI
[I L R., 14 Calc., 314

2 ———— *Giving false information to a public servant*—Under s 182 of the Penal Code (Act XLV of 1860), the giving of false information to a public servant is penal when either of two

be to the injury or annoyance of any third person. *A* personated *B* at an examination called the Vernacular Sixth Standard Examination *A* passed the examination, and obtained a certificate from the educational authorities in *B's* name *B* thereupon applied to the Assistant Collector to have his

for employment in the Revenue Department. On receipt of this application, the Assistant Collector

PENAL CODE (ACT XLV OF 1860)
—*continued.*

ordered *B*'s name to be entered on the list of candidates. *Held* that *B* was guilty of the offence of giving false information to a public servant within the meaning of the latter part of s. 182 of the Penal Code. QUEEN-EMPRESS *v.* GANESH KHANDERAO

[I. L. R., 13 Bom., 506

3. ——— *Criminal Procedure Code, ss. 342, 428, 540—Examination on affirmation of one preferring a criminal appeal—Verification of petition of appeal.*—In a petition of appeal from a conviction, the appellant falsely stated that the convicting Magistrate declined to summon his witnesses. The Magistrate to whom the appeal was preferred called upon the appellant to verify the allegations in the petition of appeal on solemn affirmation, and he did so. *Held* that the appellant had not committed an offence under s. 181 or 182 of the Penal Code. QUEEN-EMPRESS *v.* SUBBAYYA

[I. L. R., 12 Mad., 451

4. ——— *Giving false information to public servant—Definition of offence provided for in s. 182 explained.*—In order to constitute the offence defined in s. 182 of the Penal Code, it is not necessary that the public servant to whom false information is given should be induced to do anything or to omit to do anything in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false information is given; but the intention or knowledge (to be inferred from his conduct) of the person supplying such information. *In the matter of the petition of Golam Ahmed Kazi, I. L. R., 14 Calc., 314,* dissented from. QUEEN-EMPRESS *v.* BUDH SEN

[I. L. R., 13 All., 351

5. ——— *False information to a public servant—False complaints to police.*—Where as the result of a police investigation it appears that a complaint made to the police of the commission of an offence punishable under the Penal Code is false, it is not necessary that the complainant should be given any further opportunity of establishing the truth of his allegation before his prosecution under s. 128 of the Penal Code is ordered. QUEEN-EMPRESS *v.* RAGHU TIWARI

[I. L. R., 15 All., 336

6. ——— and s. 189—*Right of person against whom information has been falsely given to institute criminal prosecution—Consent of public servant.*—A person against whom information has been falsely given with a view to his injury has a right to bring a civil action for damages, with or without the consent of the public servant against whom the offence was committed; but he cannot bring a criminal charge under s. 189, or any other section of Ch. X of the Penal Code, without the permission of such public servant; the law looking upon the conduct of the person who gives the false information as an offence, not against the individual charged, but against the public servant to whom the false information was given. To constitute an offence under s. 182 of the Penal Code, the information given must be information which the informer knew or believed to be false, and it must be proved that he gave it with such knowledge. IN THE MATTER OF THE PETITION OF ABDOOL LUTEEF

[9 W. R., Cr., 31

See QUEEN *v.* RAM GOLAM SING

[11 W. R., Cr., 22

7. ——— *Statements made by prisoner for his defence.*—Statements made by a prisoner for the purposes of his defence cannot be held to be "information given to a public servant" within the meaning of s. 182 of the Penal Code. QUEEN *v.* DARIA KHAN . . . . 2 N. W., 128

8. ——— *Giving false information to public servant.*—S. 182 of the Penal Code does not apply where the public servant misinformed is only competent to pass and passes on the information, and the power to be exercised by him cannot tend to any direct or immediate prejudice of the person against whom the information is levelled. QUEEN *v.* PERIANNAN . . I. L. R., 4 Mad., 241

9. ——— *Furnishing false information—Cheating.*—A person attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under s. 177 or s. 182 of the Penal Code, or the offence of attempting to "cheat" within the meaning of s. 415 of that Code. EMPRESS *v.* DWARKA PRASAD . . . . . I. L. R., 6 All., 97

10. ——— *Giving false "information" to a public servant.*—*M* falsely informed the Collector of a district that certain zamindars had usurped possession of certain land belonging to Government, with the intent "to give trouble to such zamindars and waste the time of the public authorities." *Held* that, inasmuch as such information was no more than an expression of a private person's belief that the Collector might, if he chose, sustain a civil suit with success against such zamindars, and as, had the Collector agreed with the informant, the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of such zamindars, or that he would have done anything he ought not to have done, *M* had not committed an offence under s. 182 of the Penal Code. EMPRESS *v.* MADHO

[I. L. R., 4 All., 498

11. ——— *Public servant—Forest Act (VII of 1878).*—Under s. 172 of the Forest Act (VII of 1878), a forest officer is a public servant within the meaning of the Penal Code. Any information given to him with the intent mentioned in s. 182 of the Penal Code is punishable under that section whether that information is volunteered by the informant, or is given in answer to questions put to him by that officer. QUEEN-EMPRESS *v.* RAMJI SAJABARAO . . . I. L. R., 10 Bom., 124

12. ——— *Complaint of giving false information, Prosecution of.*—No ground for a complaint of giving false information to a public servan

PENAL CODE (ACT XLV OF 1860)
—*continued*

under s. 182 of the Penal Code exists on the part of any one but the public serv nt against whom the offence was committed QUEEN v HURREE RAM [3 N W, 194

13 ——————— and s 211—*Prosecution under s 182—Complaint—Rejection with reference to police report*—*K* made a report at a police station accusing *R* of a certain offence The police having reported to the Magistrate having jurisdiction in the matter that in their opinion the offence was not established the Magistrate ordered the case to be "shelved" *K* then preferred a complaint to the Magistrate again accusing *R* of the offence The Magistrate rejected the complaint with reference to the police report Subsequently *R*, with the sanction of the police authorities instituted criminal proceedings against *K*, under s 182 of the Penal Code in respect of the report which he had made at the police station and *K* was convicted under that section *Held* that *K*'s conviction under s 182 of the Penal Code was illegal as the Magistrate had no power to entertain a complaint under that section at the instance of *R* the application of s 182 and the institution of prosecutions under it being limited to the public servant against whom the offence has been committed or to his official superior as mentioned in s 467 of Act X of 1872 and it not being intended that those provisions should be enforced at the instance of private persons Moreover if *K*'s complaint was false his offence was against *R* and not against the public servant to whom the complaint was made, and fell within s 211 of the Penal Code EMPRESS v RADHA KISHEN I L R, 5 All, 36

14 ——————— *Prosecution Sanction to—Criminal Procedure Code s 195*—A prosecution under s 182 of the Penal Code may be instituted by a private person provided that he first obtains the sanction of the public officer to whom the false information was given or of his official superior *Queen Empress* v *Radha Kishan I L R 5 All, 36*, overruled QUEEN EMPRESS v JUGAL KISSORE [I L R, 8 All, 382

15 ——————— *False information to a public servant, Charge of—Criminal Procedure Code s 195—Sanction to prosecution—Separate* [illegible]

[illegible]

was found to be false, and the accused was convicted and punished for two offences under s 182 as affecting two different persons *Held* that although the information related to two different persons the accused could be charged with having made only one false statement and punished for one offence under s 182. S 195 Criminal Procedure Code, clearly shows that a complaint directly made by a public servant mentioned therein is quite as sufficient as his sanction *Empress of India* v *Radha Kishan I L R 5 All 36*, dissented from. POORIT SINGH v MADHO BHOT I L R, 13 Calc, 270

PENAL CODE (ACT XLV OF 1860)
—*continued*

1. ——————— s 183—*Resistance to taking of property by the authority of a public servant—Objection to attachment of property in execution of a* [illegible]

[illegible]

he entered them as his property does not amount to an offence under s. 183 of the Indian Penal Code QUEEN EMPRESS v HUSAIN [I L R, 15 Bom, 564

2 ——————— *Resistance to attachment—Lawful authority—Village Chaukidari Act (Bengal Act VI of 1870) ss 26 27 and 34*— [illegible] ation [illegible] hout [illegible] 27 [illegible] VI [illegible] the [illegible] —*Held* that resistance to such attachment was not an offence under s 183 of the Penal Code DURGA CHARAN MALI v NOBIN CHANDRA SIL I L R, 25 Calc, 274

3 ——————— *Resistance to the taking of property—Attachment of goods not being pro*[illegible]

[illegible]

resisted the seizure asserting that the goods seized were his own He was thereupon charged with having committed an offence under the Penal Code s 183 but he was acquitted for want of proof by the [illegible]

[illegible]

——————— s 185

See CRIMINAL PROCEDURE CODES s 487 (187, s 473) . . 7 N. W, 132

——————— s 186

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT I. L. R, 20 Calc., 481

1. ——————— *Obstructing public servant in the execution of his duty—Escape from lawful custody*—Escaping from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of s 186 of the Penal Code REG v POSHU BIN DHAMBAJI PATIL 2 Bom., 134: 2nd Ed, 128

2. ——————— *Refusal to accompany measuring clerk employed under Bom Act I of 1865*—Conviction and sentence under s. 186 of the Penal Code reversed as the conduct of the accused refusing to accompany a measuring clerk employed under Act I of 1865 (Bombay) to his (the accused's)

[illegible]

PENAL CODE (ACT XLV OF 1860) —*continued.*

3. ——— *Obstruction to officer unjustifiably searching without warrant though acting in good faith.*—An officer subordinate to the officer in charge of a police station who was deputed by the latter to make an enquiry under s. 135, Criminal Procedure Code, 1861, attempted without a search warrant to enter a house in search of property alleged to have been stolen. *Held* that persons obstructing and resisting his so doing could not set up the illegality of the officer's proceeding as a justification of their obstruction unless it was shown the officer was acting otherwise than in good faith and without malice. REG. v. VYANKATRAV SHRINIVAS [7 Bom., Cr., 50

4. ——— and s. 183—*Obstructing public servant—Bailiff breaking open doors unjustifiably.*—If a bailiff break the doors of a third person, in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under s. 183 or s. 186 of the Penal Code. REG. v. GAZI KOM ABA DORE . 7 Bom., Cr., 83

5. ——— *Refusal of cart-owner to hire his cart to Government officer.*—The refusal of a cart-owner to give his cart on hire to a Government officer does not constitute the offence of obstructing a public servant in the discharge of his public functions within the meaning of s. 186 of the Penal Code. REG. v. DHORI KULLAN . . 9 Bom., 165

6. ——— *Mouzadar—Public servant.*—Conviction under s. 186 of the Penal Code, of obstructing a mouzadar in the discharge of his duty, reversed, there being nothing to show that the mouzadar was a public servant. JOYNATH v. SOORJARAM [8 W. R., Cr., 66

7. ——— *Voluntarily obstructing a public servant in discharge of his duties—Mamlatdar's decree—Execution by a surveyor under Collector's orders—Public function—Right of private defence.*—In a suit filed in a Mamlatdar's Court under Bombay Act III of 1876, the plaintiff obtained a decree against the accused for possession of a certain piece of land. When the Mamlatdar proceeded to execute the decree, he found that there was no land corresponding to the boundaries set forth in the plaint, and that the parties were joint owners and in joint occupation of the land in dispute. Finding himself unable to execute the decree, the Mamlatdar referred the matter to the Collector for advice. The Collector, on looking into the papers of the case, ordered a surveyor to execute the decree by dividing the land in dispute and putting the decree-holder in possession of his share. The surveyor, in attempting to execute the decree, was obstructed by the accused, who was thereupon tried and convicted of the offence of voluntarily obstructing a public servant in the discharge of his public functions, under s. 186 of the Penal Code (Act XLV of 1860). *Held,* reversing the conviction, that, as the Collector had no legal

PENAL CODE (ACT XLV OF 1860) —*continued.*

authority to issue the order to the surveyor in execution of the Mamlatdar's decree, the surveyor acting under that order was not discharging a public function, and the act of the accused was not an offence against s. 186 of the Penal Code. *Held,* further, that the Collector's order was so entirely *ultra vires* as to leave no room for the operation of either the first or the second clause of s. 99 of the Penal Code. QUEEN-EMPRESS v. TULSIRAM [I. L. R., 13 Bom., 168

8. ——— *Public servant—Ameen appointed under Bengal Tenancy Act (VIII of 1885), s. 69—Bengal Tenancy Act, s. 89.*—A person nominated by the Collector, under s. 69 of the Bengal Tenancy Act, for the purpose of making a division of crops between the landlord and the tenant, is not a public servant within the meaning of s. 186 of the Penal Code. CHATTER LAL v. THACOOR PERSHAD . . . I. L. R., 18 Calc., 518

9. ——— *Obstructing a public servant—Public vaccinator.*—To spread a false report and thereby prevent persons from bringing their children for vaccination to the public vaccinator is not an offence under Penal Code, s. 186. QUEEN-EMPRESS v. THIMMACHI . . I. L. R., 15 Mad., 93

10. ——— and s. 183—*Obstructing public servant—"Voluntarily."*—A District Judge ordered that the house of the defendant in a suit pending before him be searched and certain property brought to the Court, and appointed a commissioner to carry out this order. The commissioner went to the house, but the defendant shut the doors and would not admit him. A crowd collected, and the commissioner felt it would be unsafe to proceed to carry out the order by force, and was unable to do so otherwise. The defendant was prosecuted and sentenced under Penal Code, s. 186. *Held* that the facts disclosed no offence under that section. The use of the word "voluntarily" in that section seems to contemplate some overt act of obstruction, and not that mere passive conduct should be penal. QUEEN-EMPRESS v. SOMMANNA . I. L. R., 15 Mad., 221

11. ——— *Voluntarily obstructing public servant in discharge of his duties—Impeding railway servant—Railways Act (IX of 1890), ss. 121, 122.*—Before a person can be convicted of wilfully obstructing or impeding a railway servant in the discharge of his duties as provided in s. 121 of the Railways Act (IX of 1890) or of voluntarily obstructing a public servant in the discharge of his public functions as provided by s. 186 of the Penal Code, it must be shown that the obstruction or resistance was offered to the railway or public servant in the discharge of his duties or public functions as authorized by law. The mere fact of a public servant or railway servant believing he was acting in the discharge of his duties or public functions is not sufficient to make resistance or obstruction to him amount to an offence. IN THE MATTER OF THE PETITION OF BARODA KANTO PRAMANICK [1 C. W. N., 74

PENAL CODE (ACT XLV OF 1860) —*continued*

12 ———— *Obstructing public servant in discharge of his public functions—Ameen, Power of, to measure lands in butwarra proceedings—Public functions—Estates Partition Act (Bengal Act VIII of 1876), ss 112 and 116*—The public functions contemplated by s 186 of the Penal Code mean legal or legitimately authorized public func

connected with the partition of an estate under

and of certain other estates The persons who obstructed him were not co-sharers in that estate, and con-

s 112 is limited to cases where the community of *interest in the land in dispute between the proprietors* of the estate under partition as a body and the proprietors of other estates is admitted When this is not admitted, the provisions of s. 116 apply *Held* further that, as there was no evidence to show that such community of interest was admitted, the accused were entitled to the benefit of the doubt and to have the case treated as one under s 116, and that, as the procedure laid down in that section had not been followed, the ameen had no power to measure the lands, and could not be said to be a public

13. ———— *Obstructing public servant in discharge of his public functions—Public servant*

Procedure Code, but only bears his initials, and the substance of which is not notified to the person to be arrested as required by s 80 of the Code, cannot be said to be acting in the discharge of his public functions in a manner authorized by law. A person obstructing him cannot be convicted under s 186 of the Penal Code ABDUL GAFUR v. QUEEN EMPRESS [I. L R, 23 Calc., 896

14. ———— —— and s. 21 *Obstructing public servant in discharge of public functions—Court peon—Nazir's power of delegation of service of warrant to peon—Civil Procedure Code (1882), s 251—Court-fees Act (VII of 1870), s 22—Service of warrant of attachment*—The petitioner was convicted under s. 186 of the Penal Code of obstructing a Civil Court peon, who was attaching his property in execution of a decree, the warrant of attachment was addressed to the Nazir of the Court, who delegated its execution to a peon by an endorsement of the peon's name *Held* the Nazir had authority thus to delegate the execution of the warrant to the peon The words "to be executed" in s 251 of the Code of Civil Procedure would seem to imply that it was not intended that the "proper officer" should himself execute all warrants sent to him And there is nothing in the Code which indicates in any way that warrants being either warrants of arrest or of attachment or for distress and sale, are to be executed by the "proper officer," in any manner different from the service of summonses The Court-fees Act (VII of 1870) distinctly contemplates that the peons are to be employed not only for the service of summonses notices or orders, but also for the execution of other processes such as warrants of arrest, or of attachment and distress Though the authority may well be conferred in more clear and explicit

15. — and s 21—*Nazir's power of delegation—Public servant—Peon—Escape from arrest*—A Nazir has authority to delegate the execution of warrants of arrest

Quære—Whether the escape of a prisoner from arrest is an obstruction of a public servant within the meaning of s 186 of the Penal Code SHEO PROGASH TEWARI v BHOOP NARAIN PROSAD PATHAK I. L. R., 22 Calc, 759

16. ———— — *Illegal issue of warrant of arrest—Code of Criminal Procedure (1882), ss 76, 81, 90, and 160—Penal Code (Act XLV of 1860), ss 143 and 174—Justifiable assault—Investigation by police—Power of Magistrate to issue warrant of arrest for production of witness—*

that the attempt to arrest was made on the wrong person, a District Magistrate has no authority to

was

PENAL CODE (ACT XLV OF 1860)
—*continued.*

Criminal Procedure Code, the proper course was for the Sub-Inspector of Police to require the attendance of the witness under s. 160 of the Code of Criminal Procedure, and, on failure by her to comply with such order, prosecute her under s. 174 of the Penal Code. *Held* further that the accused were justified in their resistance, and that no offence either under s. 143 or s. 186 of the Penal Code was committed, and that they should be acquitted. QUEEN-EMPRESS *v.* JOGENDRA NATH MUKERJEE
[I. L. R., 24 Calc., 320
1 C. W. N., 154

17. ———— and ss. 99 and 353—*Madras Local Boards Act (Madras Act V of 1884), ss. 77, 78, 81, 94, 163—Service of notice of demand of house-tax—Omission to fill up the house-register completely—Illegal distraint—Resistance to distraining officer.*—A notice of demand of a house-tax under the Local Boards Act V of 1884 (Madras) was affixed to the house. The owner, who was a potter and cultivator by occupation, was in the village at the time. He did not pay the tax. A warrant of distress was issued, the house-register not having been completely filled up, and a bucket and spade belonging to the defaulter were attached. The defaulter successfully resisted the distraint. *Held* that the provisions of the Act had been sufficiently complied with as regards the preliminary steps for making the demand and the service of notice, and the fact that the spade and the bucket were protected from attachment under s. 94 did not justify the resistance, and accordingly that the defaulter was guilty of offences under Penal Code, ss. 186 and 353. QUEEN-EMPRESS *v.* POOMALAI UDAYAN . . . I. L. R., 21 Mad., 296

———— s. 187.

See FALSE EVIDENCE—GENERAL CASES.
[I. L. R., 23 Mad., 544

See FOREST ACT, s. 78.
[I. L. R., 22 Bom., 769

———— s. 188.

See BOMBAY DISTRICT MUNICIPAL ACT, s. 73 . I. L. R., 14 Bom., 180

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE 2 B. L. R., A. Cr., 45
[I. L. R., 10 All., 115
I. L. R., 16 Calc., 9
I. L. R., 14 Bom., 165
I. L. R., 19 Mad., 464
2 C. W. N., 70
I. L. R., 20 All., 501

See UNLAWFUL ASSEMBLY.
[I. L. R., 7 Bom., 42

1. ———— *Criminal Procedure Code, 1861, s. 62.*—An order in writing under s. 62 of the Code of Criminal Procedure is necessary to sustain a charge under s. 188 of the Penal Code of disobeying an order under the former section. IN THE MATTER OF PITAMBUR DEY . . 17 W. R., Cr., 57

2. ———— *Evidence of promulgation of lawful order.*—To support a conviction under s. 188 of the Penal Code, there must be evidence that the order has been promulgated by a public servant lawfully empowered to promulgate it. QUEEN *v.* SUBUN SINGH . . . 23 W. R., Cr., 57

3. ———— *Knowledge of promulgation of order.*—Before a conviction can be had under s. 188, Penal Code, it must be proved that the accused knew that an order had been promulgated by a public servant directing such accused person to abstain from a certain act. QUEEN *v.* RAMTONOO SINGH . . . . . 12 W. R., Cr., 49

ABELAKH SINGH *v.* SIRRAM SINGH
[15 W. R., Cr., 50

4. ———— *Injunction in civil suit—Disobedience of order.*—S. 188 of the Penal Code applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party. The proper remedy for disobedience of an order of injunction passed by a Civil Court is committal for contempt. IN THE MATTER OF THE PETITION OF CHANDRAKANTA DE
[I. L. R., 6 Calc., 445: 7 C. L. R., 350

5. ———— *Requisites for conviction under.*—A conviction under s. 188 of the Penal Code, of disobedience of an order duly promulgated by a public servant, will not stand where the evidence fails to show that the disobedience caused or tended to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or that it caused or tended to cause danger to human life, health, or safety, or caused or tended to cause a riot or affray. ANONYMOUS . . . . . 4 Mad., Ap., 6

6. ———— *Criminal Procedure Code, 1861, s. 62—Order of Assistant Magistrate.*—Ss. 62 (Criminal Procedure Code, 1861) and 188 of the Penal Code should be read together. GOVERNMENT *v.* MAHOMED BUKSH . . 1 Agra, Cr., 23

7. ———— *Issue of summons and warrant.*—A Magistrate has no authority to issue simultaneously a summons and a warrant under s. 188 of the Code of Criminal Procedure, 1861, unless he has reason to believe that the witness will not attend in obedience to a summons. QUEEN *v.* CHUNDER SEEKUR ROY . . . 12 W. R., Cr., 18

8. ———— *Illegality of order—Order under consideration of Appellate Court.*—Where a Magistrate had made an improper order requiring the petitioner to pull down his house as an obstruction in fifteen days, and the Sessions Judge, on application of the petitioner, called for the proceedings under s. 434 of the Criminal Procedure Code, 1861, the Magistrate wrote and questioned the Judge's authority to interfere, and without waiting for a reply proceeded to try the petitioner for disobedience to an order duly promulgated by a public servant and sentenced him to twenty-five days' imprisonment under s. 188 of the Penal Code. *Held* (reversing the conviction) that the Magistrate ought at once to have complied with the precept of the Sessions Judge

PENAL CODE (ACT XLV OF 1860) —*continued*

under s 434, and that he was not warranted in ... lisobey- ... roperly ... REG

[2 Bom, 407: 2nd Ed, 384

9. — *Order of Magistrate under s 518, Criminal Procedure Code, prohibiting payment of rents—Illegal order* —In a case of a dispute between rival parties as to the payment of rents by tenants, a Magistrate has no power, under s 518 of Act X of 1872 to make an order that no rents should be collected until such time as the right and title of both parties should have been established by order of a competent Court and a conviction under s 188 of the Penal Code for disobeying such an order cannot be sustained PROSONO COOMAR CHATTERJEE v EMPRESS 8 C L R., 231

10 ——— *Order of Magistrate under s 133, Criminal Procedure Code, Act X of 1882 made without jurisdiction* —The accused was con- ...

... between certain hours *Held* that the conviction was bad IN THE MATTER OF KOMUL KRISTO BONICK . 12 C. L R, 231

11. ——— *Plying boat for hire near public ferry—Disobedience of order promulgated by public servant* —If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Penal Code MUTHRA v JAWAHIR

[I. L R., 1 All, 527

12 ——— *Code of Criminal Proce-* ...

... S C QUEEN v AMEERUDDEEN

[12 W. R., Cr., 36

13 ——— *Landholder, Duty of—Neglect to aid a public servant—Disobedience to* ... *1872 (Criminal* ... rate directed a ... theft "within ... *Held* that ... ss 90 and 91 of Act X of 1872, and the conviction of such landholder, under ss 187 and 188 of the Penal Code, for disobedience to such order was not maintainable EMPRESS OF INDIA v. BAKHSHI RAM

[I. L. R., 3 All., 201

14 ——— *Act XXXI of 1860, s 26—Criminal Procedure Code (Act XXV of 1861), ss 250, 251—Carrying firearms without license—* ...

XXXI of 1860, and certain persons were in consequence of his notification arrested and brought before him charged in a police report with carrying arms without license No summons or warrant had been applied for, nor any complaint lodged before the Magistrate previous to the arrest of the prisoners No charge in writing was framed as required under ss 250, 251 of the Criminal Procedure Code No evidence was taken, but the prisoners admitted carrying the firearms The Magistrate convicted them under s 188 of the Penal Code, of disobedience of an order duly promulgated by a public servant There was no evidence that the disobedience would cause or tend to cause annoyance obstruction or injury to human life, health, or safety *Held* the convictions must be quashed Necessity of observing the rules laid down in the Criminal Procedure Code remarked on QUEEN v NANDKUMAR BOSE

[3 B L R., Ap 149

15 ——— *Order under s 530 Criminal Procedure Code, 1872* —In the absence of evidence that an order under s 530 of the Criminal Procedure Code was in fact directed to the accused, he cannot legally be convicted under s 188 of the Penal Code for disobeying such order IN THE MATTER OF NOBO KISHORE CHUCKERBUTTY

[7 C L R., 291

16 ——— *Order declaring land in dispute not to be public* An order which declares that as between the parties to a contention certain land in dispute does not belong to the public is not one the contravention of which can form the subject of an order under the Penal Code, s 188 UNNODA PROSHAD DUTT v. SHAMA SOONDUREE

[24 W R., Cr., 20

17 ——— *Order on report of jury under Criminal Procedure Code, 1872, ss 521, 526—Disobedience of order* —A jury having been applied for and duly appointed under s 521 of Act X of 1872 one of the jurors appointed by the Magistrate fell sick, and the foreman of the jury, unknown to the Court, substituted another man in his place The Magistrate accepted the report of the majority of the jury so constituted and made an order under s 526. The order having been disobeyed proceedings were taken under s 188 of the Penal Code against the person to whom it was directed and he was convicted and sentenced to imprisonment. *Held* that, the report upon which action was taken not being the report of a regularly constituted jury, the order and the conviction and sentence passed on disobedience thereto were illegal EMPRESS v BHOIRUB CHUNDER DUTT . . . 10 C. L. R., 193

18 ——— *Disobedience to order of public servant—Enquiry as to possession—Parties to enquiry* —In May 1883 the District Magistrate of Tipperah held an enquiry as to the possession of certain lands claimed by *A* and *B*, and having found on

PENAL CODE (ACT XLV OF 1860) —*continued.*

the evidence taken by him that *A* was in possession, he passed an order on the 21st of May 1883, declaring that *A* was entitled to hold possession of the disputed land until evicted in due course of law, and forbidding *B* and all others to disturb *A*'s possession until such disturbance should be effected in due course of law. Previously to November 1885, *B* sold an 8-anna share of his interest in the disputed land to *C*, who at the time of his purchase had notice of the order of the 21st of May 1883. In November 1885 *B* and others went to the disputed lands, and attempted to turn *A* out of possession by force, and to compel the tenants of the lands to pay rent and give kabuliats to *B* and *C*. At the time that *B* and his companions went to the disputed land, the latter were aware of the order of the 21st of May 1883, though none of them was a party to the enquiry then made by the District Magistrate. In December 1885 they were all tried and found guilty of disobedience to an order duly promulgated by a public servant. *Held* that the conviction was right. GOLUCK CHANDRA PAL *v.* KALI CHARAN DE [I. L. R., 13 Calc., 175

19. ——————— *Disobedience to order of public servant—Order of Magistrate under Criminal Procedure Code, 1861, s. 318.*—Where an order was made under s. 318 of the Criminal Procedure Code, 1861, between *A* on the one side and *B* and the three tenants of *B* on the other,—*Held* that the order was only binding on the actual parties to the case, and subsequent tenants of *B* could not be punished for disobeying the order. IN THE MATTER OF GOPAL BURNAWAR . . 3 B. L. R., A. Cr., 13

20. ——————— *Omission or neglect of zamindar to obey call under s. 21, Beng. Reg. XX of 1817.*—An omission or neglect by a zamindar when called upon under s. 21 of Regulation XX of 1817 to nominate some one to fill the office of village watchman which had become vacant is not an offence under either s. 187 or s. 188 of the Penal Code. IN THE MATTER OF KALI PROSONO GHOSE [7 C. L. R., 575

21. ——————— *Chairman of Municipal Committee under Act XXVI of 1850—Public servant.*—The Chairman of the Municipal Committee appointed under Act XXVI of 1850, though a public servant, has no power to make an order for the attendance of any one before him, and therefore there can be no conviction for disobedience of it. REG. *v.* PURSHOTAM VALJI . 5 Bom., Cr., 33

22. ——————— *Conviction for disobeying order made without jurisdiction.*—Convictions and sentences for disobeying an order promulgated by a public servant reversed, as the mamlatdar who stated that he proceeded under Bombay Act V of 1864 was not thereby empowered to make the order. REG *v.* BHAU BIN VITHU . 3 Bom., Cr., 53

REG. *v.* KHANDOJI BIN TANAJI [5 Bom., Cr., 21

23. ——————— *Order to abate nuisance—Criminal Procedure Code, ss. 133, 134—Notice of order and subsequent disobedience.*—The terms of s. 134 of the Criminal Procedure Code, and the notification made by Government thereunder as to promulgation and issue of an order, are directory, but an omission to follow strictly such direction, though it is an irregularity, does not invalidate the order: where therefore it is shown that the order has been brought to the actual knowledge of the person sought to be affected by it, such omission does not prevent the case coming within s. 188 of the Penal Code. IN THE MATTER OF THE PETITION OF PARBUTTY CHARAN AICH. PARBUTTY CHARAN AICH *v.* QUEEN-EMPRESS . . I. L. R., 16 Calc., 9

24. ——————— *Criminal Procedure Code, ss. 133, 134, 135, 136—Service of notice of order under s. 133—Disobedience of order where notice was affixed to house of accused.*—A Magistrate made an order under s. 133 of the Code of Civil Procedure requiring *N* to fence a certain well in a public street or to appear before him and move to have the order set aside; a copy of this order was affixed to the house of *N*, but he did not appear. The Magistrate then adopted the procedure prescribed by ss. 136, 140, and made an order requiring *N* to fence the well by a certain date. *N*, who was personally served with notice of the above order, did not comply with it. The Magistrate then sanctioned the prosecution of *N* under s. 188 of the Penal Code. *N* appeared and produced evidence to prove that he was not liable to fence the well. *Held* that the accused was guilty of the offence of disobedience to an order duly promulgated by a public servant, and was not entitled to go behind the order and show that it was one which ought not to have been made. QUEEN-EMPRESS *v.* NARAYANA [I. L. R., 12 Mad., 475

25. ——————— *Disobedience to order duly promulgated by public servant—Criminal Procedure Code, ss. 133, 140.*—A person against whom an order under s. 133 of the Code of Criminal Procedure is passed who neglects to take any steps whatever in respect of such order within the time therein specified either by way of compliance therewith or by way of objection thereto in the manner prescribed by law, renders himself liable to be proceeded against under s. 188 of the Penal Code without its being necessary to wait until the order has been made absolute. If such order is made absolute under s. 140 of the Code of Criminal Procedure, further proceedings can then be had under s. 188 of the Penal Code, against the person disobeying the order absolute. When an order under s. 133 of the Code of Criminal Procedure has been made absolute under s. 140, its validity cannot subsequently be questioned. *Queen-Empress* v. *Narayana, I. L. R., 12 Mad., 475,* approved. QUEEN-EMPRESS *v.* BISHAMBAR LALL [I. L. R., 13 All., 577

26. ——————— *Madras Local Boards Act (Madras Act V of 1884), ss. 98 and 100—Disobedience to notice given by President of Local Board.*—The President of a Local Board, acting under Madras Act V of 1884, issued a notice calling upon a

PENAL CODE (ACT XLV OF 1860)
—*continued*

person to remove certain encroachments on a public road within ten days *Held* that such a notice was not an order within the meaning of s 188, Penal Code, and a person neglecting to obey it could not be convicted under that section QUEEN-EMPRESS v SUBRAMANIAN . . I. L. R, 20 Mad, 1

27. ———— *Criminal Procedure Code (Act V of 1898), s 144—Disobedience of an order* [illegible]

thirdly, the result that is likely to follow such disobedience A conviction under s 188, Penal Code, for the disobedience of an order under s 144, Criminal Procedure Code, in the absence of evidence as to the likely result of the disobedience of such order is bad in law Although the establishment of a rival hât at a place near to an old hat and held on the same day may lead to a breach of the peace, it would not be safe or proper that that should alone form a sufficient ground for a conviction under s 188 of the Penal Code BROJONATH GHOSE v EMPRESS [4 C W. N., 226

———— s 189—*Threat of injury to public servant—Necessity of proving actual words used*—In a prosecution for an offence under s 189 of the Penal Code, the witnesses differed as to the exact [illegible]

what the words used were, and that the intention and effect of the words were plain *Held* that the Judge was mistaken in regarding it as immaterial [illegible] and that, on the [illegible] at those words [illegible] it to ascertain [illegible] to the public servant was really made by the accused QUEEN-EMPRESS v MAHESHRI BAKHSH SINGH [I L. R., 8 All, 380

———— s. 190.

See CRIMINAL INTIMIDATION [I. L. R., 8 Mad, 140

———— s 191.

See BANKERS . I. L. R., 16 All, 88

See CASES UNDER FALSE EVIDENCE.

———— ss. 191, 192.

See CONFESSION—CONFESSIONS TO MAGISTRATE . . I. L. R., 11 Bom., 702

———— ss. 191—199.

See CASES UNDER FALSE EVIDENCE

PENAL CODE (ACT XLV OF 1860)
—*continued.*

———— s 192.

See FORGERY I. L. R., 6 Calc, 482 [7 C. L. R., 356

———— s. 193.

See COMPENSATION—CRIMINAL CASES—TO ACCUSED ON DISMISSAL OF COMPLAINT . I. L. R., 22 Calc, 586

See CRIMINAL PROCEDURE CODES, s 487 (1872, s 473) I. L. R, 1 All, 625

See MARRIAGE ACT, s 18 [I. L. R, 16 All., 212

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY 3 C. L. R., 527

See STAMP ACT, 1879 s 51 [I. L. R, 5 All., 17

See STOLEN PROPERTY—OFFENCES RELATING TO I. L. R., 1 All., 379

———— s. 196.

See SESSIONS JUDGE JURISDICTION OF [I. L R, 16 Calc, 766

———— s 199.

See BENGAL MUNICIPAL ACT, 1884, s. 133 [I L R, 22 Calc, 131

1. ———— s. 201 and s 218—*Belief and intention of accused*—Where a person is charged (s 218, Penal Code) with framing a report incorrectly, or (s 201, Penal Code) giving false information, with intent to save offenders from punishment the issue to be tried is, not whether such alleged offenders were in fact guilty or not, but merely the belief and intention of the prisoner in respect to their guilt. QUEEN v HURDUT SURMA [8 W. R, Cr., 68

2 ———— *Concealing evidence of crime—False information*—S 201 of the Penal Code does not apply to the case of a criminal causing disappearance of evidence of his own crime, but only to the case of a person who screens the principal or actual offender *Queen* v. *Ram Soonder Shootar*, 7 *W. R*, *Cr*, 52, *Reg* v. *Kashinath Dinkar*, 8 *Bom*, *Cr* 126, *Empress* v. *Kishna*, *I. L R.*, 2 *All*, 713, *Empress* v. *Behala Bibi*, *I L R*, 6 *Calc*, 789; and *Queen-Empress* v *Lalli*, *I. L R*, 7 *All*, 749, referred to. QUEEN EMPRESS v DUNGAR . . . . I. L R., 8 All., 252

3 ———— *Abetment of offence by concealment*—S 201 of the Penal Code refers to prisoners other than the actual criminals who, by their causing evidence to disappear, assist the principals to escape the consequences of their offences. But the person who commits an offence, and afterwards conceals the evidence of it, cannot be punished on both heads of the charge QUEEN v. SHAM SOONDER SHOOTAR . 7 W. R., Cr., 52

4 ———— *Causing evidence of crime committed by oneself to disappear*—*Semble*

PENAL CODE (ACT XLV OF 1860)
—*continued.*

—A person cannot be convicted, under s. 201 of the Penal Code, of causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act (*per* LLOYD and KEMBALL, *JJ.*). REG. *v.* KASHINATH DINKAR . . . . 8 Bom., Cr., 126

5. ———— *Causing disappearance of evidence of offence.*—*K* and *B*, having caused the death of *J* in a field belonging to *B*, removed *J*'s dead body from that field to his own field with the intention of screening themselves from punishment. *K* was convicted on these facts of an offence under s. 201 of the Penal Code. *Held* that that section referred to persons other than the actual offenders, and *K* could not therefore properly be punished under that section for what he had done to screen himself from punishment. Also that, as a matter of fact, he did not, by removing *J*'s corpse from one field to another, cause any evidence of *J*'s murder, which that corpse afforded, to disappear, and his act, although his object may have been to divert suspicion from himself and *B*, did not constitute the offence defined in that section. EMPRESS OF INDIA *v.* KISHNA [I. L. R., 2 All., 713

6. ———— *False information—Exculpatory statements inculpating another.*—A woman who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child which was missing. She made three different statements: (1) that she had left it with her husband; (2) that she had been enticed away by one *R*, who had taken the child from her; (3) that one *H* had drowned the child. The Sessions Judge believed the last statement, and convicted her under s. 201 of the Penal Code. *Held* that the conviction was wrong, and must be set aside. S. 201 of the Penal Code does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another. IN THE MATTER OF THE PETITION OF BEHALA BIBI. EMPRESS *v.* BEHALA BIBI [I. L. R., 6 Calc., 789: 8 C. L. R., 207

7. ———— *Concealing evidence of crime—Secondary offence, Conviction of.*—In a trial upon a charge under s. 201 of the Penal Code, the accused made a statement to the effect that he was present at the commission of a murder by two other persons; that he himself took no part in the act; that before the murder was committed, one of the persons named pulled off a razai from the bed on which the deceased was sleeping; and that, in his presence, the razai was subsequently concealed in a stack. It was proved that the razai belonged to the deceased, that it was found concealed in a stack, and that it was pointed out by the accused to the police. The accused was convicted of concealing evidence of the murder, with the intention of screening the offender from legal punishment, under s. 201 of the Penal Code. *Held* that the conviction must be quashed, inasmuch as, if the razai had not been concealed or destroyed, its presence or existence would have been no evidence of the murder. A person who is concerned as a principal in the commission of a crime cannot be convicted of the secondary offence of concealing evidence of the crime. QUEEN-EMPRESS *v.* LALLI [I. L. R., 7 All., 749

8. ———— *Disappearance of evidence—Intention to screen offender.*—A person cannot be punished under s. 201 of the Penal Code, where the act which caused the disappearance of the evidence of the commission of an offence was not done with the intention of screening the offender from legal punishment. It is not sufficient that the disappearance of evidence was likely to have the effect of screening the offender. QUEEN *v.* TOOLSHEE RAI [5 N. W., 186

9. ———— *Giving false information of offence.*—Prisoner was charged, under s. 201 of the Penal Code, "for that he, knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false." *Held* that the proper order of proof on the part of the prosecution in the case was to prove (1) that *A N* was murdered; (2) that the prisoner gave information respecting the offence; (3) that such information was false and known by him to be so; (4) that he then knew of the commission of the murder; and (5) that his intention was to screen the murderer. *Held* also that it was essential to the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner. Further enquiry directed under s. 422, Criminal Procedure Code, 1861. QUEEN *v.* SUBBRAMANYA PILLAI . . . . 3 Mad., 251

10. ———— *Causing disappearance of evidence of crime—Proof of commission of crime.*—A conviction on a charge of causing the disappearance of evidence of an offence which amounted to culpable homicide not amounting to murder may be good, though there be no proof of who committed the culpable homicide. QUEEN *v.* MUDDUN MOHUN BOSE [7 W. R., Cr., 22

11. ———— *Causing disappearance of evidence of an offence.*—*Held* that it is necessary, in order to justify a conviction under s. 201 of the Penal Code, that an offence for which some person has been convicted, or is criminally responsible, should have been committed. EMPRESS OF INDIA *v.* ABDUL KADIR . . . . I. L. R., 3 All., 279

12. ———— *Causing disappearance of evidence of an offence—Omitting to report a sudden, unnatural, or suspicious death.*—Before an accused can be convicted of an offence under s. 201 of the Penal Code, it must be proved that an offence, the evidence of which he is charged with causing to disappear, has actually been committed, and also that the accused knew or had information sufficient to lead him to believe that the offence had been committed.

PENAL CODE (ACT XLV OF 1860)
—*continued*

Empress of India v *Abdul Kadir, I L. R., 3 All, 279,* followed MATUKI MISSER *v* QUEEN EMPRESS
[I. L. R., 11 Calc, 619

13 ——— *Abetment of murder—Causing disappearance of evidence of offence*—Prisoner was present at a murder without being aware that such an act was to be committed Through *fear he not only did not interfere to prevent the* commission of the crime, but joined the murderers in concealing the body *Held* that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under s 201 of the Penal Code QUEEN *v.* GOBURDHUN BERA
[6 W. R, Cr., 80

14. ——— *Causing disappearance of evidence*—The accused was attacked by a man whom he found by a hole cut in his house for the purpose of committing a burglary, and struck out at the man a blow which caused his death *Held* that the ... ...vate defence, ... her men, who ... and were ac... of evidence, ... mitted, under ... ted, for that ...

[2 W R, Cr, 42

15 ——— *Causing disappearance of evidence of supposed murder—Want of proof of commission of offence*—S 201 of the Penal Code applies merely to the person who screens the principal or actual offender, and not the principal or actual offender himself The accused were charged with murder and also with causing the disappearance of the corpse of the deceased with the intention of screening the murderer from punishment under s 201 of the Penal Code Evidence for the prosecution pointed conclusively to one or other of them being the actual murderer, but it was impossible upon the evidence to say which of them caused the c... of murder, ... *Held* that ... ALI v QUE...

——— s 203

See INFORMATION OF COMMISSION OF OFFENCE . 20 W. R., Cr, 66

——— s. 204.

See THEFT . I L. R, 3 Mad, 261

——— s 205

See FALSE PERSONATION
[1 Ind. Jur, O S, 123
1 Mad., 450
4 Mad, 18
8 W. R., Cr., 80

PENAL CODE (ACT XLV OF 1860)
—*continued*

——— s 206.

See EVIDENCE ACT, ss 14, 15
[I. L. R., 16 Bom, 414

1 ——— *Absence of fraudulent intent.*—To bring a case under s 206 of the Penal Code, there must be a fraudulent removal sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine IN THE MATTER OF THE PETITION OF BALMOKOOND BROJOBASI . 18 W R, Cr, 65

2 ——— *Fraudulent removal of property to prevent seizure in execution—Act X of 1859, s 145*—Certain persons were convicted by the Deputy Magistrate, under s 206 of the Penal Code, of having fraudulently removed property to prevent its being taken in execution of a decree under Act X of 1859. The Judge was of opinion that the offence was one provided for by s 145 of Act X of 1859, and was not therefore triable by the Magistrate *Held the prisoner was rightly tried* and convicted under s 206 GAURCHANDRA CHUCKERBUTTY *v* KRISHNA MOHUN SINGH
[2 B. L R., S N, 4 10 W R, Cr, 46

——— s. 210.

See CIVIL PROCEDURE CODE, s 2 8
[I. L R., 9 Mad., 101
I L. R, 10 Bom, 288

See CRIMINAL PROCEDURE CODES, s 487.
[I L R., 16 Calc, 121, 766

1 ——— *"Satisfied"—Decree not certified to Court*—In s 210 of the Penal Code the word "satisfied" is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court QUEEN-EMPRESS *v.* BAPUJI DAYARAM
[I. L R, 10 Bom, 288

2 ——— and s 209—*Fraudulently applying for execution of decree*—Where a person applies for the execution of a decree which ...

3. ——— *Civil Procedure Code (Act XIV of 1882), s 258—Satisfaction of decree—Execution of decree—Fraudulently executing decree after it has been satisfied when satis...*

PENAL CODE (ACT XLV OF 1860) —*continued.*

of the Penal Code. It was contended that the case did not fall within that section, as the satisfaction, not having been certified to the Court, could not be recognized by the Court executing the decree, and that consequently no offence had been committed. *Held* that the words "after it has been satisfied," used in s. 210 of the Penal Code, indicate only the fact of the satisfaction of the decree. The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it, does not prevent the decree-holder from being properly convicted of an offence under that section. MADHUB CHUNDER MOZUMDAR *v.* NOVODEEP CHUNDER PUNDIT . . I. L. R., 16 Calc., 126

Overruled by QUEEN-EMPRESS *v.* SARAT CHANDRA RAKHIT . . I. L. R., 16 Calc., 766

See QUEEN-EMPRESS *v.* BAPUJI DAYARAM [I. L. R., 10 Bom., 288

4. ———— *Sanction to prosecution—Code of Criminal Procedure (1882), s. 195—Execution of decree which has been satisfied.*—A decree-holder applied for execution of his decree against the judgment-debtor. The application was dismissed on the ground that the decree had been satisfied out of Court. The judgment-debtor then applied for and obtained sanction to prosecute the decree-holder under s. 210 of the Penal Code. *Held* that such sanction must be revoked, because the decree had not been caused to be executed, and therefore no offence under s. 210 of the Penal Code had been committed. SHAMA CHARAN DAS *v.* KASI NAIK [I. L. R., 23 Calc., 971

———— s. 211.

See CASES UNDER FALSE CHARGE.

See MALICIOUS PROSECUTION [I. L. R., 3 Mad., 6
I. L. R., 19 Bom., 717

———— s. 212—*Harbouring an offender.*—To justify a conviction under s. 212 of the Penal Code, it is necessary that there should be an offence committed, and consequently an offender who has been harboured or concealed. *Empress* v. *Abdul Kadir, I. L. R., 3 All., 279,* referred to. QUEEN-EMPRESS *v.* FATEH SINGH I. L. R., 12 All., 432

———— s. 213.

See COMPOUNDING OFFENCE. [6 C. L. R., 392

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE. [6 W. R., Cr., 90

———— s. 214.

See CASES UNDER COMPOUNDING OFFENCE.

———— *Screening an offender.*—S. 213 of the Penal Code is applicable only when it is proved that the person screened or attempted to be screened from legal punishment has been guilty of an offence, and not when there is merely a suspicion of his having committed some offence. *Queen-Empress* v. *Saminatha, I. L. R., 14 Mad., 400,* followed. GIRISH MYTE *v.* QUEEN-EMPRESS [I. L. R., 23 Calc., 420

———— s. 215—*Agreeing or consenting to take illegal gratification—Nature of agreement or consent.*—In order to constitute the offence punishable under s. 215 of the Indian Penal Code, it is necessary that the person who is willing to take and the person who is willing to give the illegal gratification must agree not only as to the object for which the gratification is to be given, but also as to the shape or form the gratification is to take. QUEEN-EMPRESS *v.* CHITTAR . . I. L. R., 20 All., 389

———— s. 217.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE. [I. L. R., 2 Bom., 142

1. ———— *Direction of law—Disobedience of public servant—Omission to give information of offence.*—The direction of law mentioned in s. 217, Penal Code, means a positive direction of law such as those contained in ss. 89 and 90 of the Criminal Procedure Code, 1872, and cannot be made to extend to the more general obligation on every subject not to stifle a criminal charge. IN THE MATTER OF RAMANIHI NAYAR [I. L. R., 1 Mad., 266

2. ———— *Public servant disobeying direction of law with intent to save person from punishment—Evidence of such person's offence.*—It is sufficient for the purpose of a conviction under s. 217 of the Penal Code that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he has done this with the intention of saving a person from legal punishment; it is not necessary to show that in point of fact the person so intended to be saved had committed an offence or was justly liable to legal punishment. EMPRESS *v.* AMIRUDDIN I. L. R, 3 Calc., 412: 1 C. L. R., 483

3. ———— *Proof of offence under.*—It is only necessary for a conviction under s. 217 of the Penal Code to show that the prisoner knew that the person he released was in danger of punishment, and that the prisoner released such person with the intention of saving him. QUEEN *v.* ABDOOL JALEEL [W. R., 1864, Cr., 5

———— s. 218.

See CASES UNDER FALSE EVIDENCE—FABRICATING FALSE EVIDENCE.

See FORGERY . I. L. R., 5 All., 553
[I. L. R., 8 All., 653

See POLICE OFFICER . 15 W. R., Cr., 17

———— s. 220.

See ARREST—CRIMINAL ARREST. [I. L. R., 10 Bom., 506

See WRONGFUL CONFINEMENT. [9 Bom., 346

PENAL CODE (ACT XLV OF 1860) —*continued*

——— s 221—*Village watchman—Chow*

apprehend a person accused of committing murler

fuses to apprehend such person on such charge at the instance of a private person is not punishable under s 221 of the Penal Code EMPRESS OF INDIA *v* KALLU I L R, 3 All 60

——— s 223

See PUBLIC SERVANT 7 W R, Cr, 89

——— s 224

See SENTENCE—GENERAL CASES [8 W R, Cr, 85

——— ss 224 225, 226

See CASES UNDER ESCAPE FROM CUSTODY

See SENTENCE—CUMULATIVE SENTENCES [3 B L R, A Cr, 14, 15 note

——— s 227

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT 9 Bom, 356

——— s. 228.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES [4 Mad, 146

See CASES UNDER CONTEMPT OF COURT—PENAL CODE s 228

See CRIMINAL PROCEDURE CODES ss 480 481 482 (1872 ss 435 436) [13 B L R Ap, 40

See MAGISTRATE JURISDICTION OF—POWERS OF MAGISTRATES [I. L R, 15 Mad 131

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY [10 W R, Cr, 47

——— ss 230, 231 239, 241

See COUNTERFEITING COIN

——— s 260

See COUNTERFEITING GOVERNMENT STAMP [2 W R, Cr. 65

——— ss 264, 266

See WEIGHTS AND MEASURES FRAUDULENT USE OF 1 Bom, 181 [18 W R, Cr,

——— s 268

See GAMBLING 7 Bom, Cr, 74

See CASES UNDER NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE

——— s 269

See CONTRACT ACT s 56 [I. L R 14 Bom, 147

See PUBLIC HEALTH OFFENCE AFFECTING I L R, 7 Mad., 276 [I L R 11 Bom, 59 I L R, 24 Calc, 494

1 ——— s 277—*Public spring—Reservoir—Strewing branches in river for fishing purposes*—The words public spring or reservoir used in s 277 of the Penal Code do not include a public

2 ——— *Continuous stream in river bed*—The term public spring in s 277 of the Penal Code does not include a continuous stream of water running along the bed of a river QUEEN *v* TITTI CHOKKAN I L R, 4 Mad, 229

1 ——— s 279—*Rash driving or riding on public way*—The actual driver and not the owner of a carriage is liable under s 279 of the Penal Code in case of a collision and injury to another arising out of rash driving LARRYMORE *v* PERNENDOO DEO RAI 14 W R., Cr, 32

2 ——— *Rash riding on a public way*—The accused was convicted of rash riding on a public way under s 279 of the Penal Code (Act XLV of 1860) He contended that his conviction was bad on the ground that there was no proof that any person was on the road in question at the time when he was alleged to have ridden in a rash or

included within its terms QUEEN EMPRESS *v* HORMUSJI NOWROJI LORD [I L R., 19 Bom., 715

——— s 282.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—PUBLIC SAFETY, OFFENCE AFFECTING 1 Bom., 137

——— s 283

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I. L. R., 14 Calc., 656 [I. L. R., 20 Calc., 665 I L R, 20 Mad., 433

1. ——— *Obstructing public way—Failure to prove injury*—The accused were charged generally with obstruction in a public way, no danger,

PENAL CODE (ACT XLV OF 1860)
—*continued.*

obstruction, or injury being alleged to have been caused to any person, and were summarily convicted. *Held* that the conviction could not be sustained under s. 283 of the Penal Code. In the matter of Empress *v.* Ram Singh . . 11 C. L. R., 642

2. ——— *Obstructing public road—Spreading fishing-nets by roadside.*—To spread fishing nets by the side of a thoroughfare in a town is not, without proof of obstruction caused to any particular person or class of persons, an offence under s. 283 of the Penal Code. Queen *v.* Khader Moidin [I. L. R., 4 Mad., 235

3. ——— and ss. 268 and 290—*Obstruction on tidal navigable river.*—Persons placing a bamboo stockade across a tidal navigable river for the purposes of fishing, although leaving in such stockade a narrow opening for the passage of boats, which passage was, however, kept closed except on the actual passage of a boat, were charged at the instance of a sub-divisional officer with causing an obstruction under s. 283 of the Penal Code. *Held* that, although it was doubtful whether s. 283 applied to the case, they had committed an offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code. In the matter of the petition of Umesh Chandra Kar [I. L. R., 14 Calc., 656

4. ——— *Obstruction in a public way.*—The accused was charged generally with obstructing a public way, no danger, obstruction, or injury being alleged to have been caused to any person, nor was there any clear evidence that the way was a public way. *Held* that the conviction under s. 283 of the Penal Code could not be sustained. Queen-Empress *v.* Beni Madhab Chakravarti [I. L. R., 25 Calc., 275

——— s. 285—*Injury—Injury to property.*—The word "injury" (rashly caused by fire, etc.) in s. 285 of the Penal Code includes any harm illegally caused to the property of any person, and is not confined to injury to the person only. Reg. *v.* Natha Lala . . 5 Bom., Cr., 67

——— ss. 286, 289.

See Negligence . . 3 Mad., Ap., 33
[19 W. R., Cr., 1
I. L. R., 8 Mad., 421

——— s. 289.

See Nuisance—Under Criminal Procedure Codes . 9 B. L. R., Ap., 36

——— ss. 290, 291.

See Cases under Nuisance—Public Nuisance under Penal Code.

See Sentence—Imprisonment—Imprisonment in default of Fine.
[5 Bom., Cr., 45
I. L. R., 5 Mad., 157

——— ss. 292, 293.

See Obscene Publication.
[I. L. R., 3 All., 837
I. L. R., 20 Bom., 193

PENAL CODE (ACT XLV OF 1860)
—*continued.*

——— ss. 292, 294.

See Transfer of Criminal Case—General Cases.
[I. L. R., 1 Calc., 356

——— s. 294A.

See Contract—Wagering Contracts.
[I. L. R., 22 Mad., 212

See Lottery . I. L. R., 10 Bom., 97

——— s. 295.

See Statutes, Construction of.
[I. L. R., 17 Calc., 852

——— ss. 295, 296, 297.

See Cases under Religion, Offences relating to.

——— s. 297.

See Trespass—General Cases.
[I. L. R., 3 Mad., 178

——— s. 299.

See Culpable Homicide.
[11 W. R., Cr., 3
I. L. R., 2 All., 522
I. L. R., 3 All., 776

——— ss. 299, 300.

See Attempt to commit Offence.
[4 Bom., Cr., 17

See Culpable Homicide.
[I. L. R., 1 Bom., 342

——— s. 300.

See Charge to Jury—Special Cases—Culpable Homicide.
[9 W. R., Cr., 72

See Cases under Culpable Homicide.

——— ss. 300, 302, 304, 304A.

See Cases under Murder.

——— s. 302.

See Attempt to commit Offence.
[I. L. R., 15 Bom., 194

See Jurisdiction of Criminal Court—Offences committed only partly in one District—Abetment.
[I. L. R., 19 Bom., 105

——— s. 304.

See Charge to Jury—Special Cases—Culpable Homicide.
[6 B. L. R., Ap., 86, 87 note

See Cases under Culpable Homicide.

See Joinder of Charges.
[I. L. R., 2 All., 349

——— ss. 304, 304A.

See Hurt—Grievous Hurt.
[I. L. R., 18 Calc., 49

PENAL CODE (ACT XLV OF 1860)
—*continued*

——— s. 304A.

See CAUSING DEATH BY NEGLIGENCE [I. L. R., 16 All., 472

See CASES UNDER CULPABLE HOMICIDE.

——— s. 306.

See ABETMENT . 3 N. W., 316 [1 Agra, Cr., 21

——— s 307.

See ATTEMPT TO COMMIT OFFENCE [4 Bom., Cr., 17
I. L. R., 15 Bom., 194
I. L. R., 14 All., 38
I. L. R., 20 All., 143

See SENTENCE—TRANSPORTATION [7 W. R., Cr., 41

——— s. 309

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE 1 Bom., 4

See SUICIDE . I. L. R., 8 Mad., 5

——— s 312

See MISCARRIAGE 15 W. R., Cr., 4
[19 W. R., Cr., 32
I. L. R., 9 Mad., 369

——— ss. 314, 317.

See MURDER . 10 W. R., Cr., 52, 59

——— s 317.

See ABANDONMENT OF CHILDREN [16 W. R., Cr., 12
I. L. R., 18 All., 364

——— s. 318

See CONCEALMENT OF BIRTH. [4 Mad., Ap., 63

——— ss 319, 338.

See CASES UNDER HURT.

——— s. 323.

See COMPOUNDING OFFENCE 10 Bom., 68

See CULPABLE HOMICIDE [I. L. R., 2 All., 522, 766
I. L. R., 3 All., 597

See RIOTING I. L. R., 26 Calc., 974

——— s 324.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—HURT . 4 Mad., Ap., 5

See SENTENCE—CUMULATIVE SENTENCES [I. L. R., 6 Calc., 718
7 W. R., Cr., 60
I. L. R., 11 Calc., 349
I. L. R., 12 Calc., 495
I. L. R., 16 Calc., 442

——— ss. 325, 326.

See REVISION—CRIMINAL CASES—COMMITMENT . I. L. R., 16 Bom., 580

PENAL CODE (ACT XLV OF 1860)
—*continued*

See RIOTING . I. L. R., 24 Calc., 686

See SENTENCE—CUMULATIVE SENTENCES. [I. L. R., 6 All., 121
I. L. R., 7 All., 29, 414, 757
I. L. R., 9 All., 645
I. L. R., 16 Calc., 725
I. L. R., 17 Bom., 260

——— s 328 and s 81—*Causing unwholesome thing to be taken with intent to injure.—Held* that a person who placed in his toddy-pots juice of the milk bush, knowing that if taken by a human

soldiers who purchased it from an unknown vendor was rightly convicted under s 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to injure," and that s 81, which says that "if an act be done without any criminal intention to cause harm," it is not an offence did not apply to the case REG *v.* DHANIA DAJI 5 Bom., Cr., 59

——— s 330

See ABETMENT I. L. R., 20 Bom., 394

——— ss 332, 333

See SENTENCE—CUMULATIVE SENTENCES [I. L. R., 19 Calc., 105

——— s 332 and ss 99, 147, and 323—*Criminal Procedure Code (1882), ss 55, 56, and 114—Public servant in the execution of his duty as such—Arrest without sufficient authority, but in good faith—Assault on police making arrest—Right of private defence.*—A warrant was issued by a Magistrate for the arrest of one *D* under s. 114 of the Code of Criminal Procedure. The warrant was sent to a certain thana to be executed. It was there, after being copied into a book kept for that purpose at the thana, made over to a particular constable for execution. When the constable to whom the warrant had been made over had left the thana it was discovered that *D* was in a village other than that in which he had been supposed to be. Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana, endorsed on the back the names of one A and some other constables, and having signed the endorsement, sent A and the others out with this paper to arrest *D*. A and his companions arrested *D* but as they were returning with him in custody, some of *D*'s friends, aided by *D* himself, attacked them, rescued *D*, and caused hurt to the police. *Held* that the police officers con-

PENAL CODE (ACT XLV OF 1860)—*continued.*

obstruction, or injury being alleged to have been caused to any person, and were summarily convicted. *Held* that the conviction could not be sustained under s. 283 of the Penal Code. IN THE MATTER OF EMPRESS v. RAM SINGH . . 11 C. L. R., 642

2. ——— *Obstructing public road—Spreading fishing-nets by roadside.*—To spread fishing-nets by the side of a thoroughfare in a town is not, without proof of obstruction caused to any particular person or class of persons, an offence under s. 283 of the Penal Code. QUEEN v. [illegible]

[I. L. R., 4 Mad., 235

3. ——— and ss. 268 and 290—*Obstruction on tidal navigable river.*—Persons placing a bund or stockade across a tidal navigable river for the purpose of fishing, although leaving in such stockade a narrow opening for the passage of boats, which passage was, however, kept closed except on the actual passage of a boat, were charged at the instance of a subdivisional officer with causing an obstruction under s. 283 of the Penal Code. *Held* that, although it was doubtful whether s. 283 applied to the case, they had committed no offence under s. 268 of the Penal Code, and were punishable under s. 290 of that Code. IN THE MATTER OF THE PETITION OF UMESH CHANDRA KAR

[I. L. R., 14 Calc., 656

4. ——— *Obstruction in a public way.*—The accused was charged generally with obstructing a public way, no danger, obstruction, or injury being alleged to have been caused to any person, nor was there any clear evidence that the way was a public way. *Held* that the conviction under s. 283 of the Penal Code could not be sustained. QUEEN-EMPRESS v. BENI MADHAB CHAKRAVARTI

[I. L. R., 25 Calc., 275

——— s. 285—*Injury—Injury to property.*—The word "injury" (rashly caused by fire, etc.) in s. 285 of the Penal Code includes any harm illegally caused to the property of any person, and is not confined to injury to the person only. REG. v. NATHA LALA . . 5 Bom., Cr., 67

——— ss. 286, 289.

See NEGLIGENCE . . 3 Mad., Ap., 33
[19 W. R., Cr., 1
I. L. R., 8 Mad., 421

——— s. 289.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 9 B. L. R., Ap., 36

——— ss. 290, 291.

See CASES UNDER NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF FINE.
[5 Bom., Cr., 45
I. L. R., 5 Mad., 157

——— ss. 292, 293.

See OBSCENE PUBLICATION.
[I. L. R., 3 All., 837
I. L. R., 20 Bom., 193

PENAL CODE (ACT XLV OF 1860)—*continued.*

——— ss. 292, 294.

See TRANSFER OF CRIMINAL CASE—GENERAL CASES
[I. L. R., 1 Calc., 358

——— s. 294A.

See CONTRACT—WAGERING CONTRACTS.
[I. L. R., 22 Mad., 212

See LOTTERY . I. L. R., 10 Bom., 97

——— s. 295.

See STATUTES, CONSTRUCTION OF.
[I. L. R., 17 Calc., 852

——— ss. 295, 296, 297.

See CASES UNDER RELIGION, OFFENCES RELATING TO

——— s. 297.

See TRESPASS—GENERAL CASES.
[I. L. R., 3 Mad., 178

——— s. 299.

See CULPABLE HOMICIDE.
[11 W. R., Cr., 3
I. L. R., 2 All., 522
I. L. R., 3 All., 776

——— ss. 299, 300.

See ATTEMPT TO COMMIT OFFENCE.
[4 Bom., Cr., 17

See CULPABLE HOMICIDE.
[I. L. R., 1 Bom., 342

——— s. 300.

See CHARGE TO JURY—SPECIAL CASES—CULPABLE HOMICIDE.
[9 W. R., Cr., 72

See CASES UNDER CULPABLE HOMICIDE.

——— ss. 300, 302, 304, 304A.

See CASES UNDER MURDER.

——— s. 302.

See ATTEMPT TO COMMIT OFFENCE.
[I. L. R., 15 Bom., 194

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.
[I. L. R., 19 Bom., 105

——— s. 304.

See CHARGE TO JURY—SPECIAL CASES—CULPABLE HOMICIDE.
[6 B. L. R., Ap., 86, 87 note

See CASES UNDER CULPABLE HOMICIDE.

See JOINDER OF CHARGES.
[I. L. R., 2 All., 349

——— ss. 304, 304A.

See HURT—GRIEVOUS HURT.
[I. L. R., 18 Calc., 49

PENAL CODE (ACT XLV OF 1860) —*continued*

———— s 304A

See CAUSING DEATH BY NEGLIGENCE [I. L. R., 16 All, 472

See CASES UNDER CULPABLE HOMICIDE

———— s 306

See ABETMENT 3 N W, 316 [1 Agra, Cr, 21

———— s 307

See ATTEMPT TO COMMIT OFFENCE [4 Bom, Cr, 17 I L R, 15 Bom, 194 I L R, 14 All, 38 I L R, 20 All, 143

See SENTENCE—TRANSPORTATION [7 W R, Cr, 41

———— s 309

See SENTENCE—IMPRISONMENT—IMPRISONMENT AND FINE 1 Bom, 4

See SUICIDE I L R, 8 Mad., 5

———— s 312

See MISCARRIAGE 15 W R, Cr, 4 [19 W R Cr, 32 I L R, 9 Mad 369

———— ss 314, 317

See MURDER 10 W R, Cr, 52 59

———— s 317

See ABANDONMENT OF CHILDREN [16 W R, Cr, 12 I L. R, 18 All, 364

———— s 318

See CONCEALMENT OF BIRTH [4 Mad, Ap, 63

———— ss 319, 338

See CASES UNDER HURT

———— *s 323*

See COMPOUNDING OFFENCE 10 Bom, 68

See CULPABLE HOMICIDE [I L R, 2 All, 522, 766 I L R., 3 All, 597

See RIOTING I. L R., 26 Calc 974

———— s 324

See CHARGE—FORM OF CHARGE—SPECIAL CASES—HURT 4 Mad Ap, 5

See SENTENCE—CUMULATIVE SENTENCES [I L R. 6 Calc., 718 7 W R., Cr, 60 I L. R., 11 Calc, 349 I L. R., 13 Calc, 495 I. L R, 16 Calc, 442

———— ss 325, 326

See REVISION—CRIMINAL CASES—COMMITMENT I. L. R., 16 Bom., 580

PENAL CODE (ACT XLV OF 1860) —*continued*

See RIOTING I L R, 24 Calc, 686

See SENTENCE—CUMULATIVE SENTENCES [I L R, 6 All, 121 I L R, 7 All, 29, 414 757 I L R, 9 All, 645 I L R., 16 Calc, 725 I L R, 17 Bom, 260

———— s 328 and s 81—*Causing unwholesome thing to be taken with intent to injure —Held* that a person who placed in his toddy pots juice of the milk bush knowing that if taken by a human soldiers who purchased it from an unknown vendor was rightly convicted under s 328 of the Penal Code of causing to be taken an unwholesome thing with intent to injure and that s 81 which says that if an act be done without any criminal intention to cause harm it is not an offence did not apply to the case REG *v* DHANIA DAJI 5 Bom Cr, 59

———— s 330

See ABETMENT I L R, 20 Bom, 394

———— ss 332, 333

See SENTENCE—CUMULATIVE SENTENCES [I L R., 19 Calc, 105

———— s 332 and ss 99, 147, and 323—*Criminal Procedure Code (1882) ss 55 56 and 114—Public servant in the execution of his duty as such—Arrest without sufficient authority but in good faith—Assault on police making arrest—Right of private defence —* A warrant was issued by a Magistrate for the arrest of one *D* under s 114 of the Code of Criminal Procedure The warrant was sent to a certain thana to be executed It was there after being copied into a book kept for that purpose at the thana made over to a particular constable for execution When the constable to whom the warrant had been made over had left the thana it was discovered that *D* was in a village other than that in which he had been supposed to be Thereupon the officer temporarily in charge of the thana made a copy from the book at the thana endorsed on the back the names of one N and some other constables, and having signed the endorsement sent N and the others out with this paper to arrest *D* N and his companions arrested *D* but as they were returning with him in custody some of *D*s friends aided by *D* himself attacked them rescued *D* and caused hurt to the police *Held* that the police officers cou[illegible] in good faith under the colour of their office s. 99 of the Penal Code applied and *D* and his associates might be properly convicted under ss. 147 and 323 of the Code The words "in the discharge of his duty

PENAL CODE (ACT XLV OF 1860)
—continued.

there met *J*, a public woman, with whom they went to reside, and who introduced visitors to *N*, and received the money paid by them in exchange for the board and food supplied to *N* and *N*. *N* was convicted, under s. 372, Penal Code, of disposing of a minor for the purpose of prostitution, and *J* was convicted, under s. 373, Penal Code, of obtaining possession of a minor for the purpose of prostitution. *Held per* JACKSON, J., that on the facts proved no offence was committed under the Penal Code. *Per* GLOVER, J., *N* and *J* were both guilty under ss. 372 and 373 respectively, and their appeals should be dismissed. QUEEN *v.* NOBEEN

[6 B. L. R., Ap., 34 : 14 W. R., Cr., 30

11. ——— *Buying or selling minor for the purpose of prostitution, etc.*—Certain persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage and to pay money for her in the full belief that such representation was true. *Held per* STUART, C.J., that such persons could not be convicted on these facts of offences under ss. 372 and 373 of the Penal Code. *Per* OLDFIELD, J., and STRAIGHT, J., that if such girl was disposed of for the purpose of marriage, it could not be said, because the marriage might be invalid under Hindu law, that such persons acted with the intention that she should be employed or used for the purposes of prostitution or for any unlawful and immoral purpose, or that they knew it to be likely that she would be employed or used for such purpose, and consequently they could not be convicted of an offence under these sections. *Per* PEARSON, J., and SPANKIE, J., that such girl having been disposed of for the purpose of marriage, although the marriage might be objectionable under Hindu law, it did not appear that it was wholly invalid, and therefore such intent or knowledge could not certainly be presumed, and such persons could not be convicted of offences under those sections. EMPRESS OF INDIA *v.* SRI LAL

[I. L. R., 2 All., 694

12. ——— and s. 373 —*Obtaining a minor for prostitution—Dancing-girl caste—Adoption.*—A woman, being a member of the dancing-girl caste, obtained possession of a minor girl and employed her for the purpose of prostitution; she subsequently obtained in adoption another minor girl from her parents, who belonged to the same caste. She and the parents of the second girl were charged together under ss. 372, 373 of the Penal Code. The charges related to both girls. *Held* that ss. 372, 373 of the Penal Code may be applicable in a case where the minor concerned is a member of the dancing-girl caste. *Per* MUTTUSAMI AYYAR, J.—It would be no offence if the intention was that the girl should be brought up as a daughter, and that, when she attains her age, she should be allowed to select either to marry or follow the profession of her prostitute mother. QUEEN-EMPRESS *v.* RAMANNA

[I. L. R., 12 Mad., 273

13. ——— *Disposing of a minor for immoral purposes—Abetment—Offence committed out of British India.*—A minor girl under the age of sixteen years was taken by accused No. 1, under the direction of accused No. 2, from Sholapur to Tuljapur (in the Nizam's territory), and there dedicated to the goddess Amba, with intent or knowing it to be likely that the minor would be used for purposes of prostitution. The District Magistrate of Sholapur convicted accused No. 1 of an offence under s. 372 and accused No. 2 of abetment of the offence under ss. 372 and 108A of the Indian Penal Code, and sentenced them each to six months' rigorous imprisonment. *Held* that there was no offence committed in British India, and therefore the accused No. 2 was not guilty of abetment, and s. 108A of the Penal Code had no application to the present case. Mere intention not followed by any act cannot constitute any offence, and an indirect preparation which does not amount to an act which amounts to a commencement of the offence does not constitute either a principal offence or an attempt or abetment of the same. The intention of either of the accused while they were staying at Sholapur did not constitute any offence, and their removal with the girl to Tuljapur did not by itself constitute an abetment. QUEEN-EMPRESS *v.* BAKU

[I. L. R., 24 Bom., 287

s. 373.

See CHEATING BY PERSONATION.

[7 W. R., Cr., 55

See HINDU LAW—CUSTOM—ADOPTION.

[I. L. R., 19 Mad., 127
I. L. R., 21 Mad., 229

1. ——— *Obtaining minor for purpose of prostitution—Soliciting a girl to sexual intercourse.*—S. 373 of the Penal Code is not applicable to a case where a man solicits a girl to have sexual intercourse with him and having no other intention or purpose in view. QUEEN *v.* BHUTIA

[7 N. W., 295

2. ——— *Obtaining possession of minor for purposes of prostitution—Offence defined by above section explained.*—To constitute the offence provided for by s. 373 of the Penal Code, it is necessary, first, that a minor under sixteen years of age shall be bought, hired, or otherwise obtained possession of, and, secondly, that the minor shall be bought, hired, or otherwise obtained possession of, with the intent that the same minor, while still under the age of sixteen years, will be employed for the purposes of prostitution, or with the knowledge that it is likely that the said minor, while still under the age of sixteen years, will be employed or used for an unlawful and immoral purpose. The offence is complete so soon as the obtaining possession, with the requisite intention or knowledge, of the minor is accomplished, though the minor may not enter upon prostitution until years after she has attained maturity, or may never enter upon such a profession at all. *Deputy Legal Remembrancer* v. *Karuna Baistobi, I. L. R., 22 Calc., 164,* approved. QUEEN-EMPRESS *v.* CHANDA . . . . I. L. R., 18 All., 24

3. ——— and s. 372—*Buying minor for purpose of prostitution—Intention, Proof of—*

PENAL CODE (ACT XLV OF 1860)
—*continued.*

Onus of proving guilty intention in case of sale of minor for purpose of prostitution—Evidence Act (I of 1872), s 106 —In order to constitute an offence under s 373 of the Penal Code, it is not necessary that the intention or knowledge of likelihood as to the employment of the minor for purposes of prostitution should be with reference to employment either immediate or at some definite and not very remote future period, but an offence under the section is complete as soon as a girl is purchased with the guilty intention or knowledge of likelihood that she will, while still a minor under the age of sixteen years, be employed for that purpose, although the point of time for such employment may be remote by reason of her physical incapacity for the purpose *H*, the father of two girls twins about a year old, sold one of them to *K*, a prostitute, for R9, and within ten days of such sale also sold her the other f r R14 *K* was shown to have previously purchased another child whom she had brought up from her infancy, and who was then living with her and leading the life of a prostitute Both *H* and *K* made confessions as to the guilty knowledge and intention with which the sale of the two children was made *K*'s confession was made within two hours after her arrest, and immediately thereafter she was committed to hajat for seven days On the seventh day, on being brought up for trial before the Deputy Magistrate, she retracted her confession and assigned an innocent reason for her purchase of the girl *H* and *K* were tried jointly, *H* being charged with an offence under s 372, *viz*, selling the girls for the purpose of prostitution, and *K* with an offence under s 373, *viz*, buying for the same purpose Neither was charged with abetting the other The two confessions were used as evidence, and there was other evidence tending to prove the intention and guilty knowledge The Deputy Magistrate convicted each of the offence with which they were charged On appeal the Sessions Judge acquitted *K* on the ground that the offence under s 373 could not be committed unless the intention was that the minor was to be used for the purpose of prostitution at some definite future time, and that it would be carrying the law too far to hold that the intention had reference to a period some twelve or fourteen years after [illegible]

circumstances under which the confession of *K* was given and retracted, it was open to suspicion, and could not safely be acted upon and that the con- [illegible]

sixteen years, and that, as she had failed to show this, and the evidence all tended the other way, the acquittal was erroneous, and must be reversed. DEPUTY LEGAL REMEMBRANCER *v* KARUNA BAISTOBI I. L. R., 22 Calc., 164

4. ——— *Obtaining a girl under the age of 16 for purposes of prostitution—Evidence of intent* —In a charge against a dancing girl under s 373 of the Indian Penal Code for having purchased a young girl with intent that she would be used for the purpose of prostitution or knowing it to be likely that she would be so used, evidence was [illegible]

dancing-girls ever having been married On its being contended that there was no evidence of intent to support a conviction under s. 373 of the Indian Penal Code,—*Held* that there was evidence before the Court to support the conviction QUEEN-EMPRESS *v* PAPA SANI . I. L. R., 23 Mad., 159

——— s. 374.

See UNLAWFUL COMPULSION
[I. L R., 19 Calc, 572

——— s 375.

See RAPE . I. L. R, 5 Bom., 403

——— s 376.

See SENTENCE—TRANSPORTATION.
[1 B. L. R., A. Cr, 5

——— s. 377.

See UNNATURAL OFFENCE
[I. L R, 6 All, 204

——— s 378.

See PARTNERSHIP PROPERTY.
[13 B. L. R., F. B, 307, 308 note, 310 note

See POST OFFICE ACT, 1866, s 48.
[I. L. R, 14 Mad, 229

——— ss. 378—381.

See CASES UNDER THEFT

——— s. 379.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . I. L. R., 17 Bom, 369
[I. L. R., 27 Calc., 660, 990

——— ss 379, 380

See SENTENCE—CUMULATIVE SENTENCES
[3 W. R., Cr., 19
1 Bom., 87
9 Bom., 172
I. L. R., 1 Bom, 214
I. L. R., 10 All., 146

——— s. 380.

See REVISION—CRIMINAL CASES—SENTENCES . B. L. R., Sup. Vol., 488

See SENTENCE—FINE . 16 W. R., Cr., 17

PENAL CODE (ACT XLV OF 1860)—*continued.*

—— ss. 383—387.

See CASES UNDER EXTORTION.

—— s. 391.

See RIOTING . I. L. R., 15 All., 22

—— s. 394.

See SENTENCE—TRANSPORTATION.
[7 W. R., Cr., 41

—— ss. 395, 398.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.
[I. L. R., 17 Bom., 369

See CHARGE TO JURY—SPECIAL CASES—DACOITY . I. L. R., 25 Calc., 711
[2 C. W. N., 369

—— ss. 395—402.

See CASES UNDER DACOITY.

—— s. 401.

See CHARGE TO JURY—SPECIAL CASES—BELONGING TO GANG OF THIEVES.
[6 Mad., 120
I. L. R., 27 Calc., 139

See THEFT . I. L. R., 27 Calc., 139
[4 C. W. N., 97

—— s. 403.

See POST OFFICE ACT, s. 48.
[I. L. R., 14 Mad., 229

See STOLEN PROPERTY—OFFENCES RELATING TO . I. L. R., 11 Mad., 145

See THEFT.
[I. L. R., 15 Calc., 388, 390 note, 392 note
I. L. R., 22 Mad., 151
I. L. R., 17 Calc., 852

—— ss. 403—409.

See CASES UNDER CRIMINAL BREACH OF TRUST.

See CASES UNDER CRIMINAL MISAPPROPRIATION.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST . I. L. R., 13 Bom., 147

—— ss. 404, 405—408.

See COMPOUNDING OFFENCE.
[7 Mad., Ap., 34
6 C. L. R., 392
I. L. R., 1 Mad., 191

—— s. 405.

See PARTNERSHIP PROPERTY.
[13 B. L. R., 307, 308 note, 310 note

—— s. 408.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—CRIMINAL BREACH OF TRUST.
[I. L. R., 24 Calc., 193

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—CRIMINAL BREACH OF TRUST . I. L. R., 10 All., 111

—— s. 409.

See BANKER . I. L. R., 10 All., 88

See CHARGE—FORM OF CHARGE—SPECIAL CASES—CRIMINAL BREACH OF TRUST AND MISAPPROPRIATION.
[I. L. R., 17 All., 153
I. L. R., 18 All., 116
I. L. R., 24 Calc., 193
2 C. W. N., 341

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.
[I. L. R., 10 Bom., 749

—— ss. 410—414.

See CASES UNDER STOLEN PROPERTY—OFFENCES RELATING TO.

—— s. 411.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—STOLEN PROPERTY 1 Bom., 95

See CHARGE TO JURY—SPECIAL CASES—STOLEN PROPERTY.
[I. L. R., 15 Bom., 369

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.
[I. L. R., 11 All., 393

—— ss. 411, 414.

See SENTENCE—CUMULATIVE SENTENCES.
[4 Mad., Ap., 14
I. L. R., 11 Mad., 393

—— ss. 415, 416, 417, 419.

See CASES UNDER CHEATING BY PERSONATION.

—— ss. 415, 417, 419, 420.

See CASES UNDER CHEATING.

—— ss. 415, 419, 420.

See FORGERY . I. L. R., 19 Calc., 380
[I. L. R., 13 Mad., 27

—— ss. 416, 419.

See FALSE EVIDENCE—GENERAL CASES.
[1 Bom., 89

—— s. 417.

See BENGAL MUNICIPAL ACT, 1884, s. 133.
[I. L. R., 22 Calc., 131

See CRIMINAL BREACH OF TRUST.
[4 Bom., Cr., 16

See CRIMINAL MISAPPROPRIATION.
[3 W. R., Cr., 32

—— s. 419.

See FALSE PERSONATION.
[2 B. L. R., A. Cr., 25

PENAL CODE (ACT XLV OF 1860)
—*continued*

——— s 422—*Compromise of debt*—Where *A* entered into an agreement with *B* not to compromise a case with *C* because he had assigned the benefit of the suit to *B* as a security for the due payment of some monthly instalment of money and *A* notwithstanding did afterwards compromise the suit with *C* it was held that *A* could not be convicted under s 422 of the Penal Code unless the compromise with *C* was made dishonestly or fraudulently towards *B* IN THE MATTER OF THE PETITION OF NOBIN CHUNDER MUDDUCK 22 W R, Cr, 46

——— s 424

See CRIMINAL MISAPPROPRIATION
[I L R, 22 Mad, 151

See PARTNERSHIP PROPERTY
[13 B L R, 307, 308 note, 310 note

See THEFT I L R, 22 Mad, 151

——— *Illegal attachment—Fraudulent concealment of property*—The legality or formality of the mode of attachment allowed by a Civil Court is not a matter for a Deputy Magistrate's consideration Where a Deputy Magistrate considering that the attachment of a carria e i i execution of a decree of a Civil Court was illegal because it was placed in the custody of the judgment debtor's husband and that the husband had acted fraudulently s of of der set aside QUEEN v BROJO KISHORE DUTT
[8 W R, Cr, 17

——— s 425

See THEFT I L R, 17 Calc, 852

——— ss 425—430

See CASES UNDER MISCHIEF

——— s 426

See OFFENCE RELATING TO DOCUMENTS
[I L R, 12 Mad 54

See SENTENCE—CUMULATIVE SENTENCES
[I L R, 12 Mad, 36

See THEFT
[I L R, 15 Calc, 388, 390 note, 392 note, 402

——— s 429—*Bull and Cow Definitions of— Any other animal Meaning of*—The words bull and cow in s 429 of the Penal Code include the young of those animals The section specifies the more valuable of the domestic animals without any regard to age but in respect of other kinds of animals not so specified the section would not apply unless the particular animal in question was shown to be of the value of fifty rupees or upwards HARI MANDLE v JAFAR
[I. L R, 22 Calc., 457

——— ss 441, 442, 443, 447, 448, 451, 456, 447

See CASES UNDER CRIMINAL TRESPASS

PENAL CODE (ACT XLV OF 1860)
—*continued*

——— s 442

See PRISONS ACT s 45
[I L R, 2 All, 301

See THEFT 16 W R, Cr, 63

——— ss 442, 452, 456, 457

See TRESPASS—HOUSE TRESPASS
[6 N W 301, 307
I L R 2 All, 301
12 W R Cr, 33
I L R 2 Mad., 30

——— s 447

See THEFT
[I L R, 15 Calc 388, 390 note 392 note, 402

——— s 451.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—HOUSE TRESPASS
[16 W R, Cr, 63

——— s 454

See SENTENCE—CUMULATIVE SENTENCES
[3 W R, Cr, 19
I L R 10 All., 146

——— ss 456, 457

See REVISION—CRIMINAL CASES—SENTENCES B L R Sup Vol 488

——— s 457

See BENCH OF MAGISTRATES
[23 W R, Cr, 6

See CRIMINAL PROCEDURE CODES ss 436 438 (18 2 s 296)
[I L R, 1 All 413
2 B L R, S. N 3
7 C L R, 168

See SENTENCE—CUMULATIVE SENTENCES
[1 Bom, 87
I L R 1 Bom, 214
5 W R, Cr, 49
6 W R Cr, 49, 92
I. L R, 10 Bom, 493
8 W R., Cr, 31
I L R, 12 Mad, 36

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION
[I L R., 3 All., 773
I L R, 17 All, 120

——— ss 458, 459

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—PENAL CODE
[1 W R, Cr., 34
9 W R., Cr., 5

——— ss 459, 460

See HURT—GRIEVOUS HURT
[I L R., 8 All., 640

——— ss. 463, 471.

See CASES UNDER FORGERY

PENAL CODE (ACT XLV OF 1860)—*continued.*

——— s. 467.

See ATTEMPT TO COMMIT OFFENCE.
[I. L. R., 10 All., 400

See LETTERS PATENT, HIGH COURT, CL. 25.
[3 Bom., Cr., 20

See SANCTION TO PROSECUTION WHERE SANCTION IS NECESSARY OR OTHERWISE.
[I. L. R., 12 Bom., 30

——— s. 471—*Using as genuine a forged document.*—The offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine a document which he knew to be a forged document, is one cognizable under s. 471 of the Penal Code. Such accused should therefore be charged under that section, and not under s. 196 of the Code. EMPRESS *v.* KURLOOP CHUNDER MOZOOMDAR
[I. L. R., 5 Calc., 717: 6 C. L. R., 118

——— s. 473.

See FORGERY . . 2 W. R., Cr., 5
[13 W. R., Cr., 16

——— s. 474—*Possession of forged documents—Intention.* It is not sufficient for a conviction under s. 474 of the Penal Code to say that the prisoner might possibly have used an altered document. The guilty intent must be proved, not inferred. QUEEN *v.* LOKENATH SHAHA
[W. R., 1864, Cr., 12

——— ss. 474, 475.

See CHARGE TO JURY—SPECIAL CASES—POSSESSION OF FORGED DOCUMENT.
[I. L. R., 16 Bom., 165

1. ——— s. 475—*Possession of papers bearing counterfeit marks or devices—Charge under s. 475, how to be framed—Misdirection—Evidence.*—During the course of a police investigation into a complaint of theft, the house of the accused was searched and a bundle of papers, about 58 in number, were found, which were alleged to be forgeries or preparations for forgeries. The accused was thereupon committed to the Court of Session on a charge under s. 475 of the Penal Code. A few days before the trial of the accused, the police searched the house of one *S*, who was a witness for the defence, and there discovered a batch of suspicious papers which were produced at the trial, and put in as evidence against the accused. The accused was convicted of the offence under s. 475 of the Penal Code and sentenced to transportation for life. *Held*, reversing the conviction and sentence, that the suspicious papers found in *S*'s house were not admissible in evidence against the accused. *Held*, further, that the Judge's direction to the jury regarding those papers, that they established a connection between the accused and many of the witnesses belonging to the same faction, and that they showed the extent to which the practice of forgery had gone in the village, and that in this way they were relevant to the question of guilty knowledge and intention, was a misdirection which prejudiced the accused. In the trial of an accused person on a charge under s. 475 of the Penal Code, the charge should be so framed as to specify distinctly that part of the section which is applicable to the case, and should distinctly specify the particular papers bearing a counterfeit mark or device which the accused was alleged to have had in his possession with the intent mentioned in the section. QUEEN-EMPRESS *v.* ABAJI RAMCHANDRA
[I. L. R., 15 Bom., 189

2. ——— and s. 467—*Counterfeiting device or mark.*—In order to a conviction under s. 475 of the Penal Code, the document which the accused has in his possession must have some counterfeit device or mark upon it, and it must be proved that the accused has the document in his possession with the intent of using such device or mark for the purpose of giving the appearance of authenticity to the document. The document must be of the nature mentioned in s. 467 of the Penal Code. QUEEN *v.* BRAHOOSUNDER PUTTRONUVEES
[15 W. R., Cr., 19

——— ss. 477, 477A.

See CASES UNDER OFFENCE RELATING TO DOCUMENTS.

——— s. 477A.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—FALSIFICATION OF DOCUMENTS.
[I. L. R., 28 Calc., 560

——— s. 482.

See TRADE MARK.
[I. L. R., 22 Mad., 488

——— s. 486.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE, s. 486.
[I. L. R., 25 Calc., 639

See CASES UNDER TRADE MARK.

——— s. 490.

See CRIMINAL BREACH OF CONTRACT.
[6 W. R., Cr., 80
9 W. R., Cr., 12

——— s. 494.

See ABETMENT . I. L. R., 4 Calc., 10

See CASES UNDER BIGAMY.

——— s. 496—*False marriage.*—Proof of dishonest or fraudulent intent is necessary for a conviction, under s. 496 of the Penal Code, of falsely going through the ceremony of marriage. QUEEN *v.* KUDUM . . . W. R., 1864, Cr., 13

——— s. 497.

See CASES UNDER ADULTERY.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO . I. L. R., 17 Mad., 260

——— s. 498.

See CRIMINAL PROCEDURE CODES, s. 238.
[I. L. R., 20 Calc., 483

PENAL CODE (ACT XLV OF 1860)
—*continued.*

1. ———————— *Enticing or taking away wife temporarily living alone* —Enticing or taking away, with a criminal intent, a wife living in her husband's house, or in a house hired by him for her occupation and at his expense, during his temporary absence, is punishable under s 498 of the Penal Code, provided the seducer knew, or had reason to know, that she was the wife of the man from whose house he took her MUTTY KHAN v MUNGLOO
[5 W. R., Cr, 50

2. ———————— *Enticing away married woman—Presumption of marriage—Onus probandi* —In a charge under s 498 of the Penal Code, the proof that the woman and a man other than the accused were living together is sufficient to throw the burthen of proof on the accused that they were not man and wife QUEEN v WAZIRA
[8 B. L R, Ap, 63: 17 W. R, Cr, 5

3 ———————— *Enticing away wife—Proof of marriage* —*S* and *G* having been convicted of enticing away the wife of the complainant, the conviction was quashed on appeal, on the ground that

or otherwise impugn it *Held* that the marriage was sufficiently proved *Empress v Pitambur Singh, I. L R, 5 Calc, 566*, discussed QUEEN EMPRESS v SUBBARAYAN I L. R, 9 Mad, 9

4 — *Aliyasantana law—Marriage—Custom* —In the absence of very clear evidence of custom, which, if well founded, must be a matter of general notoriety, the cohabitation of a man and a woman under the Aliyasantana system cannot be considered marriage so as to render punishable, under s 498 of the Penal Code, a person who entices away the woman with the intents specified in that section KORAGA v. QUEEN
[I. L. R., 6 Mad, 374

5 ———————— *Detaining enticed woman* —A conviction cannot be had under the latter part of s 498 of the Penal Code for detaining an enticed woman, until the enticing has been proved EMPRESS v TIKA SINGH . I. L. R, 3 All, 251

6 ——— ——— *Enticing and taking away* —Upon an indictment under s 498 of the Penal Code, charging that the prisoner took away one *A*, who was then, and whom he then knew to be, the wife of one *M*, with the intent that he might have illicit intercourse with the said *A*,—*Held* that there was a taking within the meaning of the section, although the advances and solicitation had proceeded from the woman, and the prisoner had for some time refused to yield to her request QUEEN v KUMARASAMI 2 Mad, 331

PENAL CODE (ACT XLV OF 1860)
—*continued*

7. ——— — — *Concealing or detaining* —In a charge under s 498 of the Penal Code, the words of the section, "conceals or detains" must

wife

and

husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments QUEEN v SUNDARA DASS TEVAN 4 Mad, 20

8 ———————— *Enticing away married woman—Finding in words of section* —A finding exactly in the words of s 498 of the Penal Code that the prisoner took or enticed away a married woman from her husband, or some person having the care of her on his behalf, with intent that she should have illicit intercourse with some person, or concealed or detained such woman with a like in-

9. ———————— *Detaining with criminal intent married woman* —The words "such woman" in s 498 of the Penal Code do not mean such a woman as has been so enticed as mentioned in that section, but mean such woman whom the accused knows or has reason to believe to be the wife of any other man, the detention of such a woman with the particular intent defined in the section is one of the offences made punishable under that section QUEEN EMPRESS v NIADAR
[I. L R., 10 All., 580

some better evidence of the marriage than the mere statement of the complainant and the woman QUEEN EMPRESS v DAL SINGH
[I L. R., 20 All., 166

——— ss. 499, 500

See CASES UNDER DEFAMATION

——— ss 503, 505, 506, 507, 508

See CASES UNDER CRIMINAL INTIMIDATION

——— s. 504.

See INSULT I. L. R., 10 Mad., 353

——— s 505 (b)—*Penal Code Amendment Act (IV of 1898), s 6—Statements conducing to public mischief—Report alleging impending war and massacre—Fear or alarm inducing commission of offence against the State or the public tranquillity—Vague or remote possibility* —The mere causing of fear or alarm to the public or to a section

PENAL CODE (ACT XLV OF 1860) —*concluded.*

of the public does not constitute an offence under s. 505, but it is necessary that the fear or alarm should be caused in such circumstances as to render it likely that a person may be induced to commit an offence against the State or against the public tranquillity. Account cannot be taken in a case of this kind of a vague possibility that the state of mind which is caused by alarm may easily induce a person to commit an offence against the public tranquillity. This would depend on the circumstances of a particular case. The accused, a duffadar of a tea estate in Darjeeling, who had recently returned from Nepal, circulated a report among the garden coolies that a war was impending between the British Government and Nepal, that Nepalese soldiers were stationed on the frontier, and that the coolies would be killed by the British. The effect of the report was that about 150 coolies immediately ran away. *Held* that the accused could not be taken to have intended more than the probable result of the report he circulated, the result which, in fact, did take place. IN THE MATTER OF THE PETITION OF MANBIR [3 C. W. N., 1

——— s. 508.

See DEFAMATION . I. L. R., 6 Mad., 381

——— s. 509.

See CRIMINAL TRESPASS. [I. L. R., 22 Calc., 391, 994

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—PENAL CODE, s. 509. [7 W. R., Cr., 52

——— s. 511.

See CASES UNDER ATTEMPT TO COMMIT OFFENCE.

PENAL CODE AMENDMENT ACT (VIII OF 1882), s. 4.

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 11 Calc., 349
I. L. R., 12 Calc., 495
I. L. R., 6 All., 121
I. L. R., 7 All., 29
I. L. R., 9 All., 645
I. L. R., 16 Calc., 442

PENAL CODE AMENDMENT ACT (IV OF 1898), s. 6.

See PENAL CODE, s. 505 . 3 C. W. N., 1

PENAL SERVITUDE.

See SENTENCE—GENERAL CASES. [I. L. R., 19 Mad., 483

PENALTY.

See CASES UNDER DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES.

PENALTY—*concluded.*

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE.

See CASES UNDER STAMP ACT, 1869, s. 34.

——— Payment of—

See STAMP ACT, s. 39. [I. L. R., 17 Mad., 473

——— Tender of—

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.
[I. L. R., 2 All., 554
I. L. R., 4 Calc., 213
7 W. R., 439
I. L. R., 13 Bom., 449, 493

PENSION.

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.

See INSOLVENCY — PROPERTY ACQUIRED AFTER VESTING ORDER. [I. L. R., 19 Bom., 232

See TREATY, CONSTRUCTION OF.
[I. L. R., 17 Calc., 234
L. R., 16 I. A., 175

PENSIONS ACT (VI OF 1849).

1. ——— **Arrears of pension, Succession to**—*Heirs—Succeeding grantee.*—Arrears of pension due to the deceased at the time of her death form part of her estate, and the person who is legal heir to the deceased is entitled to recover them. The grantee of the pension formerly enjoyed by the deceased has no right to such arrears which formed part of the deceased's estate. NOUSHABAH SOOLTAN BEGUM *v.* NUBEERAH SOOLTAN BEGUM [3 Agra, 44

2. ——— **Agreement to pay portion of pension.**—A pension having been granted by Government to *B P* in lieu of a saranjam held by his grandfather, a claim to share the same by *M P* and his brothers was compromised by *B P*, agreeing to pay them a certain proportion thereof yearly. The Agent for Sardars, affirming the decree of the Assistant Agent, found the agreement to be null and void as an assignment of a future interest in a pension. *Held* that, as the pension was not granted "in consideration of past service and present infirmities or old age," the case did not come within the terms of Act VI of 1849, and that the agreement was a valid one. MADHAVRAV PANSE *v.* BAPURAV PANSE . . . . 4 Bom., A. C., 62

3. ——— **Liability to attachment**—*Deshmukh allowance.*—As the holder for the time being of a deshmukhi watan (an hereditary office) has only a life interest in the allowances pertaining to that watan, such allowances accruing due subsequently to his death cannot be attached as part of

PENSIONS ACT (VI OF 1849)—*concluded*

his estate HANMANTRAV KHANDERAV v BHAVANRAV BAJIRAV . 10 Bom., 299

4 ———— *Political pension* —An order made by a District Judge, rejecting an application to attach a pension on the ground that being a political pension it could not be attached under Act VI of 1849, was reversed on petition by the High Court which directed the pension to be attached IN THE MATTER OF THE PETITION OF HARBHAT BIN RAM CHANDRABHAT

[4 Bom., A C, 67

5. ———— *Requisite proof for* . . . praying which under inter- on was es and present infirmities or old age EX PARTE VITHALRAV ESHWANTRAV . 4 Bom, A C, 65

PENSIONS ACT (XXIII OF 1871)

See HINDU LAW—ALIENATION—ALIENATION BY FATHER

[I. L R, 14 Bom, 320

1. ———— Operation of Act—*Retrospective operation* —The Pensions Act (XXIII of 1871) is not retrospective JAMNADAS v LALITARAM

[I. L. R, 2 Bom, 294

2 ———— Construction of Act—*Grant by Government—Ownership in the soil.*—Though as . . . 4 Bom A C. 1,

popular parlance occasionally so called," yet such

any person subsequently to the date of the grant deriving under Government, can be permitted to say that the ownership did not so pass, unless there

. . . RAJVI

[I. L R, . Bom., 523

3 ———— *Suit for declaration* . . . *of village—Jurisdic-*

PENSIONS ACT (XXIII OF 1871) —*continued*

BIN RUDRAGAVDA v RUDRAGAVDATI KOM DYAMANGAVDA . . I. L R., 1 Bom, 531

4 ———— *Political pension in lieu of grant of land resumed—Impartible property* —A saranjam is ordinarily impartible, and

should authorize it to do so, and the fact that the Collector authorizes a suit for maintenance out of such a pension affords no ground for presuming that he authorizes a suit for the partition of the pension RAMCHANDRA SAKHARAM v SAKHARAM GOPAL

[I. L R., 2 Bom, 346

1 ———— s 3—"*Grant of money or land revenue*"—*Grant of proprietorship of soil* —The meaning of the expression "grant of money or land revenue," extended by s 3 of Act XXIII of 1871 to include "anything payable on the part of Government in respect of any right, privilege, perquisite, or office," is not of so wide a range as to include a grant of the proprietorship of the soil,

[I. L. R, 1 Bom, . . .

2 ———— and s 6—"*Right,*" *Meaning of—Toda garas haks—Mortgage of hak* —To . . . the scope of the Pensions Act

had, before the date on which the Act came into operation, obtained a decree for the recovery of his mortgage-debt from the mortgaged haks and from the mortgagor personally, and a fresh suit was neces

word "hak" in its restricted sense of "allowance" or "fee" PARBHUDAS RAYAJI v MOTIRAM KALYANDAS . I L R., 1 Bom, 203

1. ———— s. 4—*Toda garas hak, Suit for money in lieu of—Jurisdiction of Civil Courts* —Act XXIII of 1871, s 4, prohibits the Civil Courts from entertaining a suit against Government upon an alleged agreement by it to pay moneys from its treasury in lieu of toda garas haks MANSANG v GOVERNMENT OF BOMBAY I. L. R., 4 Bom., 443

2. ———— *Toda garas hak, Suit for money in lieu of* —In part of Western India annual payments known as toda garas hak, made by village communities and commuted by them into liabilities to garasias, have been recognized as a species of property, however unlawful their origin In 1862 a resolution of the Government of Bombay described the position of the garasias at that time, and gave them the

PENSIONS ACT (XXIII OF 1871)
—*continued.*

option of resuming the collection of the toda garas hak formerly levied, resorting only to legal proceedings to enforce their claims, or of receiving from the Government allowances of an equivalent amount, the collections in the latter case being discontinued on all hands. The ancestors of the adoptive father of the plaintiff formerly levied toda garas hak; and after 1862 the Government in respect thereof made payments, under the resolution, to three brothers, of whom one was the plaintiff's father; the latter receiving a one-third share, which on his death in 1865 was no longer paid. *Held* that a suit against the Government for payment of this third share with arrears fell under the Pensions Act (XXIII of 1871), s. 4, which prohibits cognizance, save as in the Act provided, "of any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for such pension or grant, or whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted." *Held* that there was no reason, either in the language of the Act itself or in any antecedent legislation, for construing these words as applicable only to rights in the nature of pensions. MAHARAVAL MOHANSINGHJI JEYSINGHJI *v.* GOVERNMENT OF BOMBAY

[I. L. R., 5 Bom., 408
L. R., 8 I. A., 77

Affirming the judgment of the High Court in the same case . . . I. L. R., 4 Bom., 437

3. ———— *Jurisdiction of Civil Court —Deshmukh.*—A suit in a Civil Court by a hereditary deshmukh relating to a grant of land revenue is prohibited by the Pensions Act (XXIII of 1871). NARO DAMODAR GHUGRI *v.* COLLECTOR OF POONA

[I. L. R., 6 Bom., 209

4. ———— *Jurisdiction of Civil Court —Suit relating to grant of money or land revenue.* —A plaintiff, alleging that, as the hereditary deshmukh of certain mehals, he was entitled to be paid directly by the raiyats of these mehals a percentage on the revenue thereon assessed, sued to recover a portion of such percentage which had been collected along with the revenue and retained by the Government. *Held* that the claim was "a suit relating to a grant of money or land revenue," and as such excluded from the jurisdiction of the Civil Courts by s. 4 of the Pensions Act (XXIII of 1871). VASUDEB SADASHIV MODAK *v.* COLLECTOR OF RATNAGIRI

[I. L. R., 2 Bom., 99
L. R., 4 I. A., 119

5. ———— *Rent-free grant of land from Government.*—S. 4 of the Pensions Act (XXIII of 1871) debars the Civil Court from taking cognizance of any suit, whether the Government is a party to it or not, which relates to any pension or grant of money or land revenue conferred or made by the British or any former Government, without a certificate from the Collector or other authorized officer. S. 5 prescribes a remedy for the claimant of such pension or grant, and s. 6 enables the Revenue officer to refer the parties to the Civil Court for the determination of their respective interests in the income or other benefits, which the executive will, however, still, as against either or both of the litigants, be at liberty to allow or withhold. Lands held free of assessment under a grant from Government which bestows on the grantee the lands themselves, and not merely the Government revenue arising from them, do not fall within the provision of the Pensions Act. BABAJI HARI *v.* RAJARAM BALLAL . . . . . I. L. R., 1 Bom., 75

6. ———— *Grant of land revenue—Former suit for money.*—The plaintiffs formerly sued for a sum of money, and, obtaining a decree, attached in 1861 two villages the land revenue of which had been granted in inam. The attachment continued down to 1875, when the last holder of the villages died, and the Government having resumed the villages, the attachment was raised. The plaintiffs now sued to have their right declared to satisfy their decree from the revenues of the villages. *Held* that the former suit was not a suit in respect of a pension or grant of money of land revenue, and that an attachment placed in pursuance of an ordinary money-decree before the date of the Pensions Act (XXIII of 1871) could not be treated as a suit in respect of a pension, grant of money, or land revenue instituted before such date, so as to exclude the operation of the Act under s. 1. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* JAMNADAS

[I. L. R., 6 Bom., 737

7. ———— *Inam—Grant of land free of revenue—Specific Relief Act, s. 42.*—A grant of lands free of revenue does not come within the purview of the Pensions Act, 1871. PANCHANADAYYAN *v.* NILAKANDAYYAN

[I. L. R., 7 Mad., 191

8. ———— *Gratuitous pension—Suit for share of annual grant made by Government.*—One *S*, a servant of the Delhi Emperor, having been killed in Burdwan while fighting for his master, the Emperor built a tomb over his remains, and made a grant of land (five mouzahs) to his family for the purpose of maintaining it in the manner usual amongst Mahomedans. This grant was subsequently confirmed to a descendant of *S* and his heirs. Some years later the land came into the possession of the Raja of Burdwan, who paid to the grantees a certain sum of money annually. When the perpetual settlement was made, the British Government continued the payment on account of the Raja, in whose zamindari four of the five mouzahs were incorporated. Owing to disputes in the family, a reference was made to Government, who reduced the money payment and appointed a mutwalli for the tomb. One of the descendants of *S* then sued the Government and the mutwalli for a share of this annual payment. *Held* that the grant to *S*'s family was not a gratuitous pension or allowance, and that the money payment by the zamindar of Burdwan was rent justly due to them for the use and occupation of their land, and that the fact of the payment being continued by Government did not alter its nature.

PENSIONS ACT (XXIII OF 1871) —*continued*

Accordingly, the suit was not barred by Regulation XXIV of 1793 or Act XXIII of 1871 HAZARA BEGUM v COLLECTOR OF BURDWAN
[23 W R., 378

9 ———— *Grant by Nawab of Carnatic, Resumption of—Substitution of money payment—Suit to recover share of money*—A jaghir, having been granted by the Nawab of the Carnatic for the support of the grantee and his relatives, was resumed by Government, and a money payment, equivalent to the rent, substituted *Held* that a suit by a relative of the original grantee to recover, as arrears of his share, money received by the representative of the grantee was barred by s 4 of the Pensions Act, 1871 MAHOMMED ISAACK MUSHYACK v AZEEZOON NISSA BEGAM I. L R, 4 Mad., 341

10. ———— *Suit to recover matam service inam lands granted for support of temple*—A suit by a lessee of the holders of a matam service inam (religious endowment for the support of the family of the grantees and of a temple) to recover the inam lands from strangers is not barred by the provisions of the Pensions Act, 1871 KOLANDAI MUDALI v SANKARA BHARADHI
[I. L. R., 5 Mad, 302

11. ———— *Religious endowment—Personal grant*—When the object of the endowment was to provide for certain religious and pious purposes,—*Held* that the provisions of the Pensions Act were not applicable to it "Pensions and grants" in that Act meant personal grants, and not grants to endowments SECRETARY OF STATE FOR INDIA v ABDUL HAKKIM KHAN I. L R, 2 Mad, 294

12. ———— *Taumia granted to mosque—Jurisdiction of Civil Court*—S 4 of the Pensions Act, 1871, provides that no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension [illegible]

13. ———— *Grant of villages enabling grantee to receive the land-revenue*—Suit to recover a moiety of two villages granted as a jaghir *Held* that, as the original grant was not of the free hold or full ownership in the soil, the suit was barred by s 4 of the Pensions Act 1871 RAMA v SUBBA . . . I. L R., 12 Mad, 98

14. ———— *Jurisdiction of Civil Court—Suit against Government for inam lands and mokasa amals—Bom Reg XXIX of 1827, s 6—Bombay Revenue Jurisdiction Act (X of 1876), s 4—Mokasa amals, Meaning of*—In 182[illegible] *A* obtained a decree on a mortgage, awarding him possession and enjoyment of certain inam property, consisting of lands and of cash allowances annually

PENSIONS ACT (XXIII OF 1871) —*continued*

[illegible]

inam The attachment remained in force till 1865, when Government finally decided that the inam property, with the exception of a certain portion should be restored to those from whose possession it had been taken in 1852 Therepon *D* the successor in interest of *A*, applied to the Collector to be restored to possession The Collector refused *D* therefore sued him for arrears of the mokasa amals, and obtained a decree in 1868 Thereafter *D* did not [illegible]

and under the Bombay Revenue Jurisdiction Act (X of 1876), s 4 Both these Acts, though not retrospective in their operation, still do not create rights to relief against the Government where none subsisted before. Accordingly the suit, being barred under Bombay Regulation XXIX of 1827, was equally barred under the later Acts XXIII of 1871 and X of 1876 SIVRAM DINKAR GHARPURAY v SECRETARY OF STATE FOR INDIA
[I. L. R., 11 Bom, 222

15. ———— *Jurisdiction of Civil Court—Abkari revenue—Inamdar Right of, to abkari revenue under grant from Peshwa*—The Peshwa's Government granted in inam to the plaintiff's ancestor, by sanad the villages of Golap and Randpar The sanad granted "water trees grass wood, quarries, mines, buried treasure, present and future cesses and taxes and assessments" The plaintiff brought the present suit to recover from the defendant a part of the abkari revenue for 1884 85 and 1885-86. He contended that the revenue derived by the Government for tapping trees in the villages aforesaid was a tax within the contemplation of the grant *Held* that the Court had no jurisdiction to entertain the suit under the Pensions Act (XXIII of 1871) The tax in question was a money tax and as soon as it was imposed, the grant, if it entitled the inamdar to the tax, operated as a grant of the money to be derived from the tax, and was therefore within the spirit, if not the letter, of the Pensions Act, the object of which was to reserve to the Government the determination of all questions affecting grants of money, the bestowal of which was an act of grace or State policy on the part of the ruling power JANARDHAN BHASKAR v SECRETARY OF STATE FOR INDIA
[I L R., 14 Bom., 573

16. ———— *"Civil Court"—Claim to percentage of forest income—Forest Settlement officer*—A Forest Settlement officer has no jurisdiction to entertain a suit in which a claim to a percentage of forest income is made, and such a suit brought by discharged forest karnams is barred by s 4 of the

PENSIONS ACT (XXIII OF 1871) —*continued.*

Pensions Act. A Forest Settlement officer is a Civil Court for the purposes of the Pensions Act. SECRETARY OF STATE FOR INDIA *v.* VYDIA PILLAI [I. L. R., 17 Mad., 193

17. ——— *Kulkarni vatan—Suit for partition and declaration of right to a specific share in the vatan and to officiate—Money grant—Vatan consisting exclusively of cash allowance.*—A suit for a declaration that the plaintiffs are vatandars of a share of a moiety of a kulkarni vatan consisting exclusively of a cash allowance from Government is not a suit relating to a "money grant" within the contemplation of s. 4 of the Pensions Act (XXIII of 1871). GOVIND SITARAM *v.* BAPUJI MAHADEO . I. L. R., 18 Bom., 516

18. ——— and s. 6—*Suit for malikana without certificate of Collector.*—In a suit against the Rajah of Palghat and other members of his family for a declaration of the plaintiff's status as the third Rajah, and to recover a sum of money payable to him as such on account of his share of malikana, it appeared that the plaintiff had obtained no certificate under the Pensions Act, 1871, s. 6. *Held* that the suit was not maintainable. ANDI ACHEN *v.* KOMBI ACHEN I. L. R., 18 Mad., 187

19. ——— and s. 3—*Jurisdiction of Civil Court—Certificate of Collector to precede suit for malikana payable by Government.*—A village, part of an estate, had been made over to the Government by parties, who in consideration received a malikana in perpetuity, or, in other words, a grant of a portion of the revenue in lieu of their proprietary right. *Held* that the right to the malikana was on the construction of ss. 3 and 4 of the Pensions Act (XXIII of 1871), in the absence of a certificate obtained under that Act, excluded from judicial cognizance in this suit. *Vasudev Sada Shiv Nodak* v. *Collector of Ratnagiri, I. L. R., 2 Bom., 99 : L. R., 4 I. A., 119,* and *Naharaval Mohan Singji Joysingji* v. *Government of Bombay, I. L. R., 5 Bom., 408 : L. R., 8 I. A., 77,* referred to and approved. DEO KUAR *v.* MAN KUAR [I. L. R., 17 All., 1 L. R., 21 I. A., 148

20. ——— *Meaning of the word "pension"—Suit for a cash allowance payable by an inamdar—Necessity of Collector's certificate.*—Plaintiff sued, as the trustee of a devasthan, to recover the amount of a cash allowance attached to the worship of certain idols in the village of Ankli. The plaintiff alleged that the defendant, who was the inamdar of the village, received its revenues subject to the payment of the allowance in question, and that he had wrongfully appropriated the latter for the three years preceding suit. *Held* that the allowance in question was "a grant of money" within the meaning of s. 4 of the Pensions Act (XXIII of 1871), and that the suit would not lie in the absence of the Collector's certificate, though Government was not a party to the suit. VYANKAJI *v.* SARJARAO APAJIRAO [I. L. R., 16 Bom., 537

PENSIONS ACT (XXIII OF 1871) —*continued.*

21. ——— *Suit relating to right of management of saranjam lands.*—Where a suit was brought in relation to the management of saranjam lands,—*Held* that the suit was *primâ facie* one not included in the Pensions Act. KESHAVRAV *v.* GANPATRAO NILKANTH NAGARKAR [I. L. R., 16 Bom., 596

22. ——— *Collector's certificate—Execution of decree—"Suit"—Desaigiri hak, sale of.*—The word "suit" in s. 4 of the Pensions Act (XXIII of 1871) does not include execution proceedings. The Collector's certificate is not necessary to validate the sale of a desaigiri hak in execution of a decree. VAJIRAM BHAGVAN *v.* RANCHORDJI GOPALJI [I. L. R., 16 Bom., 731

23. ——— *Cash allowance allowed to worship of idol—Personal grant.*—A plaintiff claimed to be a co-trustee of certain dargas and entitled to a share in the management and in the profits thereof, which consisted of a certain cash allowance from Government. He sued the defendants for an account and for the recovery of his share. *Held* that the suit, so far as it related to the cash allowance from Government, required a certificate under s. 4 of the Pensions Act (XXIII of 1871). A cash allowance attached to the worship of an idol is a grant of money within the meaning of s. 4 of the Pensions Act, 1871. The Pensions Act applies to religious endowments as well as to personal grants. *Vyankaji* v. *Sarjarao Apajirao, I. L. R., 16 Bom., 537,* concurred in. NIYA VALI ULLA *v.* BAVA SAHEB SANTI MIYA [I. L. R., 22 Bom., 496

24. ——— *Suit relating to inam land granted before the time of the British Government—Confirmation of inam.*—Early in the eighteenth century two villages were granted by the zamindars of Sivaganga and Guntamanaikanur to the last of the Naik rulers of Madura for the maintenance of the rank and dignity of his family which was now represented by the plaintiffs and defendants Nos. 1 to 23. The property was long managed by the representative, for the time being, of the senior line. In 1814 one of the junior members instituted a suit for partition, which terminated in a decree declaring the corpus of the property to be indivisible and the annual produce to be divisible in certain shares. Subsequently in 1857 a compromise was entered into, by which the parties agreed to vary the distribution of the sharers, but they agreed that the management of the estate, indivisible and inalienable, should continue to be vested in the eldest line subject to certain supervision on the part of the other members. The compromise was long acted upon by the family; but in 1892 the representative of the senior line died, leaving only his widow and infant sons. The widow, as guardian of the elder son, then entered on the management, and, being gosha, delegated it to a stranger. The plaintiffs, representing a junior line, now sued for the removal of these persons from management and the appointment of another manager, alleging both that they had no right to the managership and that they had been guilty of mismanagement.

PENSIONS ACT (XXIII OF 1871)—*continued*

All the members of the family were made parties to the suit It appeared that the plaintiffs had not received their proper share of the produce, and the defendants in management denied in the pleadings their right thereto The plaintiffs had not obtained a certificate from the Collector under the Pensions

25 ———— and s 6—*Jurisdiction of Civil Court—Omission to obtain, previous to suit, certificate enabling Court to entertain suit—Effect of certificate granted after the hearing*—

Begum . I L R, 8 Calc, 422
[L R., 9 I A, 8

26 ———— *Collector's certificate—Certificate not obtained when suit filed—Certi*

27. ———— and s 9—*Grant of land-revenue—Suit by assignees, zamindars, for arrears—Right of plaintiff's admitted by Government—Want of Collector's certificate Effect of*—The sections of the Pensions Act (XXIII of 1871) restricting the jurisdiction of the Civil Courts to entertain suits relating to pensions of grants of money or land revenue must be construed strictly *Held* that a suit by the assignees from Government of land revenue, whose rights were admitted by Government, to recover arrears from persons admittedly liable to

therein provided. Nagar Mal v Ali Ahmad
[I L R., 10 All., 396

28 ———— *Suit in Court of Agent for Sirdars in the Deccan—Bom Reg XXIX*

PENSIONS ACT (XXIII OF 1871)—*continued*

of 1827, ss 4 and 6—Bom Reg II of 1827—Certificate of Collector—A suit brought against

1. ———— s 6—*Suit for a declaration of title to stanom of fifth Raja of Palghat*—Suit to declare plaintiff s title to the stanom of fifth Raja of Palghat, the first Raja (defendant No. 1) received a malikana allowance from Government payable to the various stanomdars, but had refused to pay to plaintiff the fifth Raja's share *Held* the suit was not one relating to any pension or grant of money or land revenue conferred by Government, but was merely a suit for a declaration as to the plaintiff's status, and the Pensions Act, s 6, was therefore not applicable to the case Kombi v Aundi I L R, 13 Mad., 75

Estoppel—Where the mortgagee of a desaigiri hak, without obtaining the Collector's certificate under s 6 of Act XXIII of 1871 sued the representative of the mortgagor to enforce the mortgage-debt by a sale of the hak, and obtained a decree without jurisdiction—*Held* that the proceedings in the suit were without jurisdiction, and that the decree could not constitute the basis of any title, or estop the representative from suing for a declaration of his right to the hak as a life holder as against the purchaser at the auction sale held in execution of the decree *Radhabhai* v *Anantram Bhagvant I L R, 9 Bom 198*, followed Vasanji Haribhai v Lallu Akhu I. L. R., 9 Bom, 285

———— s 7

See Mahomedan Law—Gift—Validity
[I. L. R., 9 All., 213

1. ———— s 11—*Toda garas hak—Liability to attachment—Attachment*—A toda garas hak is not exempted from attachment under a decree of a Civil Court by s 11 of the Pensions Act of 1871 The word "pension" in s 11 of the Pensions Act is used in its ordinary and well known sense, *viz*, that of a periodical allowance or stipend granted, not in respect of any right, privilege perquisite or office, but on account of past service or particular merits or as compensation to dethroned princes, their families and dependants A toda garas hak does not come within the meaning of the word 'pension," which denotes something different from 'a grant of money or revenue" as defined in s 3 of the Act Secretary of State for India in Council v. Khemchand Jeychand I. L. R., 4 Bom, 432

2 ———— ———— *Attachment of bonus—Liability to attachment*—A bonus granted by Government in addition to a pension to an officer compulsorily retired on account of reductions in the public

PENSIONS ACT (XXIII OF 1871) —*concluded*.

service is not a pension within the meaning of the Pensions Act, 1871, s 11, and was liable to attachment in execution proceedings begun prior to June 1, 1882. KHASIM *v.* CARLIER I. L. R., 5 Mad., 272

1. ———— s. 12—*Assignment of pension before passing of Act.*—On the 12th February 1865, *A*, who was in receipt of a zihakhi pension from Government, assigned by deed a portion thereof to his wife in lieu of her dower. After his death, disputes arose between the wife and the heirs of *A* in regard to a portion of the amount thus settled on her; and she instituted a suit, on a certificate granted by the Collector under s. 6 of the Pensions Act (XXIII of 1871), in which she prayed for a declaration of her proprietary right in respect of the said money, and of her power to transfer the same. *Held* that the assignment of the 12th February 1865, having been made before the passing of the Pensions Act, was not invalidated by s. 12 of that Act, which had no restrospective operation. IMTIAZ BEGAM *v.* LIAKAT-UN-NISSA BEGAM . I. L. R., 7 All., 886

Reversing on a re-hearing of the case (the first hearing having been *ex-parte*). IMTIAZ BEGAM *v.* LIAKAT-UN-NISSA BEGAM I. L. R., 6 All, 630

2. ———— *Political pension of Zamorin of Calicut—"Payable"—Power of disposition by will.*—The Zamorin of Calicut, whether he be or not a member of a kovilagom, is entitled to dispose of the separate property by a will. The Zamorin, by his will, bequeathed to the plaintiff the malikana due to him from the Government which might be in arrears at the time of his death. The malikana was a political pension of R6,000 a month, payable quarterly. The Zamorin died on the 6th of August 1892. The plaintiff, having obtained a certificate under Pensions Act, s. 6, now sued the new Zamorin to recover the proportionate amount of the pension for the current quarter up to the time of the Zamorin's death. *Held* that the plaintiff was not entitled to recover the amount sued for. SRIDEVI *v.* KRISHNAN . I. L. R., 21 Mad., 105

———— s. 14—*Rule (6) framed under the Act—Suit for recovery of varshasan allowance—Collector's certificate—Cancellation of certificate by Revenue Commissioner.*—When a certificate is granted by the Collector under s. 6 of the Pensions Act (XXIII of 1871), the presumption is, until the contrary is shown, that the order for granting the certificate was made, as is contemplated by the 6th rule framed under the Act, with the previous sanction of the Revenue Commissioner by the Collector himself. But the Revenue Commissioner has no power vested in him to cancel a certificate granted by the Collector, and there is no rule which provides for the revision by the Revenue Commissioner of the Collector's action in granting certificates or for the cancellation by him of the certificates granted by the latter. BHIMBHAT GOTKHANDI *v.* BHIKAMBHAT [I. L. R., 23 Bom., 676

PEON.

See ARREST—CRIMINAL ARREST. [I. L. R., 27 Calc., 457

PEON—*concluded*.

See PENAL CODE, s. 186. [I. L. R., 22 Calc., 596, 759

———— Appointment of—

1. ———— *Nazir, Power of—Beng. Act V of 1863, ss. 3, 12.*—By Bengal Act V of 1863 the appointment of peons was vested in the Nazir, subject to the approval of the Judge, by whatever title designated (ss. 3 and 12), and no superior authority was competent to control such appointment or to restrict the choice of the Nazir. IN THE MATTER OF THE PETITION OF GOOROO DYAL SINGH [9 W. R., 333

2. ———— *Officers of Munsif's Court—Power of Judge.*—All officers of a Munsif's Court are appointed by him, subject to the approval of the Judge, who should hear what any person aggrieved has to say, and determine whether the Munsif has rightly exercised his authority. IN THE MATTER OF GOOROODASS BHUTTACHARJEE . 11 W. R., 158

3. ———— *Appointment of officers in Munsif's Court—Power of Judge—Beng. Act V of 1863.*—A Judge is not warranted in interfering with the appointment of peons made in a Munsif's Court under Bengal Act V of 1863 and approved by the Munsif. IN THE MATTER OF SOMEROODDEEN [11 W. R., 159

PERIM, ISLAND OF—

———— Law in force in—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER. [I. L. R., 10 Bom., 258, 263

PERJURY.

See APPEAL IN CRIMINAL CASES—PROCEDURE . B. L. R., Sup. Vol., 426

See CRIMINAL PROCEEDINGS. [I. L. R., 16 Bom., 729
I. L. R., 18 Bom., 581

See CASES UNDER FALSE EVIDENCE.

See SANCTION TO PROSECUTION—WHEN SANCTION MAY BE GRANTED. [3 B. L. R., A. Cr., 10

PERMANENT SETTLEMENT.

See CASES UNDER ENHANCEMENT OF RENT—EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT, AND PRESUMPTION.

———— Districts to which it has not been extended.

See BENGAL RENT ACT, 1869, ss. 16 AND 17 . . . . 8 B. L. R., 280

1. ———— Date of settlement.—The date of the permanent settlement was March 22nd, 1793. RAJESSUREE DEBIA *v.* SHIBNATH CHATTERJEE [4 W. R., Act X, 42

PERMANENT SETTLEMENT—*concluded*

DHUNPUT SINGH *v* GOOMAN SINGH [W. R., 1864, Act X, 61

PORAN BEBEE *v.* ALLY KHAN [W. R., 1864, Act X, 61

2. ———— *District of Jessore*.—The date of the permanent settlement for the district of Jessore was April 11th, 1790 HURO NATH ROY *v* AMEER BISWAS 1 W R, 231

3 ———— Permanent settlement, Reference to, in Act X of 1859—*Subsequent settlements*.—The words "Permanent Settlement" in Act X of 1859 refer to the permanent settlement of 1793, and not to permanent settlements subsequently made SHEOBURN LALL *v* RAM PURTAP SINGH . . 3 W. R., Act X, 20

4. ———— Adverse possession by Government of permanently settled estate

[illegible]

that the Government intended to guarantee to the

[illegible]

is would debar Government from claiming and exercising against those owners the rights of an ordinary proprietor Although therefore Government continues to receive the full revenue from the proprietor of a permanently settled estate for the

[illegible]

GUPTA *v* SECRETARY OF STATE FOR INDIA IN COUNCIL 3 C W. N., 99

PERMIT.

———— Failure to obtain——

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s 412 [I L R., 20 Calc., 605

PERPETUITIES.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, ETC.

See PARSIS . I. L. R., 6 Bom., 151 [I. L. R., 23 Bom., 355

PERPETUITIES—*concluded.*

See WILL—CONSTRUCTION.

[I. L. R., 11 Bom., 441
I. L. R., 15 Mad., 424, 448
I. L. R., 25 Calc., 112

———— Application of rule against perpetuities—*Succession Act (X of 1865), s 101—Transfer of Property Act (IV of 1882), s 14—Moveable property*.—The rule against perpetuities [Indian Succession Act (X of 1865), s. 101, and Transfer of Property Act (IV of 1882), s 14] applies to moveable as well as immoveable property COWASJI NOWROJI POCHKHANAWALLA *v* RUSTOMJI DOSSABHOY SETNA I L. R., 20 Bom., 511

PERSONA DESIGNATA.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—ADOPTION

See WILL—CONSTRUCTION [I. L. R., 15 Mad., 448

PERSONAL DECREE

See CASES UNDER HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY

See HUSBAND AND WIFE [8 B L R., 372

PERSONALTY, LAW RELATING TO—

See ENGLISH LAW [I. L R., 24 Calc., 216

PERSONS NOT PARTIES TO SUIT.

See COSTS—SPECIAL CASES—THIRD PERSONS

———— Right of, to question order in execution

See LIMITATION ACT, 1877, ART 179—LAW APPLICABLE TO APPLICATION IN EXECUTION OF DECREE [I. L. R., 17 Calc., 491

PETITION.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—PETITIONS [Marsh., 75
I. L R., 10 Mad., 334

See EVIDENCE ACT, s 35 [I. L. R., 15 Mad., 10

———— Amendment of—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT [I. L. R., 17 Mad., 67
I. L. R., 17, Calc., 631

———— Application by—

See GUARDIAN—APPOINTMENT [I. L. R., 3 Calc., 357

PETITION—*concluded.*

——— containing defamatory statements.

See PRACTICE—CRIMINAL CASES—PETITION FOR BAIL.
[I. L. R., 15 Bom., 488

——— for administrative summons.

See ADMINISTRATION.
[3 B. L. R., Ap., 3

——— Form of—

See BENGAL TENANCY ACT, s. 158.
[I. L. R., 21 Calc., 602
I. L. R., 24 Calc., 197

——— *Misstatement in*—

See PRIVY COUNCIL, PRACTICE OF—COSTS.
[14 B. L. R., 394

——— Omission in—

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.
[I. L. R., 17 Mad., 304

——— Power to allow withdrawal of—

See INSOLVENT ACT, s. 7.
[6 B. L. R., 558
I. L. R., 7 Bom., 411

——— Power to set aside order dismissing—

See INSOLVENT ACT, s. 7.
[6 B. L. R., 310

——— Registration of—

See CIVIL PROCEDURE CODE, 1882, s. 548 (1859, s. 341) . 4 B. L. R., Ap., 103
[8 W. R., 141

——— Verification of—

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION.
[I. L. R., 20 Calc., 879
I. L. R., 22 Calc., 491
I. L. R., 26 Calc., 404

PHULKUR, RIGHT OF—

——— *Proprietorship in soil.*
—Phulkur, or the right of gathering fruits, is a right indicative of a certain dominion over the soil. LEELANUND SINGH *v.* MOHESHUR SINGH
[3 W. R., P. C., 19: 10 Moore's I. A., 81

PILGRIMS.

——— Contract to carry—

See CONTRACT ACT, s. 56.
I. L. R., 14 Bom., 147

——— Place of worship.

See RIGHT OF SUIT—PUBLIC WORSHIP, SUITS REGARDING RIGHT OF.

PILOTS.

See CASES UNDER SHIPPING LAW—COLLISION.

PLAINT.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—SPECIAL CASES—PLAINT.

See COURT FEES ACT (XXVI OF 1867).
[7 B. L. R., 663, 664 note

See COURT FEES ACT, 1870, SCH. I, ART. 1.
[I. L. R., 7 Bom., 535

See EVIDENCE ACT, s. 35.
[I. L. R., 15 Mad., 19

See CASES UNDER MULTIFARIOUSNESS.

See CASES UNDER RELIEF.

See CASES UNDER VARIANCE BETWEEN PLEADING AND PROOF.

——— Filing of—

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 3 Calc., 312

——— Presentation of—

See CASES UNDER LIMITATION ACT, 1877, s. 4.

See PAUPER SUIT—SUITS.
[I. L. R., 1 All., 230
Marsh., 174: W. R., F. B., 53
1 Ind. Jur., O. S., 66
6 N. W., 225
I. L. R., 20 Bom., 508
I. L. R., 17 All., 526
I. L. R., 18 All., 206
I. L. R., 19 Mad., 197

——— Return of, for presentation in proper Court.

See APPEAL—ORDERS.
[I. L. R., 1 All., 620
I. L. R., 2 All., 357
I. L. R., 3 All., 456, 855
I. L. R., 4 All., 478
I. L. R., 21 Mad., 234
I. L. R., 26 Calc., 275

PLAINT—*continued*

See APPELLATE COURT — EXERCISE OF POWERS IN VARIOUS CASES—PLAINT.
[I. L. R, 9 All, 191 : L. R., 13 I A, 134
I L. R., 11 Mad., 482

See CASES UNDER LIMITATION ACT, 1877, s 4

——— Verification of—

See CIVIL PROCEDURE CODE, s. 432.
I. L. R., 10 Calc., 136
[I. L. R., 19 All., 510

See FALSE EVIDENCE—GENERAL CASES
[2 B. L R, A Cr, 1

See WRITTEN STATEMENT
[I L. R, 22 Calc., 268

1 GENERAL CONSTRUCTION OF PLEADINGS

1. ——— **Pleadings in Courts in India.** —Pleadings in Indian Courts should not be construed with the same strictness as they are in the English Courts NAWAB NAZIM OF BENGAL *v* AMRAO BEGUM . . . . 21 W. R., 59

See GIRDHAREE SINGH *v.* KOOLAHUL SINGH
[6 W. R, P. C, 1 : 2 Moore's I. A, 344

MOKUDDIMS OF MOUZAH KUNKUNWADY *v.* ENAMDAR BRAHMINS OF MOUZAH SOORPAL
[7 W R., P. C, 8 : 3 Moore's I A, 383

MOHESH CHUNDER MOOKERJEE *v* RAMDHUN PAL
[13 W. R, 248

2 ——— *Primary and* ... sons were ... ated by ... *Z* exe- ... of the ... of the ... guished accordingly *J*, however, fraudulently caused it to appear from the novating document that the former mortgage was still alive, and, after the death of *Z*, put the bond in suit against *Z's* widow, who, being ignorant of the fraud, confessed judgment as guardian of her minor sons, and the entire right and interest of *Z's* heirs were sold in execution of the decree obtained by *J* Subsequently the fraud was discovered and *Z's* sons brought a suit to set aside the execution sale and to recover possession of the property first mortgaged. In regard to three-fourths of this property, they prayed that "possession might be awarded to them by establishment of their right and share by amendment of the revenue papers" In ... must not be construed with the same strictness ...

PLAINT—*continued*

1 GENERAL CONSTRUCTION OF PLEADINGS—*concluded*

therefrom as vitiated by fraud, and, as secondary relief, to be granted, if the Court should not see its way to setting aside those proceedings, a declaration that they took effect only as regards one-fourth of the property. *Nawab Nazim* v. *Amrao Begam, 21 W. R, 59*, referred to NATHU SINGH *v* JODHA SINGH . . . . I. L R., 6 All, 406

2 ADMISSION OF PLAINT

3. ——— **Holiday** — *Stamp duty* — The ...

v. HARGOPAL NAG
[3 B. L R, Ap, 72 : 11 W. R., 537

3 FORM AND CONTENTS OF PLAINT

(a) DATE OF CAUSE OF ACTION.

4. ——— **Limitation** — *Civil Procedure Code, 1859, s 26* —In a suit to recover possession plaintiff is bound, under s 26, Act VIII of 1859, to give the date on which he was dispossessed as accurately as possible, especially where one of the issue is whether he has been in occupation of the land within twelve years of suit BOYDONATH SURMA *v* OJAN BIBEE . . 11 W. R., 238

5. ——— *Plaint not showing when cause of action arose* —A plaintiff is bound by the Civil Procedure Code to show on the face of the plaint that his cause of action accrued within the period of limitation Where an assignment to himself is a material part of a plaintiff's cause of action, he ought to allege the fact in his plaint BROOKE *v* GIBBON 21 W. R., 47

... subsequent stage of the suit ... RAJSANGJI JALMSANGJI
[2 Bom., 169 : 2nd Ed., 162

7. ——— *Taking plaint off the file—Indefiniteness—Omission to show suit not barred* —A plaint which merely stated that the cause of action arose previous to 21st August 1869 and which did not show that the suit was not barred by limitation, was ordered to be taken off the file. SONAMULL *v* SUNARAM ROTTI
[8 B. L. R., Ap., 23

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

8. ———— *Plaint not showing when cause of action arose.*—The fact of *A's* plaint not showing when the cause of action arose is ground for rejecting the plaint, but no ground for finding on the trial that the suit is barred upon an issue raised as to limitation. KALLYNAUTH SHAW *v.* RAJEEBLOCHUN MOZOOMDAR [2 Ind. Jur., N. S., 343

9. ———— *Omission to state when cause of action arose in plaint—Amendment of plaint.*—A suit in which the plaint discloses a cause of action falling within the period of limitation should not be dismissed after the framing of issues merely because the Court considers that an erroneous date has been assigned in the plaint as the cause of action. The plaint should be amended. SHEORAJ SINGH *v.* NUR KHAN . . 7 N. W., 354

(*b*) FRAME OF SUITS GENERALLY.

10. ———— **Paper referred to in plaint.** —A paper referred to in a plaint is not a part of the plaint. TOULTON *v.* GWYTHER [Bourke, O. C., 273

11. ———— **Schedule to plaint**—*Statement of cause of action.*—The schedule appended to a plaint cannot disclose a cause of action not revealed in the plaint. MUZHUR HOSSAIN *v.* DINOBUNDO SEN . . . Bourke, O. C., 8: Cor., 94

LUCKEY MONEY DOSSEE *v.* KHETTER COOMARY DOSSEE . . . 2 Ind. Jur., N. S., 117

12. ———— **Defects in plaint**—*Plaint showing good cause of action—Ground for dismissal of suit.*—A suit should not be dismissed for mere defects in the plaint, if the evidence shows there is a good cause of action. GOLAM ALI CHOWDHRY *v.* EUTTICK CHUNDER . . 10 W. R., 460

13. ———— *Plaint showing good cause of action—Ground for dismissal of suit.*—If a plaint discloses a cause of action, a Judge on appeal ought not to dismiss the suit, on the ground merely of defect in the allegations in the plaint. KASEENAUTH MOOR *v.* REEJOONISSA [Marsh., 198: 1 Hay, 467

14. ———— *Inaccuracy of language—Ground for dismissal of suit—Construction of plaint.*—A plaintiff's suit should not be dismissed because, in describing his cause of action, strictly accurate language has not been used. A plaint should not be construed literally, but according to the plaintiff's real meaning, unless such meaning is inconsistent with the words used in the plaint, so as to deceive the defendant and prejudice his defence. INGLIS *v.* RAM SINGH W. R., F. B., 159

PITAMBUR MOOKERJEE *v.* HUREE NARAIN THAKOOR . . . . W. R., 1864, 50

15. ———— *Want of distinctness in plaint—Ground for dismissal of appeal.*—A suit should not be dismissed at the last stage of the proceedings in regular appeal for want of sufficient distinctness in the plaint, but such defect may be cured by examining the plaintiff or his pleader on that point. JUGMOHUN TEWAREE *v.* BULDEO NAIK . . . . 3 Agra, 162

ABDOOLLAH *v.* SHAHA MUJEESOODDEEN [15 W. R., 286

16. ———— *Indistinctness and obscurity of plaint—Ground for refusal to give decree.*—A Court is justified in refusing to give a decree upon a plaint which it deems to be intentionally indistinct and obscure. MAHOMED HOSSEIN *v.* KRISHNO CHURN MISSER . 20 W. R., 147

See RAM DYAL DUTT *v.* RAM DOOLAL DEB [11 W. R., 273

17. ———— *Charges of fraud—Pleading.*—A plaint charging fraud must set forth particulars; general allegations, however strong the words, not even amounting to an averment of fraud of which a Court can take notice. GUNGA NARAIN GUPTA *v.* TILUCKRAM CHOWDRY [I. L. R., 15 Calc., 533 L. R., 15 I. A., 119

18. ———— **Mistake in plaint**—*Ground for dismissal of suit.*—A suit should not be dismissed for what is obviously a mere mistake in the plaint, *viz.*, the erroneous statement of the date of a mortgage made many years before the plaintiff acquired an interest in the property, where all the parties to it were dead, and the deed itself lost. LALLA DABEE PERSHAD *v.* BEHAREE LALL . 3 Agra, 33

MOHUN LALL *v.* NOOR KHAN . 3 Agra, 218

19. ———— *Return and amendment of plaint—Ground for dismissal of suit.*—A suit cannot be dismissed merely on the grounds that the plaint did not contain a specification of the land in the defendant's possession, and that there was an error in the plaint in the description of the defendant's residence. REZA ALI *v.* PURNANAND CHUCKERBUTTY [6 B. L. R., Ap., 84: 14 W. R., 474

20. ———— **Suit for account**—*Principal and agent.*—Discussion as to form of plaint in suits for an account. GOBIND MOHUN CHUCKERBUTTY *v.* SHERIFF I. L. R., 7 Calc., 169: 8 C. L. R., 357

SHOOSHI BHOOSUN PAL *v.* GURU CHURN MOOKHOPADHYA [I. L. R., 7 Calc., 89: 8 C. L. R., 285

21. ———— **Money, Suits for**—*Suits for sums due on taking accounts—Civil Procedure Code, s. 50.*—Under s. 50 of the Code of Civil Procedure (Act XIV of 1882), if a plaintiff seeks the recovery of money, the plaintiff must state the precise amount so far as the case admits; while in a suit for the amount which will be found due on taking unsettled accounts, the plaint need only state approximately the amount sued for. As in the former instance the precise amount, so in the latter the approximate amount stated in the plaint, must be

PLAINT—*continued*

3 FORM AND CONTENTS OF PLAINT —*continued*

taken to be the amount of value of the subject matter of the suit for purposes of jurisdiction KHUSHALCHAND MULCHAND v NAGINDAS MOTI CHAND . I. L. R., 12 Bom., 675

22 ———— **Partnership suit**—*Civil Procedure Code 1877, sch II, form 113*—The plaint in a partnership suit ought to be framed on the lines of form 113 in sch IV of the Code, and the accounts should be taken as prayed in that form RAM CHUNDER SHAHA v MANICK CHUNDER MANIKYA I. L. R., 7 Calc., 428 9 C. L. R., 157

23 ———— *Suit by sole surviving partner to recover partnership debt*—In a suit brought by a sole surviving partner to recover a partnership debt, the plaint if properly framed, ought to allege that the debt of which recovery is prayed was a partnership debt that the deceased partner had died before the suit and that the suit was brought by the plaintiff as surviving partner for his own benefit and that of the estate, but the suit should not be dismissed merely because the plaint did not contain these averments *Jell v Douglas 4 B & Ald 374* GOBIND PRASAD v CHANDAR SEKHAR I. L. R., 9 All., 486

24 ———— **Suit to remove bunds on river**—*Interruption to flow of water*—How a plaint should be framed in a suit for removal of certain bunds which interrupted the plaintiff's right to a flow of water from a river, considered COURT OF WARDS v LILANUND SINGH
[4 B. L. R., Ap., 30 13 W. R., 48

25 ———— **Suit for fishing in tank without permission**—*Suit for damages and trespass*—Where the owner of a tank wishes to bring a suit against a person for fishing in the tank without his permission, the plaint should be framed for the recovery of damages for trespass and should not be based on an alleged dispossession by reason of the defendants fishing in the tank LUKHIMONI DASI v KORUNA KANT MOITRO . 3 C. L. R., 509

26 ———— **Suit to set aside deed of sale**—*Civil Procedure Code, s 50—Inconsistent causes of action—Inconsistency in pleading the suit*—In a suit for cancellation of a sale-deed by the person whose name appeared on it as executant, it was alleged in the plaint that it was a forgery, and that, if it was not a forgery, its execution had been obtained by fraud and that it was moreover, void for want of consideration *Held* that the gist of the plaintiff's charge against the defendant being that she had never executed a sale deed in his favour, and that the document set up by him was a forgery It was not competent to the plaintiff to combine with this charge as an alternative the wholly inconsistent charge that if she did execute the document, no consideration was received by her or that fraud had been practised upon her *Mahomed Buksh Khan v Hosseini Bibi, I. L. R., 15 Calc., 684; L. R., 15 I. A., 81* followed IYYAPPA v RAMALAKSHMAMMA I. L. R., 13 Mad., 549

PLAINT—*continued*

3 FORM AND CONTENTS OF PLAINT —*continued*

27. ———— **Suit for reliefs inconsistent with each other**—*Ground for dismissing suit*—*Held* that the fact that a plaintiff claims in his plaint two alternative reliefs which are inconsistent with each other is no ground in itself for the dismissal of the suit *Iyappa v Ramalakhshmamma I. L. R. 13 Mad., 549*, dissented from *Mahomed Buksh Khan v Husseini Bibi, I. L. R. 15 Calc 684 L. R., 15 I. A., 81* referred to JINO v MANON
[I. L. R., 18 All., 125

(c) PLAINTIFFS

28 ———— **Suit by a firm**—*Per* PEACOCK C J—A suit by a firm should not be brought in the name of the firm, but in the names of the members who constitute the firm PULIN BEHARI SEN v WATSON . B. L. R., Sup Vol., 904
S C POOLIN BEHAREE SEN v WATSON
[9 W. R., 190
GOSSAIN GUNGA DUTT BHARUTEE v DADEE DASS BABOO . 25 W. R., 118

29 ———— **Suit by club**—*Goods supplied to a member—Parties*—An action to recover the price [illegible]

30 ———— **Suit by company**—*Corporation Suit by—Plaintiff, Misdescription of—Civil* [illegible]

company' and the claim made in the plaint was a claim made on behalf of the company It was not suggested that the \ Company was a company authorized to sue or be sued in the name of an officer or trustee, nor was it shown that it was registered as a corporation under s 41 of the Indian Companies Act *Held* that the suit was badly framed and that it should be dismissed CAMPBELL v JACKSON
[I. L. R., 12 Calc., 41

31 ———— *Form of plaint in suit by company in liquidation—Companies Act (VI of 1882) s 144*—*Held* that a plaint in a suit by a bank in liquidation in which the plaintiff was described as "The Official Liquidator, Himalaya Bank, Limited in liquidation," and which was also subscribed and verified in the same terms was not a valid plaint, having regard to the terms of s 144 of the Indian Companies Act 1882 and that the defect could not be cured by amendment *In re Winterbottom, L. R., 18 Q. B. D., 446,* referred to. GHULAM MUHAMMAD v HIMALAYA BANK
[I. L. R. 17 All., 292

32. ———— *Suit by Official Liquidator—Description of plaintiff—Companies Act (VI of 1882), s 144—Civil Procedure Code*

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

s. 53—Amendment of plaint—Limitation Act (XV of 1877), s. 22.—In a suit to recover a debt to a company which had gone into liquidation, the plaintiff was described in the plaint as "The Official Liquidator, Himalaya Bank, Limited, in liquidation," and the plaint was signed and verified in the same terms. On objection taken by the defendant, the plaint was allowed to be amended, but after the period of limitation prescribed for the suit had expired, so as to read "The Himalaya Bank, Limited, in liquidation, plaintiff." *Held* by the Full Bench that the plaint as originally filed was in substantial compliance with the provisions of Act VI of 1882; and that, even if it might be considered that the amendment made was necessary, such amendment did not introduce a new plaintiff into the suit so as to let in the operation of s. 22 of Act XV of 1877. *Ghulam Muhammad* v. *Himalaya Bank, I. L. R., 17 All., 292,* overruled. *In re Winterbottom, L. R., 18 Q. B. D., 446,* distinguished. MUHAMMAD YUSUF *v.* HIMALAYA BANK . . . . **I. L. R., 18 All., 198**

33. ——— *Civil Procedure Code, 1882, s. 435—Company—Corporation—Unincorporated society.*—The corporation contemplated by the Code of Civil Procedure is a corporation as known in English law, that is, a corporation created with the express consent of the sovereign, or of such antiquity that the consent of the Sovereign may be presumed. In a suit by an unregistered and unincorporated society the names of the members of the company must be disclosed. If this is not done and if the society is neither a corporation nor a company authorized to sue or be sued in the name of an officer or of a trustee, so as to make the provisions of the Code of Civil Procedure, s. 435, applicable, the plaint is a bad plaint. *Kylash Chandra Roy* v. *Ellis, 8 W. R., 45; Muhammadan Association of Meerut* v. *Bukhshi Ram, I. L. R., 6 All., 284;* and *Yusuf Beg* v. *The Board of Foreign Missions of the Presbyterian Church of New York, I. L. R., 16 All., 420,* referred to. PANCHAITI AKHARA KALAN UDASI *v.* GAURI KUAR . **I. L. R., 20 All., 167**

34. ——— **Suit on behalf of minor**—*Suit by mother as guardian—Description of plaintiff.*—It is not absolutely necessary for the mother to describe herself as guardian in the plaint, when the suit is evidently brought by her as mother of her minor son. GOONO MONEE DEBIA *v.* RAM KUMOL SANDLE . . . . . **17 W. R., 144**

35. ——— *Description of Plaintiff—Objection to frame of suit.*—In a suit brought on behalf of a minor by his next friend it is not necessary for the next friend to have a certificate under Act XL of 1858, provided he have, in fact, permission of the Court to sue. Where a suit was brought in the name of *A* for self and as guardian of her daughter *B*, a minor, and it was objected that it should have been brought in the names of *A* and of *B*, a minor, by her next friend and guardian,—*Held* that, as no one was misled or injured by the improper form of the plaint, the objection ought not to be held fatal, but the decree must be taken to be in favour of *A* and of *B* suing by *A* as if the suit had been properly framed. ALIM BUKSH FAKIR *v.* JHALO BIBI . . . . **I. L. R., 12 Calc., 48**

36. ——— *Suit by manager of minors' property—Beng. Act IV of 1870.*—A suit brought by minors through the manager of their property as next friend must follow the form prescribed by Bengal Act IV of 1870. JOYRAM LALL MAHTOON *v.* STEWART . . **20 W. R., 453**

37. ——— **Suit against administrator of minor for an account**—*Minors Act (Bombay), XX of 1864—Misconduct.*—A plaint under Act XX of 1864 by a relative of a minor against his administrator must specify one or more facts of misconduct, or assign some satisfactory reason for apprehending an injury to the estate of the minor by the administrator; otherwise it will be held to contain no cause of action. DAMODARDAS MANIKLAL *v.* UTAMARAM MANIKLAL . . **10 Bom., 414**

38. ——— *Suit brought in name of idol of temple.*—A suit relating to property alleged to belong to a temple cannot be in the name of the idol of the temple; the manager is the proper person to be plaintiff in the suit. THAKUR RAGHUNATHJI MAHARAJ *v.* SHAH LAL CHAND . . . **I. L. R., 19 All., 330**

39. ——— **Misdescription of plaintiff**—*Suit for rent.*—Plaintiff sued for rent, describing herself as holding a dar-mirasi jote, and the lower Appellate Court treated that description of her jote as misdescriptive, because the jumma-wasil-baki papers called her a mirasi ijaradar, and other papers showed her to be a dar-mirasi talukhdar. *Held* on special appeal that the misdescription, if there were any, was an utterly insufficient ground for throwing out plaintiff's claim. BHOOBUN MOYEE DASSEE *v.* RUFFICK MUNDLE . . . **17 W. R., 17**

40. ——— *Residence—Civil Procedure Code, 1877, ss. 50-52—Description of defendant.*—To describe the plaintiff as residing in Chitpore Road in the town of Calcutta is not a sufficient description, under s. 50 of the Civil Procedure Code, of his place of abode; nor is it sufficient under that section to describe the defendant as formerly of Calcutta without alleging that the plaintiff has been unable to ascertain his place of residence more definitely. SOLOMON *v.* ABDOOL AZIZ **[4 C. L. R., 366**

(*d*) DEFENDANTS.

41. ——— **Description of defendant**—*Act VIII of 1859, s. 26—Titles of honour.*—Where the Government has recognized a person as having a right to bear particular titles, a plaint in a suit against such person does not contain "the description of the defendant" in accordance with s. 26 of Act VIII of 1859 if such titles are omitted. In such a case the plaintiff should, on the objection

PLAINT—*continued*

3 FORM AND CONTENTS OF PLAINT —*continued*

being taken by the defendant be ordered to amend the plaint, and if such order is not complied with, the plaint should be rejected MAHARAJA OF VIZIANAGRAM v LAKSHMI CHALLAYA
[12 B L R, P C, 443 18 W R, 301

Reversing decision of High Court in SETA RAMA KRISHNA RAYUDAPPA RANGA RAO v VIJAYA RAMA GAJAPATY 3 Mad, 31

42 ———— *Act VIII of 1859, s 26—Title of honour*—The object of s 26 Act VIII of 1859 is to identify the parties to the suit, and where it was clear on the defendant's own admission that the right party was sued, an objection by the defendant that the plaint was bad as it omitted to style him Roy Bahadoor" was overruled KISSEN CHAND GOLACHA v MEGRAJ KUTURIA ROY
[12 B L R, 445 note. 12 W R, 450

43 ———— **Suit against firm**—*Partners*—In an action against a firm the names of the partners should be specified in the plaint and a summons served on one or more of its members if resident within the jurisdiction LEKNATH BABAJI v CHAND KAHANJI 1 Bom, 85

44 ———— **Suit against a corporation or company**—*Act VIII of 1859 s 26*—A plaint described the defendants as *C S* Deputy Agent of the East Indian Railway Company, and *W B L* District Engineer of Rajmehal and Beerbhoom who were made joint defendants. The real defendants were the East Indian Railway Company *Held* the plaint did not contain the description of the defendants under s 26 Act VIII of 1859 The company should be sued in its corporate name RAM DAS SEN v COLLECTOR OF MOORSHEDABAD
[2 B L R, S.N, 6

S C RAM DOSS SEN v STEPHENSON
[10 W. R, 366

NUBEEN CHUNDER PAUL v STEPHENSON
[15 W R, 534

45 ———— *Bom Act III of 1867, s 11—Cantonment committee—Contracts entered into a corporate character—Liability to be sued on such contracts as a corporation*—The plaintiffs sued the Poona Cantonment Committee to recover damages for breach of a conservancy contract The committee was created by rules made by the Local Government under s 11 of Bombay Act III of 1867 The committee ordinarily consisted of certain officials acting *ex officio* It was part of their duty to provide for the management and regulation of public roads, of conservancy, and drainage within the cantonment. They defrayed the expenses of such management out of the cantonment fund placed at their disposal. The defendants contended that the suit was not properly framed and that all the members of the committee should be made parties. *Held* that the suit was properly constituted The rules by which the committee was created did, by implication, though not by express words create the committee a corporation for the purposes of the conservancy of the cantonment It could therefore sue and be sued in its own name on contracts entered into in its corporate character CANTONMENT COMMITTEE POONA v BAB JORJI BAMANJI I L R, 14 Bom, 286

46 ———— **Suit against company**—*Ignorance of names of persons forming company*—In the case of an unincorporated or unregistered company, the plaintiff if he does not know of what persons the company is composed may sue the company by the name under which they are carrying on business stating in his plaint his inability to describe them better KOYLASH CHUNDER ROY v ELLIS
[8 W. R., 45

47 ———— **Suit by Bank for money against executrix**—*Description of parties—Order returning plaint for amendment*—A suit was brought by the manager of M Bank against the executrix of *B* to recover a sum of money as due upon a bond executed by *B* in favour of the Bank The plaint described the defendant as ' Mrs Sarah G Barlow, of Mussoorie " and stated that she was executrix of the deceased *B* The Court of first instance returned the plaint for amendment under s 53 of the Civil Procedure Code because the defendant was not properly described *Held* that this ground failed because it was clear that the defendant was stated to be the executrix of the deceased and the suit was brought against her in that capacity MUSSOORIE BANK v BARLOW I. L. R, 9 All., 188

48 ———— **Liability of the Secretary of a Club in respect of a contract entered into for the benefit of the members of the Club**—*Held* that the secretary of a club could not unless he specially accepted a personal liability, be sued personally, on a contract entered into on behalf of the members of the club by his predecessor in office, nor could the members of a club collectively be sued through their secretary as their representative NORTH WESTERN PROVINCES CLUB v SADULLAH I L. R., 20 All, 497

49 [illegible]

are *Koylash Chunder Roy* v *Ellis* 8 *W R*, 45, considered *North Western Provinces Club* v *Sadullah*, *I L R*, 20 *All.*, 497, followed. GANESHA SINGH v MUNDI FOREST CO I. L. R., 21 All., 346

(*e*) BOUNDARIES

50 ———— **Omission to specify boundaries**—*Suit for land*—A suit to recover land without defining boundaries cannot be maintained because, if decreed the decree could not be executed.

PLAINT—*continued.*

3. FORM AND CONTENTS OF PLAINT —*continued.*

MAHOMED ISMAIL *v.* LALLA DHUNDUR KISHORE NARAIN . . . . . . 25 W. R., 39

51. ———— *Effect of omission on execution of decree.*—The mere omission from the schedule annexed to a plaint of the boundaries of other specifications of land will not exclude from the operation of the decree matters which are by name strictly claimed in the plaint and referred to as such in the decree, and which do not need any further specification. SHIB NARAIN BANERJEE *v.* RAM NARAIN LUSHKUR . . 20 W. R., 142

52. ———— *Want of identification of the land in dispute—Civil Procedure Code (Act XIV of 1882), ss. 53, 54, and 566.*—There is no provision in the Civil Procedure Code authorizing the dismissal of a suit on the ground that the land in dispute, as described in the plaint, cannot be identified, and that therefore the decree will be incapable of execution. KAZEM SHEIK *v.* DANESH SHEIK . . . 1 C. W. N., 574

See RAJNARAIN DAS *v.* SHAMA NANDO DAS CHOWDHRY . . I. L. R., 26 Calc., 845

53. ———— Specification of boundaries—*Suit to prevent infringement of rights over land.*—Where the object of a suit is to prevent the plaintiff's rights over certain lands from being infringed upon, the boundaries of the lands should be given in the plaint. AJOODHIA LALL *v.* GUMANI LALL [2 C. L. R., 134

54. ———— Description of immoveable property—*Civil Procedure Code, 1859, s. 26, cl. 5—Suit for land.*—Under Act VIII of 1859, s. 26, cl. 5, all that it is necessary for plaintiff to do is to describe the property in such a manner as may suffice for identification; it is not absolutely necessary to set forth the boundaries. AFTABOODDEEN *v.* SHUMSOODDEEN MULLICK 18 W. R., 461

55. ———— Description of estate—*Civil Procedure Code, 1859, s. 26, cls. (4) and (5)—Boundaries, Specification of.*—From cls. (4) and (5) of s. 26 of Act VIII of 1859, it would appear that, where a whole estate bearing a name is sued for, the boundaries need not be given. RAMDOYAL KHAN *v.* AJOODHIA RAM KHAN [I. L. R., 2 Calc., 1: 25 W. R., 425

56. ———— Description of property—*Indistinctness of boundaries—Civil Procedure Code, 1859, s. 26.*—The indistinctness of boundaries is, under Act VIII of 1859, not a cause of non-suit. JANOKEE CHOWDHRANEE *v.* DWARKANAUTH CHOWDHRY . . . . 1 Hay, 555

57. ———— Effect of misdescription—*Misdescription of area and boundaries—Suit for enhancement.*—As to the effect of misdescription of area and boundaries in a suit for enhancement of rent. TARINEE CHURN SANNYAL *v.* MOHIMA CHUNDER SHAHA . . . . 22 W. R., 426

58. ———— Procedure on omission to specify boundaries—*Amending plaint.*—In a suit in which the plaintiff claimed several plots of land, but did not specify the boundaries in respect of one of them, it was held that the proper course was for the Court to call upon the plaintiff to amend his plaint. JONAB ALI MOLLAH *v.* GOLAM ASSAD CHOWDHRY . . . . 21 W. R., 187

59. ———— Procedure in case of irregularity in form of plaint—*Civil Procedure Code 1859, s. 26, cl. 5—Amendment of plaint.*—If a plaint be drawn not in accordance with the provisions of cl. 5, s. 26, Act VIII of 1859, the plaintiff ought to be allowed to amend the plaint without the suit being at once dismissed. BISSUNDEN NARAIN SHAHEE *v.* GUNGERKISSEN SHAHEE . . 2 Hay, 351

60. ———— Contents of plaint—*Civil Procedure Code, 1859, ss. 26, 27.*—Under s. 26, Act VIII of 1859, the plaint is intended to be a statement of facts, and not merely a prayer for relief. The words "cause of action" in that section, as distinguished from the "relief sought for" and the "subject of the claim," mean the grounds entitling the plaintiff to the remedy he seeks. HUROCHURN DOSS *v.* HAZAREEMULL . 1 Ind. Jur., O. S., 12

61. ———— Suit for breach of contract—*Sale and delivery of goods—Omission to allege readiness and willingness to pay on delivery.*—In a suit by the plaintiffs to recover damages from the defendant, a surety upon a contract to deliver coffee to the plaintiffs, the plaint did not allege the willingness of the plaintiff to pay on delivery. *Held* on special appeal that such allegation was no necessary, its absence not having prejudiced the defendant. PIERCE *v.* OPENDRA SHETTI GANAPATHY [7 Mad., 364

62. ———— Suit for contribution—*Requisites of claim.*—A claim for contribution should distinctly set forth the amounts due by each party sued, failing which the plaint should be rejected. BHOLANATH CHATTERJEE *v.* INDER CHAND DOOGUR [14 W. R., 373

(*f*) SPECIAL CASES.

63. ———— Suit for damages for tort—*Rules of English law.*—Plaints must state the relief sought for, the subject of the claim, the cause of action, and when it accrued; and in suits for damages for injury done, the nature of the injury ought to be set out. The strict rules of English law do not necessarily apply to plaints in this country. MOHESH CHUNDER MOOKERJEE *v* RAMDHUN PAL [13 W. R., 248

In every such plaint, plaintiff should name the amount of damages which he seeks to recover as compensation for the injury of which he complains. GIRDHARLAL DAYALDAS *v.* JAGANNATH GIRDHARBHAI . . . . . . 10 Bom., 182

64. ———— Suit for declaration of title and to have sale set aside—*Amendment of plaint.*—Where a person, by right of inheritance,

PLAINT—*continued.*

3 FORM AND CONTENTS OF PLAINT —*concluded*

sued for a declaration of his title to a share in a certain sum of money to which the defendants laid claim, and the defendants met that allegation by setting up a sale which the plaintiff admitted,—*Held* that the plaintiff was bound to mention in his plaint the fact that he had parted with his title, and to allege the particular circumstances—misrepresentation, undervalue, or fraud—on which he relies to have the sale set aside, also that the cause of action arose at some time within the period of limitation applicable to the case. If sufficient cause exists the Court may require the plaintiff to amend the plaint AZIMUDIN KHAN v ZIA-UL NISSA

[I. L. R, 6 Bom., 309

65 ——— Suit for possession and mesne profits—*Question raised in plaint* —In a

CHARLA SURYA NARAYANA v NADIMINTI BHAGAVAT PATANJALI SHASTRI . 3 Mad., 120

66 ——— Suit for redemption of mortgage—*Title, Existence and proof of—Limi-*

Bom, 137, and other cases referred to PARMANUND MISR v SAHIB ALI I. L. R., 11 All., 438

4 VERIFICATION AND SIGNATURE

67. ——— Inability to verify—*Civil Procedure Code, 1859, s 28*—Generally plaints should be verified by the plaintiff The exception under s 28, Act VIII of 1859, in favour of persons unable to verify should be separately pleaded and considered in each case IN THE MATTER OF THE PETITION OF MUHESSUR BUKSH SINGH

[5 W. R, Mis, 33

68 ——— Ground for not verifying

statements are subscribed and verified by the parties in person, except when unable to do so by reason of absence or other good cause, when they may be allowed to be subscribed and verified by competent persons only KEENOO SINGH ROY v ESHAN CHUNDER ROY

[6 W R., 213

69 ——— *Duty of Court on presentation of plaint* —A Court ought never to allow a person other than the plaintiff to verify the plaint, save strictly under the exception which the law permits —namely, where the plaintiff, by reason of absence or other good cause, is unable to subscribe it (see Act VIII of 1859, s 28) Whenever the plaint is not presented by the plaintiff in person, the Court should satisfy itself that the verification is actually signed by the plaintiff. NURSING DEB v RAM MOHUN MOOKERJEE Marsh., 176

RAM MOHUN MOOKERJEE v NURSING DEB

[W R., F B, 54 1 Ind. Jur, O S, 63
1 Hay, 379

70. ——— *Discretion of Court—Civil Procedure Code, 1859, s 28* —When an application is made to a Court to permit a plaint to be subscribed and verified on behalf of the plaintiff by a person other than the plaintiff, the Court must exercise the power vested in it by s 28, Act VIII of 1859, and must decide whether or not the plaintiff, by reason of absence or other good cause is unable to subscribe and verify the plaint himself MOHESSUR BUKSH SINGH v SHEO NARAIN SINGH

[6 W. R, Mis, 50

71. ——— *Absence on other good ground* —A plaintiff may be excused from verifying his plaint, not only by reason of his absence, but also for any other good cause to the satisfaction of the Court IN THE MATTER OF THE PETITION OF LEELA NUND SINGH . . . . 7 W. R., 168

73 ——— Improper verification—*Plaint alleging matter not personally known* —Where the plaint alleges matter which cannot be personally known to the person making the verification, and which is not stated to be information and belief, a verification which does not distinguish how

PLAINT—*continued.*

4. VERIFICATION AND SIGNATURE —*continued.*

much is true to the knowledge of the person making it, and what is alleged to be true on information and belief, does not fulfil the requirements of s. 52, Act X of 1887. SOLOMON *v.* ABDOOL AZIZ [4 C. L. R., 366

74. ——— Personal knowledge of facts —*Information and belief—Personal knowledge—Civil Procedure Code (Act X of 1877), ss. 50, 51—Act XII of 1879, s. 11.*—In all cases, whether a plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowedge, and what paragraphs he believes to be true from the information of others. IN THE MATTER OF UPENDRO LALL BOSE I. L. R., 6 Calc., 675: 7 C. L. R., 413

75. ——— *Civil Procedure Code, s. 52—Form of verification of plaint.*—In order to constitute a proper verification of a plaint within the meaning of s. 52 of the Code of Civil Procedure, it is necessary for the person verifying, if all the facts are within his knowledge, to state distinctly that they are to his knowledge true; and if he has knowledge as to some and only information and belief as to others, to state to which he speaks from his knowledge and to which from his information and belief. A verification in the form—"To the limit (or extent) of my knowledge the purport of this is true," is not such a verification as satisfies the requirements of s. 52 of the Code. *In the matter of Upendro Lal Bose, I. L. R., 6 Calc., 675,* referred to. GIRDHARI *v.* KANHAIYA LAL I. L. R., 15 All., 59

76. ——— *Allegation of fraud—Practice.*—In a case where the plaintiffs set up gross fraud, and where the case depends mainly upon the personal knowledge of the plaintiffs, it is imperative on the plaintiffs, or one of them, to verify the plaint. PROTAP CHUNDER BANERJEE *v.* KRISHTO KISHORE SHAHA . . I. L. R., 8 Calc., 885

See JARDINE, SKINNER & CO. *v.* SHURNOMOYEE [24 W. R., 215

77. ——— *Allegation of fraud.*—Where a plaint contained numerous allegations of fraud some of which must have been true or false to the plaintiff's own knowledge, and was signed and verified on the plaintiff's behalf by his general attorney,—*Held* that the defendants must reasonably require the plaintiff to subscribe and verify the plaint himself, and that he should so subscribe and verify. RAJAH OF TOMKUHI *v.* BRAIDWOOD [I. L. R., 9 All., 505

78. ——— Effect of non-verification by real plaintiff—*Benami mortgage.*—In a suit for possession after foreclosure, defendants urged that *C* (and not *A* and *B*, the plaintiffs) was the actual mortgagee. This was denied by *A* and *B*, who obtained a decree. In a subsequent suit brought by the representatives of *A* and *B* for mesne profits, they, in conjunction with *C*, urged that *C* was the real mortgagee, and *C* was made a co-plaintiff, but he did not verify the plaint. A decree was given for mesne profits in favour of *C*, the plaintiff. *Held* that the fact that *C* had not verified the plaint was no sufficient ground for dismissing the suit. ROY MOHANLALL MITTRA *v.* BISHNU CHUNDRA CHATTERJEE . . . . 1 B. L. R., A. C., 100

S. C. ROY MOHUN LALL MITTER *v.* BUHOO SOONDUREE DEBIA . . . . . 10 W. R., 145

79. ——— Partners—*Suit by firm.*—Where the plaintiffs described themselves as lately carrying on business under the name of *C & Co.*,—*Held* that there was no irregularity in the plaint being signed by *C & Co.* and verified only by *A B*, one of the partners. LACHLAN *v.* ABDULLA [5 B. L. R., Ap., 89

80. ——— *Signature by one partner of the firm—Act VIII of 1859, s. 27—Practice.*—By the practice of the Court, in a suit brought by a firm, one partner can, without having obtained special leave, verify the plaint on his own behalf and also on behalf of his co-partners. *Quære*—Whether such a practice is correct, or ought to be allowed to continue. RAMCHUNDER *v.* CHOONEE LALL . . . . . . 12 B. L. R., 35

81. ——— False verification—*Verification by mooktear—Civil Procedure Code, 1859, s. 24.*—The verification of a plaint signed with the name of the plaintiff by her mooktear, and which does not aver what is false, but attempts to do what the law estops her from doing, is not a false verification within the meaning of s. 24, Act VIII of 1859. ROSHUN JEHAN *v.* ENAYET HOSSEIN [W. R., F. B., 41: Marsh., 127 1 Ind. Jur., O. S., 44

82. ——— Subscription by agent—*Civil Procedure Code, 1877, s. 51.*—Under s. 51 of the Code of Civil Procedure (Act X of 1877), the Court may in its discretion admit a plaint which has been subscribed by an authorized agent of the plaintiff. SURNOMOYEE *v.* POOLIN BEHARY MUNDUL [3 C. L. R., 15

83. ——— *Civil Procedure Code, 1877, ss. 36, 51.*—S. 36, read along with s. 51, of the Code of Civil Procedure (Act X of 1877) shows that a plaint which may be presented by an authorized agent may in like manner be subscribed by him, and that subscription would be a compliance with s. 51. DHUNPUT SINGH BAHADOOR *v.* JHOOMUK KHAWAS [3 C. L. R., 579

84. ——— Signature and verification by agent—*Civil Procedure Code (X of 1877 as amended by Act XII of 1879), ss. 51 and 52.*—A plaint, signed by a person holding a general power-of-attorney to sue on behalf of the plaintiff, is properly signed within the meaning of the proviso in s. 51 of the amended Civil Procedure Code. The Court must be satisfied, under s. 52, that a person, other than the plaintiff, verifying the plaint, is acquainted with the facts of the case; but in the case of a person holding a general power-of-attorney, or of any other recognized

PLAINT—*continued.*

4. VERIFICATION AND SIGNATURE —*continued.*

agent, the Court will not insist on any extreme stringency of proof. S. 52 does not require the veri-

I. L. R., 1 Bom., 4..

85. ——————— *Plaint signed and verified by the pleader of the guardian—Right of the minor to sue for possession in Mamlatdar's Court.*—A minor may sue or be sued in a Mamlatdar's

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her could sign and verify the plaint. SAIFULLA v. HAJI MIYA . . . I. L. R., 24 Bom., 238

86. ——— **Verification by unauthorized person**—*Removal from file—Practice.*—When a plaint has been verified by a person who has not shown to the Court that he is a person competent to verify it, the Court will order the plaint to be removed from the file. OVEREND, GURNEY & Co. v. STEELE . . . 1 Ind. Jur., N. S., 39

87. ——— **Irregular verification**—

88. ——— **False verification**—*Waiver of objection.*—A case having come on for hearing, the verification of the plaint was found to be false. Upon this plaintiff applied to withdraw the suit with permission to bring a fresh suit. The Munsif rejected the application and dismissed the suit with costs. *Held* that, as the defendant had filed a written statement and had not objected to the verification, it was

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89. ——— **Objection to verification**—*Verification of plaint by agent.*—It is not competent

GHOSSAL v. SUROOP CHUNDER DOSS [12 W. R., 465

PLAINT—*continued.*

4. VERIFICATION AND SIGNATURE —*continued.*

90. ——— **Signature of plaint by one of several co-plaintiffs**—*Parties named as co-plaintiffs—Civil Procedure Code (XIV of 1882), ss. 30 and 34—Limitation.*—It is not necessary that all the persons named in the plaint as co-plaintiffs

by limitation) that one of these joint creditors should be added as a co-plaintiff, as if he had not been on the record already. *Held* that all the joint creditors became plaintiffs when the plaints were filed, the

91. ——— **Sufficiency of verification**—*Civil Procedure Code, s. 53.*—A suit was brought by the manager of the M Bank against the executrix of *B* to recover a sum of money as due upon a bond executed by *B* in favour of the Bank. The plaint began thus: "George Henry Webb, Manager of the abovenamed plaintiff's business, states as follows," and

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ted, G. H. Webb, manager." The Court of first instance returned the plaint for amendment under

essential should be concisely and clearly set out, and that the verification should be made by some one acquainted with these facts. MUSSOORIE BANK v. BARLOW . . . I. L. R., 9 All., 188

92. ——— **Verification of plaint by acting manager**—*Civil Procedure Code, 1882, ss. 51 and 435—Principal officer of a Corporation or Company.*—The Manager at Lucknow of the local

Bank to be its attorney in Lucknow, and ... express authority to the person so empowered to sue for debts due to the Bank. The accountant conducted, under this power, the chief business of the branch, and, while he was so conducting it, this suit was instituted

PLAINT—*continued.*

4. VERIFICATION AND SIGNATURE —*continued.*

against defendants, of whom some objected that he was not authorized to sign and verify the plaint. *Held* that s. 51, Civil Procedure Code, regulating proceedings by or on behalf of ordinary plaintiffs, did not apply, but that s. 435 was applicable, the acting manager appointed as abovementioned being a principal officer of the Bank Corporation within the meaning of that section. DELHI AND LONDON BANK *v.* OLDHAM . . . I. L. R., 21 Calc., 60 [L. R., 20 I. A., 139

93. ——— — **Suit by agent of an unincorporated society**—*Civil Procedure Code (1882), s. 435—Corporation.*—A suit in ejectment as against a trespasser was brought by a person signing the plaint as "for and as Superintendent and Principal Officer of the Estate of the Board of Foreign Missions of the Presbyterian Church of New York." The plaintiff was not shown to be a member of the Board, nor did he set up any possessory title of his own. *Held* that, inasmuch as the Board of Foreign Missions of the Presbyterian Church of New York was not a corporation or company authorized to sue and be sued in the name of an officer or trustee within the meaning of s. 435 of the Code of Civil Procedure, and also as the person signing the plaint in the manner above described did not profess to be suing on his own possessory title to the land in respect of which ejectment was claimed, the suit must be dismissed. *Jaigopal* v. *Kauleshar Roy, Weekly Notes, All. (1882), 132*; *Muhammed Yusuf* v. *Sukhnath, Weekly Notes, All. (1887), 55*; and *Asher* v. *Whitlock, L. R., 1 Q. B., 1*, distinguished. YUSUF BEG *v.* BOARD OF FOREIGN MISSIONS OF THE PRESBYTERIAN CHURCH OF NEW YORK IN AMERICA I. L. R., 16 All., 420

94. ——— - **Result of defective verification**—*Amendment—Procedure—Civil Procedure Code (1882), ss. 52, 53, and 578—Irregularity not affecting merits.*—If the verification of a plaint is discovered to be defective at any time whilst the suit is before the Court of first instance, the plaint may be amended by the Court. If such defect be not discovered until the suit comes on appeal before an Appellate Court, such Court may, if it thinks fit, return the plaint to the Court of first instance to be amended by it. But where the defect is such that it is covered by the provisions of s. 578 of the Code of Civil Procedure, there is no necessity for the Appellate Court to take any steps to procure the amendment of the plaint. In any event, a defect in the verification of a plaint will not of necessity result in the dismissal of the suit. *Balgobind Das* v. *Ganno Bibi, Weekly Notes, All. (1896), 75*, referred to. A plaint filed by three joint plaintiffs was verified by each in the form: "The contents of the petition of plaint are true to the best of my knowledge and belief." *Held* that this form of verification, though not free from ambiguity, was in substantial compliance with the provisions of s. 52 of the Code of Civil Procedure. RAJIT RAM *v* KATESAR NATH I. L. R., 18 All., 396

95. ——— **Plaint verified when in an incomplete state**—*Amendment of plaint to correct defective verification.*—The substantial portion of a plaint, consisting of the statement of the claim of the plaintiffs and the prayer, was written upon two sheets of plain paper and verified by the plaintiffs. Subsequently to the affixing of the plaintiff's signatures, a front sheet, consisting of a piece of stamped paper with the name of the Court and the names and addresses of the parties, was added, and the plaint thus composed filed in Court. *Held* that the verification was defective, but that the suit ought not to have been dismissed. The plaintiffs ought to have been allowed an opportunity of amending the plaint by making a proper verification. FATEH CHAND *v.* MANSAB RAI . . I. L. R., 20 All., 442

GANGA SAHAI *v.* MUHAMMAD ALI JAN KHAN [I. L. R., 20 All., 444 note

FAKIR CHAND *v.* MUHESH DAS [I. L. R., 20 All., 445 note

96. ——— **Plaint not signed by plaintiff or his authorized agent**—*Effect of such want of signature—Civil Procedure Code, 1882, ss. 51, 578.*—The mere fact that the plaint in a suit has not been signed by the plaintiff named therein or by any person duly authorized by him in that behalf as required by s. 51 of the Code of Civil Procedure will not necessarily make the plaint absolutely void. A defect in the signature of the plaint, or the absence of signature, where it appears that the suit was in fact filed with the knowledge and by the authority of the plaintiff named therein, may be waived by the defendant, or, if necessary, cured by amendment at any stage of the suit, and having regard to s. 578 of the Code of Civil Procedure, is not a ground for interference in appeal. *Rajit Ram* v. *Katesar Nath, I. L. R., 18 All., 396*, and *Mohini Mohun Das* v. *Bangsi Buddan Saha Das, I. L. R., 17 Calc., 580*, referred to. *Marghub Ahmad* v. *Nihal Ahmad, Weekly Notes, All., 1899, 55*, overruled. *Mahabir Prashad* v. *Wahid Alam, Weekly Notes, All. (1891), 152*, distinguished. *Katesar Nath* v. *Aggyan, Weekly Notes, All. (1894), 95*, and *Badri Prasad* v. *Bhagwati Dhar, I. L. R., 16 All., 240*, discussed. BASDEO *v.* SMIDT I. L. R., 22 All., 55

5. AMENDMENT OF PLAINT.

97. ——— - **Power to amend**—*Appellate Court.*—A plaint cannot be amended in an Appellate Court. ABDUL GUFFOOR *v.* NUR BANU [1 B. L. R., A. C., 78: 10 W. R., 111

98. ——— *Appellate Court —Objection to plaint.*—An Appellate Court is competent at any stage to allow objections to be taken to an apparent defect in the plaint. COLVIN, COWIE, *v.* ELIAS 2 B. L. R., A. C., 212: 11 W. R., 40

99. ——— *Act VIII of 1859.*—The Court has power to amend a plaint after it has been filed, although no express power to do so is given by Act VIII of 1859. Under Act VIII of

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

1859, the Court has power to make all such amendments, first in the plaint and afterwards in the issues, as may be necessary, in order to bring about a fair and proper trial of the matter which the plaintiff comes into Court to have tried GABIND CHANDRA DUTT *v* GANGA DHYE NALIT MOHUN DAS *v* GANGA DHYE . . . . 7 B L. R., 333

SAHIJI KESRAJI *v* RAJSANGJI JALMSANGJI [2 Bom, 169: 2nd Ed., 162

100. ———— *Civil Procedure Code (Act XIV of 1882), ss 42, 45, and 53 —*

fere with this SARAL CHAND MITTER *v* MOHUN BIBI . . I. L R., 25 Calc, 371 [2 C. W. N., 18, 201

101. ———— *Discretion of Judge—Code of Civil Procedure, 1882, s. 53* —The

show that the amendment does not alter the character of the suit TAPIRAM *v* SADU [I. L R., 21 Bom, 570

102 ———— *Civil Procedure Code, s 53—Limitation—Area of property claimed in suit for pre emption described is less than the true area* —A Court is not precluded from

covered that the property in suit had been described

was made, the limitation for the suit had expired *Held* also that such misdescription would not render the suit liable to the objection that the plaintiff had sought to pre-empt only a part of the property sold BARKAT UN NISSA *v* MUHAMMAD ASAD ALI [I. L R, 17 All., 288

103 ———— Right to amend—*Altering case in appeal* —A plaintiff was not allowed to alter his case on second appeal DASSORATHY HURI CHUNDER MAHAPATTRA *v* RAMKRISHNA JANA [I. L. R, 9 Calc., 526 13 C L. R., 114

104 ———— *Ground for amendment—Amendment at final hearing* —*Semble* —A defect which appears on the face of the plaint, which would have rendered it inadmissible, is not a matter for amendment at the final hearing of the suit RAMASAMI AYYAN *v* RAMU MUPAN [3 Mad., 372

PLAINT—*continued.*

5 AMENDMENT OF PLAINT—*continued*

105 ———— *Application to amend with reference to objection taken at filing of plaint* —A plaint may be amended upon subsequent application, with reference to an objection taken when it was filed. TOULTON *v*. GWYTHER [Bourke, O C, 273

106. ———— Time for amendment—*Amendment after settlement of issues* —Amendment of a plaint is not allowable after issues are fixed AMUR NARAIN *alias* NERPUT SUHAYE *v*. RUGHOOBUNSEE KOONWUR . 5 W. R., 234

107. ———— *Civil Procedure Code, 1877, s 53—Amendment subsequently to first hearing* —The words in paragraph 1 of s. 53 of the Code of Civil Procedure (Act X of 1877) "at or before the first hearing" are merely directory and

Code (Act X of 1877) did not preclude the Court from permitting the amendment to be made MOHED *v* DONGRE I. L. R, 5 Bom., 609

108 ———— *Amendment after return for amendment in fixed time—Civil Procedure Code, 1877, s 53* —*Semble*—That where at the first hearing of a suit the plaint is returned for amendment within a fixed time under the provisions of s 53 of Act X of 1877, and it is amended accordingly, it cannot afterwards be again returned for amendment. BADR UN-NISSA *v* MUHAMMAD JAN . I. L R, 2 All., 671

109 ———— *Civil Procedure Code, 1882, s 53—Practice—Amendment of plaint at a date subsequent to first hearing* —

Dongre, I. L. R., 5 Bom., 609, dissented from *Soorjmukhi Koer's case, I. L. R, 2 Calc 272* *Buryore v Bhagana, I. L R., 10 Calc. 557 L. R, 11 I A, 7*, and *Fazal-un nissa Begam v Mulo, I L. R., 6 All, 250*, distinguished by MAHMOOD, J *Per* MAHMOOD, J —The plaint may, for causes other than those mentioned in s 53, be amended by the Court after the first hearing DAMODAR DA GOKAL CHAND [I. L R., 7 All, 79

110 ———— *Civil Procedure Code (XIV of 1882), s. 54—Leave obtained to amend plaint within a certain time—Failure to amend within time allowed—Application for*

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

extension of time originally allowed.—On the 6th April 1891 the plaintiffs obtained an order giving them leave to amend the plaint and proceedings in the suit. By the order this amendment was to be made on or before the 30th April 1891. On the 18th August 1891 the plaintiffs obtained a summons calling on the defendants to show cause why the time allowed for amendment should not be extended for a month, and why the hearing of the suit should not be postponed. *Held,* making the summons absolute, that although the time originally fixed for amendment had expired, the Judge had a discretion to extend the time, and that under the circumstances the plaintiffs were entitled to the order asked for. BHAGWANDAS BAGLA *v.* ABU AHMED

[I. L. R., 16 Bom., 263

111. ——— **Mode of amendment**—*Alteration of plaintiff's case.*—The Court is not to make a case for a plaintiff which he has not made for himself. PROSUNNO CHUNDER BANERJEE *v.* GOUREE DASS BHUTTACHARJEE . . . . **7 W. R., 478**

112. ——— *Alteration of plaintiff's case—Variance between pleading and proof.—Semble*—The Court will not add an issue or amend the plaint so as to raise a wholly different question to that upon which the parties have come into Court. BIZJIE BIBEE *v.* MONOHUR DOSS

[2 Ind. Jur., N. S., 118

See NEHORA ROY *v.* RADHA PERSHAD SINGH

[I. L. R., 5 Calc., 64 : 4 C. L. R., 353

113. ——— *Allowing new cause of action—Civil Procedure Code, 1859, ss. 29 and 31.*—Ss. 29 and 31 of the Civil Procedure Code empower the Court to permit such amendment in the plaint as may enable the Court to give relief in respect of the wrong originally complained of, but not to allow totally new causes of action to be added by a supplemental plaint. RAILOO MULL *v.* NANUK

[1 N. W., 171 : Ed. 1873, 250

114. ——— **Ground for amendment**—*Insufficient disclosure of cause of action.*—Where the plaint does not sufficiently disclose the cause of action, and a cause of action exists, the plaintiff should have been allowed to amend it under s. 32, Code of Civil Procedure, 1859; not being so allowed, he is at liberty to prove any cause of action which is not inconsistent with the plaint. LUCKHEE PREA DEBIA *v.* BRINDABUN DEY . . **12 W. R., 313**

115. ——— *Misstatement of cause of action.*—The plaintiff, having failed in an application under s. 441 of the Penal Code, brought a suit in a Civil Court for possession and for the demolition of a wall or fence put up by the defendant, dating his cause of action from his failure in the Criminal Court. In the Court of first instance, he obtained a decree for possession. The Judge on appeal dismissed the plaintiff's suit on the ground that he had no power to set aside a Magistrate's order under the law cited. *Held* that, if the Judge was of opinion that the plaintiff had misstated his cause of action, he ought to have directed him to amend his plaint. DABOO JHA *v.* LUWA JHA . **11 W. R., 223**

116. ——— *Rejection of plaint for prolixity—Civil Procedure Code, 1859, s. 29.*—If a plaint not only asks for relief which a Court can afford, but seeks to open up matters already adjudicated upon in another suit, the Judge (instead of rejecting the plaint for prolixity under s. 29) should entertain the suit and adjudicate upon the matters not adjudicated upon in the former suit, amending the plaint by striking out the issues relating to the matters adjudicated upon. ROSUN JEHAN *v.* ENAYUT HOSSEIN

[W. R., F. B., 41 : Marsh., 127 : 1 Ind. Jur., O. S., 44 : 1 Hay, 269

117. ——— *Civil Procedure Code, s. 53—Alteration of the relief prayed for.*—The restriction as to amendment of a plaint is only as to the nature of the suit: the law prohibits any such amendment as would change the fundamental character of a suit, but an alteration in the relief does not change the character of a suit. Where a purchaser of a mortgage-bond at a sale in execution of decree sued to enforce the bond, but did not pray for sale of the mortgaged property,—*Held* that he might properly have been allowed to amend his plaint and add a prayer for that relief. KASINATH DAS *v.* SADASIV PATNAIK

[I. L. R., 20 Calc., 805

118. ——— *Amendment transforming claim—Suit for rent converted into suit for ejectment—Variance between pleading and proof—Civil Procedure Code, ss. 53 and 562.*—An amendment of a plaint which materially transforms the nature of the claim cannot be made under s. 53 of the Civil Procedure Code, and certainly not in appeal. S. 53 permits amendment of the plaint before judgment, and not after. The larger powers conferred on Appellate Courts by s. 562 do not authorize such a material transformation of a suit in appeal. BAI SHRI MAJIRAJBA *v.* MAGANLAL BHAISHANKAR . . **I. L. R., 19 Bom., 303**

119. ——— **Altering character of suit**—*Civil Procedure Code, 1877, s. 53—Adding prayer for possession to suit for declaration of title.*—S. 53 of the Civil Procedure Code, which provides that a plaint cannot be amended so as to convert a suit of one character into a suit of another and inconsistent character, does not prevent a plaintiff who has been ousted after suit brought for declaration of title, from amending his plaint by adding a prayer for possession. MELLUS *v.* VICAR APOSTOLIC OF MALABAR . **I. L. R., 2 Mad., 295**

120. ——— *Suit for possession and mesne profits—Resumption.*—Where in the plaint the relief sought for was possession and mesne profits, and the plaint was in the course of the suit amended, and an additional stamp paid so that the suit became one for resumption,—*Held* the amendment was improperly made, and the suit must proceed

PLAINT—*continued*

5. AMENDMENT OF PLAINT—*continued*

as a suit for possession and mesne profits GOBINDO MAHAPATRO *v* GOPEENATH PUNDIT

[B L R, Sup Vol, 581: 6 W R, 211

121 ——— *Suit by manager*

part of the minors JOYRAM LALL MAHTOON *v* STEWART . 20 W. R, 453

122 ——— *Suit on mortgage payable on demand—Amendment of suit for interest by making it one for account.*—Where a mortgage debt is payable on demand, the suit ought to be brought not for interest only, but for an account and payment of what remains due on the mortgage for principal and interest up to the filing of the plaint This amendment was allowed in this case ANNAPA *v* GANPATI I L R, 5 Bom, 181

123 ——— *Civil Procedure Code, 1877, s 53—Suit for restoration of land to its former condition—Suit for declaration of right*—By the amendment of the plaint a suit for the restoration of a bond which it was alleged the

the use of the water, by way of easement *Held* that the alteration in the plaint was a material one FARZAND ALI *v* YUSUF ALI I L R, 2 All, 669

124. ——— Plaintiff asking for relief he is not entitled to—*Suit for enhancement*—

KARTT . . 10 W R, 383

125 ——— Giving plaintiff more relief than he prays for—*Suit for redemption*—The Court should not give the plaintiff more than he claims in his plaint, therefore where a mortgagor brings a suit to redeem mortgaged land on payment of such sum as shall be found due to the mortgagee, the Court is not justified in decreeing possession without payment in favour of the mortgagor, merely because the mortgagee denies the existence of the mortgage DADA VALAD VALLI *v* BAVASHA VALAD KASAM . . . . 6 Bom, A C, 9

126 ——— Amendment by Appellate Court—*Omission of lower Court to return plaint for misjoinder*—When a plea of misjoinder has been allowed and the suit decided and an appeal

dissented from LINGAMMAL *v* CHINNA VENKATAMMAL . I L. R., 6 Mad., 239

127 ——— Amendment of plaint—*Civil Procedure Code, 1882, s 54—Multifarious suit—Malabar law—Stanom*—A suit was brought by the junior members of a tarwad which consisted of three stanoms and three tavaries against the karnavan and others including certain persons to whom he had alienated some tarwad property The plaint as originally framed prayed (1) for the removal of the karnavan, (2) for a declaration that defendants Nos 2 to 8, the senior anandravans had forfeited their right of succession to him, (3) for the appointment of the plaintiff in his place, (4) for a declaration that his alienations were invalid as against the tarwad, and (5) for possession of the property alienated Subsequently the plaint was amended by the order of the Court by striking out items 2 and 5 of the prayer, and finally the plaintiffs further amended the plaint and sued only for a declaration that the alienations in question were invalid The lower Court passed the declaratory decree prayed for *Held* that the lower Court was wrong in allowing the plaint to be amended after the first hearing because the case on which the decree was passed was essentially different from that disclosed in the plaint; and that the appeal must be allowed accordingly MAHOMED *v* KRISHNAN I. L. R., 11 Mad., 106

promissory notes, and the defendant was afterwards allowed to come in and defend and written statements were filed, and the plaintiff's written statement set out all the facts under which the notes were give , it was found that the items of the account were not properly in issue The Court allowed the plaint to be amended and an issue to be framed as to the amount due in respect of the consideration for the note JOSEPH *v* SOLANO

[9 B L. R., 441: 18 W. R., 424

129 ——— Suit for breach of contract—*Variance between pleading and proof.*—The plaint alleged a contract to deliver on the 2nd March, and the evidence showed an extension of time to the 31st March, but the pleading alleged that the breach was on 2nd March *Held* that an amendment might be allowed as the defendant would not be prejudiced thereby, he having been perfectly aware of the case he had to meet on this point. PIERCE *v* OPENDRA SHETTI GANAPATHY . 7 Mad., 364

130. ——— *Variance between pleading and proof—Relief in respect of tort*—The plaintiff sued the defendant, overseer of or for the municipal office, for the recovery of money due on a contract under which the plaintiff had done

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

certain work, the defendant contracting for the municipality, and for the performance of work known by the plaintiff to be municipal work. The municipality ignored the contract, and the Court held the defendant could not be made personally liable. *Held* that the plaintiff could not be allowed to amend his plaint so as to make the defendant liable in tort for misrepresentation of his authority. MODHOOSOODUN DEY *v.* MOHENDRONATH MOOKERJEE

[9 W. R., 206

131. ———— Plaint disclosing no cause of action—*Contract Act, s. 22— Wagering contract — Suit to recover deposit paid on such contract—Bom. Act III of 1865, s. 1—Deceit— Unilateral mistake.*—On the 21st of January 1883 the plaintiff contracted to purchase from the defendant the right to receive dividend on 50 shares of the Empress Mill at R37 per share, the plaintiff being under an impression that the dividend was to be declared on some subsequent day. The plaintiff deposited R100 with the defendant as part payment of the purchase-money. Subsequently it was ascertained that the dividend had been already declared on 17th January 1883 (*i.e.,* four days before the contract) at R25. The plaintiff thereupon sued the defendant to have the contract declared cancelled, and sought to recover the deposit of R100, with interest. The Judge of the Court of Small Causes at Broach, being of opinion that the contract was in its nature a sutta or wagering contract, rejected the plaintiff's claim. The plaintiff applied to the High Court, under its extraordinary jurisdiction, to set aside the lower Court's decision. *Held* that, in the first instance, the plaint, as framed, not disclosing any cause of action, ought to have been returned for amendment. It should either have alleged a mistake common to both parties to the contract, or should have contained an allegation of fraud, on the defendant's part, inducing the plaintiff to enter into the agreement. The mere circumstance that the contract was "caused by one of the parties to it being under a mistake as to a matter of fact" would not, under s. 22 of the Contract Act (IX of 1872), have made the contract voidable. The High Court reversed the lower Court's decision in order that the plaintiff might be given an opportunity to amend his plaint so as to show that his action was one for deceit. DAYABHAI TRIBHOVANDAS *v.* LAKHMICHAND PANACHAND . . I. L. R., 9 Bom., 358

132. ———— Suit for pre-emption—*Right to relief on different ground from that relied on—Raising new issue – Pre-emption.*—Where a plaintiff claimed in his plaint a right of pre-emption as co-partner of the vendor,—*Held* that he could not be entitled to a decree on the ground of vicinage. KUNJABEHARI LAL *v.* GIRIDHARI LAL

[1 B. L. R., S. N., 12; 10 W. R., 189

SHIU SUHAI MULLICK *v.* LALA HARI SUHAI SING

[3 B. L. R., Ap., 142

133. ———— *Conditional decree.*—Where the plaintiff in a suit to enforce the right of pre-emption sued alleging that the actual price of the property was not the price entered in the sale-deed, but a smaller price, and claimed the property on payment of such smaller price, and did not allege in his plaint that he was ready and willing to pay any price which the Court might find to be the actual price, and on the day that his suit was finally disposed of presented an application to the Court stating that he was ready and willing to do so,—*Held* that the Court was not bound to allow him to amend his plaint and bring into Court the larger sum. DURGA PRASAD *v.* NAWAZISH ALI

[I. L. R., 1 All., 591

134. ———— *Alteration of claim on appeal—Special agreement—Custom.*—The plaintiff in a suit to enforce a right of pre-emption in respect of certain shares in certain villages founded his claim on a special agreement contained in the village administration papers, and such claim was tried and determined in the lower Court as so founded. *Held* that the plaintiff could not on appeal set up a claim to enforce such right founded on custom. CHADAMI LAL *v.* MUHAMMAD BAKSH

[I. L. R., 1 All., 563

135. ———— *Alteration of claim on appeal—Right founded on agreement—Custom.*—Where the existence in a certain village of the right of pre-emption was recorded in the village administration paper as a matter of agreement and not of custom, and a suit was brought to enforce such right founded on the agreement, and was tried and determined in the lower Court as so founded, the plaintiff could not on special appeal claim such right as a matter of custom in virtue of the entry. A claim to the right of pre-emption founded on a special agreement does not exclude a claim to such right founded on Mahomedan law. MARATIB ALI *v.* ABDUL HAKIM . . I. L. R., 1 All., 567

136. ———— Suit for property misappropriated—*Omission of allegation of demand and refusal.*—In 1874 plaintiff sued to recover certain property, or its value, "dishonestly misappropriated" on the 21st January 1872 by first defendant, assisted by the other defendants. The lower Court held that the right to sue did not accrue until the property had been demanded and refused; that the plaint contained no allegation of such demand and refusal; that the plaint could not be amended by the insertion of such an allegation after answer filed; and that therefore the suit could not be maintained. *Held,* reversing the decree, that even if the present case were one in which the provision as to demand could have any application at all, still the suit ought not to have been dismissed on that technical ground, when the defendant by his answer traversed the whole of the allegations in the plaint and pleaded the statute of limitation. MANIKYA ROW LAKSHMAYYAH *v.* MANIKYA ROW GOPAL ROW

[7 Mad., 400

137. ———— Suit to set aside sale for arrears of revenue and for possession—*Purchase by fraud—Forfeiture of tenancy—Trustee of*

PLAINT—*continued*

5. AMENDMENT OF PLAINT—*continued*

owner in equity – The plaintiff sued to recover possession of certain land, and prayed to set aside the sale of it by the revenue authorities for arrears of assessment due on the land He alleged that he had let the land to the defendant, on condition of the latter paying the Government assessment and certain rent in cash and kind to the plaintiff, that the [illegible]

[illegible] tiff s allegations were true, the plaintiff would be entitled to such a declaration, and the defendant would be discharged of his sub-tenancy in consequence of his conduct which worked a *forfeiture of any right* to be continued as tenant BALKRISHNA VASUDEV *v* MADHAVRAV NARAYAN I. L. R., 5 Bom., 73

138 ———— **Suit for possession on ground of exclusive right**—*Appellate Court, Power of—Variance between pleading and proof* —When a plaintiff sues to recover possession of pro- [illegible]

[illegible] CHURN KARMOKAR [I. L. R., 8 Calc , 671 : 11 C.L. R , 194

139 ———— **Suit for possession of share of joint Hindu family before partition**—*Suit for partition*—*A*, one of three members of an [illegible]

[illegible] him for default *B* now brought a suit against *A* and his co-parceners for possession of *A's* share in such family property. *Held* that *B's* suit, being a suit for possession, was wrongly framed, and was not maintainable, there never having been any partition of the joint family property Leave, however, was given to *B* on certain terms, to amend his plaint, so as to make his suit a suit for partition KRISHNAJI LAKSHMAN RAJVADE *v* SITARAM MURARRAV JAKHI [I. L. R., 5 Bom., 496

140 ———— **Suit for money received for plaintiff**—*Addition of prayer for account—Amendment of plaint on appeal—Civil Procedure Code, 1882 s 54* —Plaint allowed by the High Court, on a regular appeal to be amended by insertion of a prayer for an account BAI ANOPE *v* MULCHAND GIRDHAR . I L R., 9 Bom , 355

141 ———— **Alternative case**—*Omission to put case in alternative.*—Where the plaintiff has not put forward an alternative case as he might have done, he may have leave to amend his plaint and to state his case correctly therein if the Court thinks that he has rested his claim upon wrong grounds from misinformation, ignorance of law or fact, mistake or misconstruction of documents LAKSHMIBAI *v* HARI BIN RAVJI . 9 Bom., 1

142 ———— *Omission to put case in alternative—Civil Procedure Code, 1882,* [illegible]

[illegible] DAMODAR MADHOWJI *v* PURMANANDAS JEEWANDAS I. L. R., 7 Bom., 155

143 ———— *Omission to ask for alternative relief—Frame of suit—Account and discovery* —After parties have come to trial to determine which of two stories is true, the plaintiff cannot be allowed to amend his plaint by abandoning his own story and adopting that of the defendant, and asking relief on that footing for the question, whether on that footing the plaintiff is entitled to relief, is one to which the defendant's attention has not been called and which he has had no opportunity of answering. In a suit to recover a specified [illegible]

[illegible] upon the footing of the case set up by the defendant. SHIBKRISTO SIRCAR *v* ABDOOL HAKEEM [I. L. R., 5 Calc , 602 : 5 C L. R., 455

144 ———— **Withdrawal of part of claim** —*Suit brought for amount in excess of jurisdiction of Munsif—Suit to declare land liable to be sold in*

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

execution of decree—Civil Procedure Code, ss. 50 and 373.—In a suit brought in a District Munsif's Court to declare certain land liable to be sold in execution of a decree for more than R2,500, the defendants pleaded that the Court had no jurisdiction. The Munsif allowed the plaintiff to amend the plaint by stating that he abandoned his claim to execute the decree against the land for more than R2,500. On appeal, the District Judge held that the plaint could not be amended after the first hearing. *Held* on appeal to the High Court that the claim was not one which could be amended, so as to bring the suit within the pecuniary jurisdiction of the District Munsif. ANNAJI *v.* RAMA KURUP . . . I. L. R., 10 Mad., 152

145. ———— Allegation of fraud—*Alteration of nature of fraud charged.*—Where in a suit for repayment of a certain sum which had after a compromise made by the official assignee been paid to a person who had assisted in taking the accounts, such payment being unauthorized by the Court, the plaint, as presented, alleged the fraudulent concealment of the payment from the assignee and afterwards, when all the evidence had been taken, and it had been established that the assignee, knew of the payment, this was amended to the statement that if he did know of it he had no power to consent to it, and that his consent would not be binding, the payment being a fraud upon the Court,—*Held* that the amendment at the stage when it was made was not permissible. ABDUL HOSSEIN ZENAIL *v.* TURNER . I. L. R., 11 Bom., 620
[L. R., 14 I. A., 111

146. ———— Charges of fraud—*General allegations of fraud—Amendment of plaint on appeal—Objection taken for first time on appeal.*—Where a plaintiff seeks relief on the ground of fraud, and the plaint contains general allegations, but no specific instances of the alleged fraud, it ought to be immediately, on presentation, rejected or returned for amendment, as it does not disclose a cause of action. The plaintiff sued to recover damages caused by the defendant's fraud during his management of the plaintiff's estate from 1870 to 1884. The plaint disclosed no specific instances of the fraud imputed to the defendant. The Court of first instance, without going into evidence, rejected the plaintiff's claim on the preliminary ground that the plaintiff had no right to sue during the lifetime of his adoptive mother. In second appeal, the respondent objected that the plaint was defective. The plaintiff's pleader asked for leave to amend it by specifying certain instances of the alleged fraud. *Held* that the amendment could not then be allowed, and the suit must fail. KRISHNAJI *v.* WAMNAJI
[I. L. R., 18 Bom., 144

147. ———— Suit by Bank for money against executrix—*Civil Procedure Code, s. 53—Order returning plaint for amendment—Form of suit.*—A suit was brought by the manager of the M Bank against the executrix of *B* to recover a sum of money as due upon a bond executed by *B* in favour of the Bank. The plaint described the defendant as "Mrs. Sarah G. Barlow, of Mussoorie," and stated that she was executrix of the deceased *B*. It began thus: "George Henry Webb, Manager of the above-named plaintiff's business, states as follows," and proceeded to state that the deceased was, at the time of his death, "indebted to the plaintiff," and to set forth the cause of action in detail. It was signed and verified thus: "For the *B* Bank, Limited, G. H. Webb, Manager." The Court of first instance returned the plaint for amendment under s. 53 of the Civil Procedure Code, because the suit should not have been brought in the form in which it was brought, but in the form referred to in s. 213 and No. 105 of Sch. IV of the Code. *Held,* with reference to this ground, that the plaintiff was at liberty to bring a suit for money against any person administering to or representing the estate; and if such suit should be found with reference to the facts in evidence not maintainable, it should be dismissed; but there was no authority for returning a plaint for amendment, when it was found that the suit was not maintainable in the form in which it was brought, in order to amend it so as to convert the suit into one of a different character. MUSSOORIE BANK *v.* BARLOW . . . . I. L. R., 9 All., 188

148. ———— Suit to restrain interference with private right—*Civil Procedure Code, ss. 31, 53.*—*A* sued for an injunction to restrain interference with his right to graze cattle on the bed of a certain tank. The other raiyats of the village in whom the same right vested were originally joined as plaintiffs, but the plaint was amended under s. 53 of the Code of Civil Procedure, and their names were struck off the record. *A* proved no special damage. *Held* (1) that the fact that the other raiyats of the village had similar rights did not make *A*'s right a public right in the sense that no action could be brought upon it unless special damage was proved; (2) that the right claimed vested in *A* severally as well as jointly with the other raiyats, and the amendment of the plaint was not contrary to the provisions of s. 31 or 53 of the Code of Civil Procedure. VENKATACHALA *v.* KUPPUSAMI . . I. L. R., 11 Mad., 42

149. ———— Change in form of suit, the cause of action being unchanged—*Civil Procedure Code, 1882, s. 53.*—The plaintiffs alleged that the defendants had encroached on the bed of a tank, raised embankments, and cultivated crops which interfered with the plaintiffs' supply of water; and they prayed for a decree ejecting the defendants from the land encroached on and restraining them from interfering with it. *Held* that the Court was not precluded by s. 53 of the Code of Civil Procedure from passing a decree declaring the plaintiffs' right to the water of the tank directing the defendants' embankments, etc., to be removed and regulating the cultivation of their lands; but that the defendants' liberty of cultivation should not be restricted more than was necessary to secure the plaintiffs' supply of water. PULAMADA *v.* RAVUTHU
[I. L. R., 11 Mad., 94

PLAINT—*continued*

5 AMENDMENT OF PLAINT—*continued.*

150 ——— Joint family—*Mortgage by a father—Decree against father on mortgage giving possession with interest and costs—Son's liability to satisfy the decree as to interest and costs* —The plaintiff's father mortgaged certain ancestral property for a limited term A suit was brought on the mortgage against the father, and a decree was passed, directing the mortgaged property to be handed over to the mortgagee for a certain time, and awarding payment of interest and costs by the father In execution of this decree, the mortgagee sought to recover the costs by sale of the property in question Thereupon the plaintiffs sued for a declaration that the property was not liable to be sold in execution of the decree against the father on the ground that the debts contracted by the father were for immoral purposes, and that therefore the estate could not be bound by the decree at all The Court of first instance found that the debts had not been incurred for any immoral purpose, and dismissed the suit At the hearing of the appeal to the High Court it was alleged that the plaintiffs had separated from their father before the mortgage decree was passed against him, and an application was made on their behalf that the plaint in this case should be amended by inserting an allegation to that effect *Held* that the amendment could not be allowed Such an amendment would entirely alter the points of contention between the parties In suing in the form adopted by the plaintiffs they doubtless intended to take the chance of getting a greater advantage than they would have obtained if they had sued merely as separated sons They sought to liberate the property altogether from liability on the ground that the debt was immoral, and that the estate could not therefore be bound by the decree at all That being so and the plaintiffs having omitted to allege partition, they could not now ask the Court to put their suit on a new footing. NARAYANRAV DAMODAR *v* JAVHERVAHU

[I. L. R., 12 Bom , 431

151. ——— Suit to declare alienation by Hindu widow invalid—*Specific Relief Act, s 42—Civil Procedure Code, s 53—Amendment of plaint—Death of widow pending appeal by plaintiff—Right of appellant to proceed with appeal—Plaint not to be amended by claim for possession* —The proviso to s 42 of the Specific [illegible]

[illegible] was entitled to proceed with his appeal, (2) that the plaintiff could not be permitted to amend his plaint and claim possession GOVINDA *v* PERUMDEVI

[I. L. R., 12 Mad., 136

152. ——— Suit in Civil Court to enforce exchange of pottah and muchalka—*Civil Procedure Code, s 53—Madras Rent Recovery Act (Madras Act VIII of 1865)—Declaratory decree.*—A suit in the Court of a District Munsif to [illegible]

[illegible] not have been dismissed, but the plaint should have been amended by the addition of a prayer for a declaration of the plaintiff's title, and that the Court then would have had jurisdiction to grant by way of consequential relief the relief originally sought NARASIMMA *v* SURYANARAYANA I. L. R., 12 Mad., 481

153. ——— Plaint for declaratory decree without consequential relief—*Objec*[illegible]

[illegible] defendants to the suit The plaintiffs should in such a case be allowed an opportunity of amending their plaint LIMBA BIN KRISHNA *v* RAMA BIN PIMPLU

[I. L. R., 13 Bom., 548

154 ——— Suit for rent, Decree for use and occupation in—*Civil Procedure Code* [illegible]

[illegible] objection having been raised by the defendants that the verbal lease was illegal under the Transfer of Property Act, the suit was dismissed The plaintiffs contended on appeal that the suit should not have been dismissed, but that they were entitled to a decree for use and occupation *Held* that a decree for use and occupation of the land by the defendants could not be granted in this case, as that would amount to an amendment raising issues of an entirely different character from those on which the trial was held in the Courts below as a suit for rent, and necessitating a trial upon fresh evidence Such amendment could not be allowed under s. 53 of the Civil Procedure Code *Lukhee Kanto Dass Chowdhury* v *Sumeeruddin Lusker, 13 B L R, 243 21 W. R, 208, Fuhan Chunder Singh* v *Shama Churn Bhutto, 11 Moore's I A, 20, Narainee Dassee* v *Nurohurry Mahanto, Marsh, 70,* referred to SURENDRA NARAIN SINGH *v* BHAI LAL THAKUR

[I. L. R., 22 Calc., 752

155 ——— Amendment in respect of parties—*Striking names out of plaint—Amending issues* —Four plaintiffs sued as partners but it was found during the trial that they were not all partners at the time the cause of action accrued; and the Judge thereupon amended the issue which had been raised on that point, and raised the question whether the plaintiffs were or were not partners; and it being decided in the negative the Judge ordered two of the plaintiffs' names to be struck out of the plaint, and gave a decree in favour of the other plaintiffs. *Held* that the Judge acted rightly in

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

amending the issue, but that he should have done so without striking the names of the plaintiffs out of the plaint. EAST INDIAN RAILWAY COMPANY v. JORDAN [4 B. L. R., O. C., 97: 14 W. R., O. C., 11

156. ——— *Hindu widow —Joinder of plaintiffs one of whom has no right to sue for pre-emption.*—The plaintiffs in a suit to enforce a right of pre-emption based on the wajib-ul-urz of a village, which gave the right to "co-sharers," alleged themselves to be jointly interested in the village, and in their plaint claimed relief jointly. One of the two plaintiffs was the widow of a co-sharer in the village, who, at the time of his death, was a member of a joint Hindu family, and it was held she could not claim pre-emption. *Held*, with reference to the manner in which the plaint was framed, that the other plaintiff could not claim pre-emption entirely on his own account without amending the plaint, but that it was too late for him to take such a course. *Damodar Das v. Gokal Chand, I. L. R., 7 All., 79*, referred to. KARAN SINGH v. MUHAMMAD ISMAIL KHAN . . I. L. R., 7 All., 860

157. ——— *Joinder of causes of action—Same parties suing in different capacities—Civil Procedure Code, 1877, ss. 26 and 31.*—By the Memorandum and Articles of Association of the New Dhurumsey Poonjabhoy Spinning and Weaving Company, the plaintiffs' firm of *M F & Co.* were appointed agents of the company for twenty-five years, and it was provided that they should have the general control and management of the company. Cl. 98 of the articles provided that the said firm, as such agents, should have full power and authority (*inter alia*) to appoint and employ, in or for the purposes of the transaction and management of the affairs and business of the company, such solicitors as they should think proper. An agreement, dated 26th August 1874, was also entered into between the company and the partners in the firm of *M F & Co*, their executors, administrators, and assigns, for the time being constituting the partnership firm of *M F & Co.*, whereby it was agreed that the said firm should be agents to the company for twenty-five years to buy and sell, etc., and particularly to exercise all the powers contained in cl. 98 of the Articles of Association. *Messrs. C & B* were duly appointed solicitors to the company, and acted as such for a considerable time. *M*, one of the members of the said firm of *M F & Co.*, died in the middle of March 1876. The plaintiffs complained that *G*, one of the shareholders in the company, became desirous of ousting the plaintiffs from the position of agents of the company, and of becoming the managing director of the company; that in July 1881 he procured his own election and that of certain nominees of his as directors of the company; and on the 8th August 1881 procured the passing of a resolution at a Board meeting to the effect that, as *Messrs. C & B*, the company's solicitors, were also the solicitors of the agents, it was desirable, for the interests of the company, that a change should be made, and that *Messrs. H C & L* be appointed solicitors of the company. The plaintiffs alleged that the only object of passing the said resolution was to facilitate the design of *G*, of ousting the plaintiffs from their agency, and getting the management of the company for himself; that *Messrs. H C & L* had been for a long time the solicitors of *G*, and had been advising him in his designs upon the company and upon the plaintiffs, and they contended that the resolution was a breach of the contract between the company and the plaintiffs and a violation of the Articles of Association of the company. The plaintiffs sued *G* and two other directors of the company and the company itself, and prayed for an injunction against the defendants to restrain them from committing any breach of the agreement of 26th August 1874 and in particular from carrying into effect the resolution appointing *Messrs. H C & L* as solicitors for the company, and to restrain them from doing anything inconsistent with the Memorandum and Articles of Association. The defendants contended that the contract of the 26th August 1874 had been determined by the death of *M*, and that the powers conferred on the agents by cl. 98 of the Articles were, subject to the general powers of management, vested in the directors by the Articles, and that the case was not one in which an injunction could be granted. Counsel on behalf of the plaintiffs sought to obtain the injunction on the ground that the resolution of the 8th August 1881 appointing *Messrs. H C & L* solicitors of the company, was contrary to the Memorandum of Association, and therefore *ultra vires*; and, in order that this point might be pressed against the defendants, it was proposed that the plaint should be amended by alleging a cause of action in two of the plaintiffs as shareholders as well as a cause of action in all the plaintiffs as parties contracting with the company. *Held* that, under the provisions of ss. 26 and 31 of the Civil Procedure Code (Act X of 1877), the amendment could not be allowed. The plaintiffs, as shareholders and contractors, had not the same cause of action, by which words were meant not only the act complained of, but also the right violated by that act. The rights of the plaintiffs as contractors, alleged to be violated by the resolution, were rights given to them by their agreement; but the rights of the plaintiffs as shareholders were rights secured to them by the Articles of Association. NUSSERWANJI v. GORDON [I. L. R., 6 Bom., 266

158. ——— *Amendment of plaint on appeal—Adding parties.*—In a suit for arrears of rent of the plaintiff's share of a talukh it appeared that, in the year 1279, a partition was effected of the zamindari in which the defendant's talukh was situated, and that the talukh ceased to be held exclusively by the plaintiff, but was divided between him and certain other persons, who were not made parties to the suit. *Held* that the plaint could not be amended by making the co-sharers parties at the hearing of the appeal. OBHOY GOBIND CHOWDHRY v. HURYCHURN CHOWDHRY [I. L. R., 8 Calc., 277

PLAINT—*continued.*

5 AMENDMENT OF PLAINT—*continued.*

159. ——————— *Suit by one member of an undivided Hindu family—Non-joinder of other persons interested in a family business*—In 1887 the plaintiff appointed the defendant to serve for three years as manager of a

for damages for breach of the contract of service, and it was held that the suit was not maintainable in the absence from the record of the other partners in the business. *Held* that by reason of the fact that an amendment of the plaint might deprive the defendants of the defence of limitation and of the other circumstances in the case, the plaintiff should not be allowed on appeal to amend the plaint by bringing his partners on to the record ALAGAPPA CHETTI *v* VELLIAN CHETTI I L. R., 18 Mad., 33

160 ——————— *Civil Procedure Code (1882), ss 27 and 53—Amendment of plaint by bringing on a new plaintiff on second appeal*—Plaintiffs sued in 1894 to recover property belonging to the estate of a testator, claiming to be his executors under a will The property was alleged to have been entrusted by the testator in 1893 to the defen-

161 ——————— *Suit brought in the name of the idol of a temple—Amendment allowed to name of manager of temple—Practice*—A suit relating to property alleged to belong to a temple cannot be brought in the name of the idol of the temple Where such a suit was so brought, the Court in second appeal allowed the plaint to be

MAHARAJ *v* SHAH LAL CHAND

[I. L. R , 19 All., 330

162. ——————— *Addition of parties on second appeal*—In a suit by the manager of a Hindu joint family to recover possession of certain lands from the defendant, the plaintiff was allowed on second appeal to amend his plaint by making other members of the family parties to the suit. HARI GOPAL *v* GOKALDAS KUSHABASHET

[I. L. R., 12 Bom., 158

163. ——————— *Addition of parties—Suit originally against owner—Ship*

PLAINT—*continued*

5. AMENDMENT OF PLAINT—*continued.*

added as party defendant—In a suit for collision originally filed against the owners of a ship,—*Held* that the plaintiffs might amend the plaint by adding the ship as a party defendant BOMBAY AND PERSIA STEAM NAVIGATION COMPANY *v* SHEPHERD

[I L. R., 12 Bom., 237

164 ——————— *Suit by parties*

parties to it and to take an account KARIMBHAI *v* CONSERVATOR OF FORESTS I. L. R., 4 Bom., 223

165. ——————— *Amendment on appeal*—Under the circumstances, the plaintiff was allowed to amend his plaint on appeal, so as to make it a plaint against one debtor alone, he having sued others who, as he framed his cause of action, were not liable while he would be prejudiced by the dismissal of the suit as against them MAHOMED ZAHOOR ALI KHAN *v*. RUTTA KOER

[11 Moore's I. A , 468; 9 W. R , P. C., 9

See PROBY *v* BELL 20 W R., 6

166 ——————— *Civil Procedure Code (Act X of 1877), s 416—Procedure—Substitution of parties—Criminal Procedure Code (Act

gistrate as defendant, and substituting in that capa

167. ——————— On the 11th August 1879 the defendant, as a Magistrate in

the ground that it had been . . . a . . . thoroughfare The plaintiff thereupon sued the Magistrate for a declaration that the "ota" and are belonged to him, and prayed for a reversal of the

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*continued.*

Magistrate's order. The Assistant Judge who tried the suit dismissed it, holding that it did not lie against the defendant. On appeal, the High Court, following the decision in *Nilkanthapa Malkapa* v. *Magistrate of Solapur, I. L. R., 6 Bom., 670*, reversed the decree of the Assistant Judge, and remanded the case, in order that the plaintiff might amend his suit by striking out the name of the first class Magistrate as defendant, and substituting in that capacity the Secretary of State for India in Council, and directing the lower Court to determine the suit upon its merits after the above amendment and due service of process. BALARAM CHATRUKLAL *v.* MAGISTRATE OF IGATPUR **I. L. R., 6 Bom., 672**

168. ———— *Allowing substitution of parties and new cause of action.*—The plaintiff brought a suit against the Secretary of State, which the Judge dismissed; on the petition of the plaintiff, he allowed the plaint in the suit so disposed of to be amended, and the name of a new defendant to be substituted, and a different cause of action to be stated. *Held* that the Judge acted illegally, and that the plaintiff should have been referred to a new suit. SETH DHUNRAJ *v.* SECRETARY OF STATE FOR INDIA **1 N. W., 118 : Ed. 1873, 204**

169. ———— *Civil Procedure Code (Act XIV of 1882), s. 53—Amendment of plaint on appeal—Substitution of legal representative for deceased defendant—Limitation Act, s. 22.*—A suit was brought to recover arrears of rent. The persons whose names were entered on the record as defendants were, in fact, dead when the suit was instituted. The suit was dismissed. The plaintiffs appealed and sought leave to amend the plaint by substituting for the names of the dead men those of their legal representatives, as against whom the suit would then have been barred by limitation. *Held* that the amendment should not be allowed. MALLIKARJUNA *v.* PULLAYYA **[I. L. R., 16 Mad., 319**

170. ———— *Substitution of parties as defendants.*—In an application to amend a plaint by substitution of the name of a firm for the Official Assignee as defendants, it was shown that the firm had been adjudicated insolvents, and one of them had obtained his permanent discharge; that the cause of action arose prior to the insolvency; and that no written statements had been filed. The application was granted, the costs to be paid by the plaintiff. DELHI AND LONDON BANK *v.* MILLER **[7 B. L. R., Ap., 65**

171. ———— *Amendment by striking out name of defendant—Suit for damages for wrongful acts of Government servant—Distinct averments against each party.*—The plaintiff had purchased at a Government auction a license to vend spirituous liquors, paid the first instalment of the purchase-money, and demanded a license, but did not receive it until six days later. Meantime he opened a shop and sold "tari" for three days, when the sale was stopped by the Extra Assistant Commissioner, notwithstanding the plaintiff represented

PLAINT—*continued.*

5. AMENDMENT OF PLAINT—*concluded.*

that he was a license-holder. The present suit was brought against the Government represented by the Deputy Commissioner for damages on account of wrongful acts of the Extra Assistant Commissioner, who was made second defendant. The Judge, holding that where a servant does a wrongful act maliciously he is personally liable and the master is free, left it to the plaintiff to say against whom he would proceed. The plaintiff elected to proceed against Government and obtained a decree for a part of his claim. In the lower Appellate Court the Judges were divided in opinion, the Recorder holding that the first Court was justified in allowing the plaintiff to abandon his suit against the second defendant, to whom malice had been imputed, and that the suit was still maintainable against the Government; and the Judicial Commissioner, considering it irregular to allow this action, inasmuch as the claims for damages on account of the illegal and malicious acts of the second defendant and for damages for non-issue of license by the first defendant were inconsistent with each other. *Held* by the High Court that the view of the Recorder was correct. Nevertheless, the plaintiff ought not to have been put to the option of abandoning his suit against one or other defendant, but the suit should have been tried out. *Held, too, that the* allegations against the two defendants were distinct, but not inconsistent, and that the Judicial Commissioner had taken too strict a view of the plaint. VYTHEELINGUM *v.* GOVERNMENT . **21 W. R., 199**

172. ———— **Suit brought under wrong Act**—*Suit erroneously brought under Rent Act.*—Where a suit had been erroneously brought under Bengal Act VIII of 1859, s. 30, and the plaintiff applied to have it amended in that respect, whereupon the Munsif dismissed the suit, the case was returned by the High Court with directions to allow the plaintiff to amend the plaint on payment of the costs. IN THE MATTER OF THE PETITION OF GOBIND CHUNDER GHOSE. GOBIND CHUNDER GHOSE *v.* BYKUNT NATH GHOSE . **19 W. R., 61**

6. RETURN OF PLAINT.

173. ———— **Form of order of return**—*Civil Procedure Code, 1859, s. 29.*—Where a plaint is returned for amendment under s. 29 of the Code of Civil Procedure, the order of return should specify a time for such amendment. ISMAIL SAHIB *v.* ARUMUGA CHETTI . . . **1 Mad., 427**

174. ———— **Time for return**—*Presentation of plaint—Civil Procedure Code, 1877, s. 57.*—Although s. 57 of Act X of 1877 contemplates the return of the plaint, should error be patent when it is first presented, yet there is nothing in the wording of that section which forbids the return of the plaint at a later stage in the suit. ABDUL SAMAD *v.* RAJENDRA KISHORE SINGH . **I. L. R., 2 All., 357**

175. ———— **Ground for return**—*Irregular plaint—Plaint in language not that of the Court.*—A plaint drawn up in what is, practically, Persian ought not to be admitted on the file, but

PLAINT—*continued*

6 RETURN OF PLAINT—*continued.*

should be rejected or returned for amendment and presentation in Urdu, the ordinary language of intercourse and business in use in the district (Patna) AMEER KOOLEE KHAN *v* RUSSICK LALL SINGH [8 W R, 495

176 ——— *Schedule to plaint—Irregular plaint—Filing fresh plaint—Costs* —A plaint which in the first count did not sufficiently disclose the subject of claim, without reading the schedule annexed as part of the plaint or when the action accrued, and in the second count did not show any right to sue in the plaintiff, was rejected by the Court as irregular but with liberty to the plaintiff to bring a fresh suit *Semble*—The Court will not make the payment of costs in respect of the former ... fresh plaint, ... *fides* LUCKH ... COOMARY DOS ...

177. ——— *Prolixity—Argument—Irrelevancy* —A plaint which is un ...

prayer that the defendant may be criminally prosecuted for forgery should be rejected BISHEN SUHAYE SINGH *v* BEER KISHORE SINGH [8 W R., 295

178 ——— *Civil Procedure Code, s 57 Plaint presented in a wrong Court* — In all cases where no option as to the selection of the Court is allowed by law to the plaintiff, a plaint presented in a wrong Court must be returned for presentation in the proper Court MUTTIRULANDI *v* KOTTAYAN I L R., 10 Mad, 211

179 ——— *Want of jurisdiction* —Where there is a want of jurisdiction in the Court in which a plaint is presented to try the cause of action mentioned in it, the plaint should be returned to the plaintiff KHANDU MORESHVAR *v* SHIVJI BIN GORKOJI 5 Bom., A. C, 212

KHOOSHAL CHUND *v* PALMER 1 Agra, 280

SURNOMOYEE *v* DOORGA MONEE DOSSEE [10 W. R., 335

180 ——— *Civil Procedure Code, s 57—Return of plaint when Court has no jurisdiction* —An Appellate Court is not bound to return the plaint under all circumstances where defect of jurisdiction appears YACOOB *v* MOHAN SINGH [I. L R., 11 Mad, 482

181. ——— *Amendment of plaint by Subordinate Judge and return for presentation in Small Cause Court—Jurisdiction of* ...

for damages, and then, ... the claim for damages would lie only in the Small Cause Court, returned the plaint for presentation in that Court ...

CITY MUNICIPALITY I. L. R, 20 Bom., 675

182 ——— *Want of jurisdiction* —If a party bring a suit in a Court which on his own showing has no jurisdiction to try it he cannot after failing in that Court have the plaint returned to him in order that he may file it in proper Court IN RE TUPANI SINGH [6 B L R., Ap, 141

183 ——— *Court having no jurisdiction—Procedure—Civil Procedure Code, 1859 s 30* —Where the Appellate Court decides that the lower Court had no jurisdiction to entertain the suit, it should return the plaint to the plaintiff in order that it may be presented to the proper Court BAI MAKHOR *v* BULAKHI CHAKU [I. L R., 1 Bom, 538

DHERAJ MAHTAB CHUND *v* DAMOODER SINGH [W R, 1864, 65

SHURUT SOONDUREE DEBIA *v* KHEMUNKUREE DEBIA 5 W R, Act X, 87

184 ——— *Case found to be entertained without jurisdiction—Act VIII of* ... suit. He ought to have returned the plaint to the plaintiff KARTICK NATH PANDAY *v* ROY NUNDEPUT MAHATAB 23 W R., 263

185 ——— *Return for amendment and presentation to the proper Court—Misjoinder of Government officer as defendant* —Where a plaint is presented to the Judge of a district ...

sentation to the proper Court SHRIDHAR HARI *v* CHIMA VALAD LADU . 10 Bom, 17

186 ——— *Suit or appeal filed in a wrong Court—Return of plaint or memorandum of appeal for presentation in proper Court—Practice of the High Court—Civil Procedure Code (Act XIV of 1882), s 373—Cancellation of court fee stamps* —The Code of Civil Procedure

PLAINT—*continued.*

6 RETURN OF PLAINT—*continued.*

(Act XIV of 1882) does not allow of a plaint or memorandum of appeal being returned to the plaintiff, or appellant, after a case has been heard on its merits, and just as the plaintiff or appellant discovers that the Court is about to pronounce an adverse decision. There is no provision in the Code for the return of a plaint to a plaintiff after it has been admitted, and the court-fee stamps thereon cancelled. Even if the Code allowed the High Court to return a plaint after the court-fee stamps have been cancelled, the plaint could not be again legally presented in any Court without new stamps being affixed to it. The executive Government alone have power to remit court-fees, and no Court or Judge has legal authority to admit a plaint which bears only cancelled stamps, or to direct a subordinate Court to admit such a document. JAGJIVAN JAVHERDAS SETH *v.* MAGDUM ALI [I. L. R., 7 Bom., 487

187. ——— *Return of plaint for presentation to proper Court—Jurisdiction—Construction—Civil Procedure Code (Act VIII of 1859), ss. 30 and 32—Civil Procedure Code (Act XIV of 1882), ss. 53 and 57.*—Where, after a trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional court-fees are payable. *Jagjivandas Javherdas Seth* v. *Magdum Ali, I. L. R., 7 Bom., 487,* overruled. PRABHAKARBHAT *v.* VISHWAMBHAR [I. L. R., 8 Bom., 313

188. ——— *Civil Procedure Code, s. 57—Decree passed on plaints.*—The ruling in the case of *Prabhakarbhat* v. *Vishwambhar, I. L. R., 8 Bom., 313,* which approves of the practice of returning the plaint for presentation to the proper Court when the trying Court has no jurisdiction prevailing in the mofussil Courts and on the Appellate Side of the High Court of Bombay, does not govern, and is distinguishable from cases in which there have been decrees passed on the plaint. *Per* BAYLEY, *J.*—The practice in the Original Side of the High Court of Bombay has always been to retain a plaint, unless it has been returned on presentation. IN THE MATTER OF THE APPLICATION OF BAI AMRIT [I. L. R., 8 Bom., 380

189. ——— *Return of, on second appeal.*—The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff. Two of the defendants did not appear or make any defence to the suit. The second defendant only appeared, and objected to the jurisdiction of the Court; but his objection was overruled, and a decree was made against all three defendants. On appeal the lower Appellate Court reversed the decree, holding that the Court of first instance had no jurisdiction. *Held* that, on finding that the Court of first instance had no jurisdiction, the lower Appellate Court ought to have ordered the plaint to be returned. It not having done so, the High Court on second appeal ordered the plaint to be returned, in order that it might be presented to the proper Court. BABAJI *v.* LAKSHMIBAI . I. L. R., 9 Bom., 266

PLAINT—*continued.*

6. RETURN OF PLAINT—*continued.*

190. ——— *Return on second appeal—Suit in wrong Court.*—Where a suit cognizable by a Small Cause Court was brought in the ordinary Civil Court and tried there, on second appeal the High Court declared the proceedings in the lower Courts null and void, and directed the plaint to be returned for presentation in the proper Court. KALIAN DAYAL *v.* KALIAN NABER [I. L. R., 9 Bom., 259

191. ——— *Civil Procedure Code, 1882, s. 57—Want of jurisdiction.*—The defendants, who resided and carried on business at Bombay, acted as the agents of the plaintiff for the sale, purchase, and despatch of goods to Tellicherry, where the plaintiff resided. To the claim arising out of the agency transactions the plaintiff joined a claim on account of a partnership transaction, which claim was triable by the Court of the District Munsif at Tellicherry. The Subordinate Judge held that he had no jurisdiction to try the claim arising out of the agency transaction, found that nothing was due to the plaintiff on account of the partnership transaction, and dismissed the suit. *Held* that the plaint ought to have been returned to the plaintiff with the proper endorsement as required by s. 57 of the Code of Civil Procedure, 1882. KHIMJI JIVRAJU SHETTU *v.* PURUSHOTAM JUTANI [I. L. R., 7 Mad., 171

192. ——— *Civil Procedure Code (Act XIV of 1882), s. 57—Court—Jurisdiction—Procedure when suit filed in wrong Court—Suit under Dekkan Agriculturists' Relief Act (XVII of 1879)—Defendants not agriculturists within meaning of s. 11.*—Under s. 11 of the Dekkan Agriculturists' Relief Act, a suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides, and not elsewhere. Where a suit was brought in the Court at Haveli, the plaintiffs alleging that some of the defendants who held lands within the jurisdiction of that Court were agriculturists, and the suit was dismissed because those defendants were found not to be agriculturists,—*Held* that the proper procedure to be adopted in such a case was not to dismiss the suit, but to return the plaint for presentation to the proper Court. LADHAJI NATHAJI *v.* HARI [I. L. R., 23 Bom., 679

193. ——— *Civil Procedure Code (Act XIV of 1882), s. 57 - Suit found to have been brought in wrong Court situate outside the jurisdiction of the Court in which the suit is filed—Practice—Procedure.*—The proviso to s. 16 of the Civil Procedure Code requires not only that the relief sought should be entirely obtainable through the personal obedience of the defendant, but also that the defendant should reside within the jurisdiction of the Court in which the suit is filed. Where a suit for the determination of an interest in immoveable property

PLAINT—*continued*

6. RETURN OF PLAINT—*continued*.

was filed in a Court within the jurisdiction of which the property was not situate and was held not to lie in that Court as all the defendants did not reside within the jurisdiction of that Court, even though [illegible]

s 57 of the Civil Procedure Code ISAK *v* KHATIJA
[I L R, 23 Bom, 756

194. ———— *Return of plaint to be presented to the proper Court—Civil Procedure Code, 1877 s 57—Rejection of plaint—Cause of action—N W P Rent Act (XVIII of 1873), s 29*—The plaintiff in this suit claimed in a Civil Court (1) a declaration of his right to certain land, (2) that certain leases of such land so far as their terms exceeded the term of settlement should be [illegible]

action had not yet arisen, and as regards claim (3) that it was cognizable in a Court of revenue,—and it directed that under s 57 of Act X of 1877 the plaint should be returned to the plaintiff to be presented to the Revenue Court *Held* that under the circumstances the plaint should have been rejected and not returned NAGAR MAL *v* MACPHERSON
[I. L. R., 3 All, 766

195 ———— *Return for undervaluation*—Where it appears that the relief [illegible]

Civil Procedure Code although the defendant may have been called upon to enter upon his defence and has filed his written statement An order dismissing a suit on the ground that by reason of the value of the relief sought the Court has no jurisdiction, is an order affecting the merits and an appeal lies from such order See *Muzhur Ali v Basoo, 8 W R, 47* KHOGENDRO NARAIN CHOWDHURY *v* GOURI KANT NATH . 11 C. L. R., 300

196 ———— *Civil Procedure Code s 57—Suit filed in wrong Court*—In a suit filed in a District Munsif's Court to recover certain [illegible]

The plaint having been presented in the Subordinate Judge's Court the Subordinate Judge, on the authority of *Jagjivan Javerdhas Seth v Magdum Ali, I L. R. 7 Bom 457*, dismissed the suit. *Held* that the procedure adopted by the Munsif was correct KANDU *v* KONDA . I. L. R., 8 Mad., 63

PLAINT—*continued*

6. RETURN OF PLAINT—*concluded*.

197. ———— *Suit for ejectment—Mortgage exceed* [illegible]

secured by the mortgage exceeds the limit of the [illegible]

[I. L. R., 8 Mad., 500

198. ———— *Undervaluation of suit—Civil Procedure Code 1877 s 57—Dismissal of suit*—A Munsif, after hearing the evidence on both sides found that the suit had been undervalued but instead of returning the plaint under s 57 of Act X of 1877, he dismissed the suit *Held* that the provisions of s. 57 were imperative and might be put into force at any stage of the hearing, and that such dismissal of the suit was a matter which affected the merits of the case and formed a proper subject for an appeal THADESHWAR CHOWDHRY *v* GOURIKANT NATH
[I L R., 8 Calc, 834

199 ———— *Undervaluation of suit—Civil Procedure Code, 1859 ss 30 31 32—Dismissal of suit*—If at the hearing of a suit it proves to be undervalued and if the Court would not have jurisdiction to entertain it if properly valued the suit ought to be dismissed MUZHUR ALI *v* BASOO 8 W R., 47

KOYLASHNAUTH ROY *v* BODUN MONEE DABEA
[2 Hay, 386

It is only at the time of presentation of the plaint that the plaintiff in a suit which has been brought in a Court, in which with reference to its proper valuation it should not have been brought can claim the benefit of ss 30 31, and 32 of the Code of Civil Procedure 1859 MUZHUR ALI *v* BASOO
[8 W. R., 47

But *see contra* JADU *v* HIFAZAT HOSSEIN
[5 B. L. R., Ap., 15

S. C. FDOO *v* HEFAZUT HOSEIN
[13 W. R., 358

7 REJECTION OF PLAINT

200 ———— *Civil Procedure Code, s 54*—S 54 of the Civil Procedure Code may be applied at any stage of a suit. KISHORE SINGH *v* SARDAL SINGH I L R, 12 All, 553

KARAMAN SINGH *v* COCKELL 1 C W N, 670

201 ———— Duty of Court—*Allowing additional stamp—Undervaluation of suit*—Where the Court is of opinion that the suit is undervalued, it is the duty of the Court in which such suit was preferred to give the suitor the option of supplying such additional stamp as is thought necessary before rejecting the plaint. THAKOOR PATTCK *v* RAMSOOMRUN LALL
[1 N. W, 17: Ed. 1873, 16

PLAINT—*continued.*

6 RETURN OF PLAINT—*continued.*

(Act XIV of 1882) does not allow of a plaint or memorandum of appeal being returned to the plaintiff, or appellant, after a case has been heard on its merits, and just as the plaintiff or appellant discovers that the Court is about to pronounce an adverse decision. There is no provision in the Code for the return of a plaint to a plaintiff after it has been admitted, and the court-fee stamps thereon cancelled. Even if the Code allowed the High Court to return a plaint after the court-fee stamps have been cancelled, the plaint could not be again legally presented in any Court without new stamps being affixed to it. The executive Government alone have power to remit court-fees, and no Court or Judge has legal authority to admit a plaint which bears only cancelled stamps, or to direct a subordinate Court to admit such a document. JAGJIVAN JAVHERDAS SETH *v.* MAGDUM ALI

[I. L. R., 7 Bom., 487

187. ———————— *Return of plaint for presentation to proper Court—Jurisdiction—Construction—Civil Procedure Code (Act VIII of 1859), ss. 30 and 32—Civil Procedure Code (Act XIV of 1882), ss. 53 and 57.*—Where, after a trial has begun, or even after it has concluded, it appears that the Court has not jurisdiction to hear the case, the plaint should be returned in order that it may be presented to the proper Court, and no additional court-fees are payable. *Jagjivandas Javherdas Seth* v. *Magdum Ali, I. L. R., 7 Bom., 487,* overruled. PRABHAKARBHAT *v.* VISHWAMBHAR

[I. L. R., 8 Bom., 313

188. ———————— *Civil Procedure Code, s. 57—Decree passed on plaints.*—The ruling in the case of *Prabhakarbhat* v. *Vishwambhar, I. L. R., 8 Bom., 313,* which approves of the practice of returning the plaint for presentation to the proper Court when the trying Court has no jurisdiction prevailing in the mofussil Courts and on the Appellate Side of the High Court of Bombay, does not govern, and is distinguishable from cases in which there have been decrees passed on the plaint. *Per* BAYLEY, *J.*—The practice in the Original Side of the High Court of Bombay has always been to retain a plaint, unless it has been returned on presentation. IN THE MATTER OF THE APPLICATION OF BAI AMRIT

[I. L. R., 8 Bom., 380

189. ———————— *Return of, on second appeal.*—The plaintiff sued three defendants on a bond alleged to have been executed by them to the plaintiff. Two of the defendants did not appear or make any defence to the suit. The second defendant only appeared, and objected to the jurisdiction of the Court; but his objection was overruled, and a decree was made against all three defendants. On appeal the lower Appellate Court reversed the decree, holding that the Court of first instance had no jurisdiction. *Held* that, on finding that the Court of first instance had no jurisdiction, the lower Appellate Court ought to have ordered the plaint to be returned. It not having done so, the High Court on second appeal ordered the plaint to be returned, in order that it might be presented to the proper Court. BABAJI *v.* LAKSHMIBAI . I. L. R., 9 Bom., 266

PLAINT—*continued.*

6. RETURN OF PLAINT—*continued.*

190. ———————— *Return on second appeal—Suit in wrong Court.*—Where a suit cognizable by a Small Cause Court was brought in the ordinary Civil Court and tried there, on second appeal the High Court declared the proceedings in the lower Courts null and void, and directed the plaint to be returned for presentation in the proper Court. KALIAN DAYAL *v.* KALIAN NAREE

[I. L. R., 9 Bom., 259

191. ———————— *Civil Procedure Code, 1882, s. 57—Want of jurisdiction.*—The defendants, who resided and carried on business at Bombay, acted as the agents of the plaintiff for the sale, purchase, and despatch of goods to Tellicherry, where the plaintiff resided. To the claim arising out of the agency transactions the plaintiff joined a claim on account of a partnership transaction, which claim was triable by the Court of the District Munsif at Tellicherry. The Subordinate Judge held that he had no jurisdiction to try the claim arising out of the agency transaction, found that nothing was due to the plaintiff on account of the partnership transaction, and dismissed the suit. *Held* that the plaint ought to have been returned to the plaintiff with the proper endorsement as required by s. 57 of the Code of Civil Procedure, 1882. KHIMJI JIVRAJU SHETTU *v.* PURUSHOTAM JUTANI

[I. L. R., 7 Mad., 171

192. ———————— *Civil Procedure Code (Act XIV of 1882), s. 57—Court—Jurisdiction—Procedure when suit filed in wrong Court—Suit under Dekkan Agriculturists' Relief Act (XVII of 1879)—Defendants not agriculturists within meaning of s. 11.*—Under s. 11 of the Dekkan Agriculturists' Relief Act, a suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides, and not elsewhere. Where a suit was brought in the Court at Haveli, the plaintiffs alleging that some of the defendants who held lands within the jurisdiction of that Court were agriculturists, and the suit was dismissed because those defendants were found not to be agriculturists,—*Held* that the proper procedure to be adopted in such a case was not to dismiss the suit, but to return the plaint for presentation to the proper Court. LADHAJI NATHAJI *v.* HARI

[I. L. R., 23 Bom., 679

193. ———————— *Civil Procedure Code (Act XIV of 1882), s. 57—Suit found to have been brought in wrong Court situate outside the jurisdiction of the Court in which the suit is filed—Practice—Procedure.*—The proviso to s. 16 of the Civil Procedure Code requires not only that the relief sought should be entirely obtainable through the personal obedience of the defendant, but also that the defendant should reside within the jurisdiction of the Court in which the suit is filed. Where a suit for the determination of an interest in immoveable property

PLAINT—*continued*

6. RETURN OF PLAINT—*continued.*

was filed in a Court within the jurisdiction of which the property was not situate and was held not to lie in that Court, as all the defendants did not reside within the jurisdiction of that Court, even though the relief sought could have been *obtained through their personal obedience*,—*Held* that in such a case the Judge ought not to dismiss the suit but return the plaint to be presented to the proper Court under *s. 57 of the Civil Procedure Code* ISAK *v* KHATIJA [I. L. R., 23 Bom., 756

194. ———— *Return of plaint to be presented to the proper Court—Civil Procedure Code, 1877, s 57—Rejection of plaint—Cause of action—N W P Rent Act (XVIII of 1873), s 29*—The plaintiff in this suit claimed in a Civil Court (1) a declaration of his right to certain land, (2) that certain leases of such land so far as their terms exceeded the term of settlement should be

[illegible]

presented to the Revenue Court. *Held* that, under the circumstances the plaint should have been rejected and *not returned*. NAGAR MAL *v* MACPHERSON [I. L. R., 3 All., 766

195 ———— *Return for undervaluation.*—Where it appears that the relief [illegible]

be *returned* to the plaintiff under s [illegible] of the Civil Procedure Code, although the defendant may have been called upon to enter upon his defence and has filed his written statement An order dismissing a suit on the ground that by reason of the value

[illegible]

196 ———— *Civil Procedure Code, s 57—Suit filed in wrong Court*—In a suit filed in a District Munsif's Court to recover certain land the defendants alleged that the value of the land was understated by the plaintiff and exceeded by far the *pecuniary limit of the Court's jurisdiction* Upon inquiry the Munsif found this allegation to be true, and directed the plaint to be returned to the plaintiff for presentation in a superior Court The plaint having been *presented* in the Subordinate Judge's Court, the Subordinate Judge, on the authority of [illegible] *Seth v Nandum All I L R*, [illegible] that the proc[illegible] rect KANDI [illegible]

PLAINT—*continued*

6. RETURN OF PLAINT—*concluded.*

197. ———— *Suit for ejectment—Mortgage exceeding pecuniary limit of jurisdiction*—If in a suit for ejectment in which the defendant shows he is a mortgagee the defendant consents to a *decree for redemption* and the amount secured by the mortgage exceeds the limit of the pecuniary jurisdiction of the Court the Court should not proceed further, but return the plaint to be presented in a superior Court CHANDU *v* KOMBI [I. L. R., 9 Mad., 208

198 ———— *Undervaluation of suit—Civil Procedure Code 1877 s 57—Dismissal of suit*—A Munsif, after hearing the evidence on both sides, found that the suit had been undervalued but instead of returning the plaint under *s 57 of Act X of 1877*, he dismissed the suit *Held* that the provisions of s. 57 were imperative and might be put into force at any stage of the hearing and that such dismissal of the suit was a matter which affected the merits of the case and formed a proper subject for an appeal. THADESHWAR CHOWDHRY *v* GOURIKANT NATH [I. L. R., 8 Calc., 834

199 ———— *Undervaluation of suit—Civil Procedure Code 1859 ss 30 31 32—Dismissal of suit*—If at the hearing of a suit it proves to be undervalued and if the Court would not have jurisdiction to entertain it if properly valued the suit ought to be dismissed MUZHUR ALI *v* BASOO 8 W R., 47

KOYLASHNAUTH ROY *v* BODUN MONEE DABEA [2 Hay, 386

It is only at the time of presentation of the plaint that the plaintiff in a suit which has been brought in a Court, in which with reference to its proper valua-

[illegible]

But *see contra* JADU *v* HIFAZAT HOSSEIN [5 B. L. R., Ap., 15

S. C EDOO *v* HEFAZUT HOSEIN [13 W R., 358

7 REJECTION OF PLAINT

200 ———— *Civil Procedure Code s 54*—S 54 of the Civil Procedure Code may be applied at any stage of a suit KISHORE SINGH *v* SARDAL SINGH I. L. R., 12 All., 553

KARAMAN SINGH *v* COCKELL 1 C. W. N., 670

201 ———— *Duty of Court—Allowing additional stamp—Undervaluation of suit*—Where the Court is of opinion that the suit is undervalued, it is the duty of the Court in which such suit was preferred to give *the suitor the option of supplying* such additional stamp as is thought necessary *before rejecting the plaint*. THAKOOR PATUCK *v* RAMSOOMRUN LALL [1 N W., 17, Ed. 1873, 16

PLAINT—*continued.*

7. REJECTION OF PLAINT—*continued.*

202. ———— Ground for rejection—*Undervaluation of suit—Civil Procedure Code, 1859, s. 31.*—In a suit in a Munsif's Court it was found, after issues had been fixed and some evidence recorded, that the claim had been undervalued, and that the proper valuation would carry it beyond the jurisdiction of the Munsif. The plaint was accordingly returned, and additional stamps having been filed, the case was tried by the Principal Sudder Ameen. The Judge on appeal held that the plaint had been illegally returned by the Munsif, and that the act of the Principal Sudder Ameen in proceeding to try the case was illegal. He accordingly dismissed the suit. *Held* that the Munsif was right, under s. 31, Act VIII of 1859, in not dismissing the suit, but rejecting the plaint; and that, when the same plaint was filed with the proper amount of stamp duty in the Court of the Principal Sudder Ameen, that Court had jurisdiction to try the case. RAM GUTTY *v.* GOONOMONEE DABEE

[11 W. R., 177

203. ———— *Undervaluation of suit—Allowing additional stamp—Civil Procedure Code (Act XIV of 1882), s. 54—Court Fees Act (VII of 1870), s. 12.*—The decision of the Court of first instance, that a plaint is undervalued, is binding upon the Court of appeal, reference, or revision; but the Court of first instance is not justified in rejecting the plaint without giving to the plaintiff an opportunity of affixing the proper stamp. BAI ANOPE *v.* MULCHAND GIRDHAR

[I. L. R., 9 Bom., 355

204. ———— *Undervaluation of suit—Civil Procedure Code, 1859, s. 31.*—Where the lower Court rejected a plaint on the ground of an improper joinder of causes of action, and also that the suit was not sufficiently valued, and the High Court was of opinion that there had been no improper joinder of causes of action, the order of the lower Court was reversed, and the Civil Judge directed to deal with the case in accordance with s. 31, Act VIII of 1859. KRISTNA AIYANGAR *v.* PERUMAL NADAN . . . . . . 2 Mad., 436

205. ———— *Subordinate Judge's power to make valuation—Court Fees Act (VII of 1870), s. 7, cl. iv (f)—Civil Procedure Code (Act XIV of 1882), s 54, cls. (a) and (b).*— The plaintiffs brought a suit for an account, and approximately valued their claim at R16-15-0. The Subordinate Judge was of opinion that the claim was for recovery of money, and should have been valued at R1,000. He therefore called on the plaintiffs to make up the stamp to that required on this valuation; and the plaintiffs refusing, he dismissed their suit under s. 54 (*b*) of the Civil Procedure Code (Act XIV of 1882). *Held* that in any case the Subordinate Judge was wrong. If the suit was really one for an account, the plaintiffs were entitled to value the relief they sought approximately, as they had done; if it were not one for an account, but for recovery of money, still the Subordinate Judge had no power himself to value the relief sought, but should have called on the defendant to value the relief he sought, and then, if he had thought such relief was undervalued, he could have applied s. 54 (*a*) of the Code of Civil Procedure (Act XIV of 1882), and rejected the suit. BALVANTRAO *v.* BHIMASHANKAR . I. L. R., 13 Bom., 517

206. ———— *Civil Procedure Code, 1859, s. 32— Ground for rejecting plaint.*— A plaint will not be rejected, under s. 32 of Act VIII of 1859, if the subject-matter alleged raises a fair question of claim or right for trial and determination between the parties. The mere unlikelihood of the plaintiff's success is not enough to justify the rejection of his plaint. LAKSHMI AMMAL *v.* TIKARAM TOVAJI . . . . 1 Mad., 240

207. ———— *Civil Procedure Code, 1859, s. 39—Document sued on not produced with plaint.*—*Held* that the Court to which a plaint is presented has no authority to reject it, merely because the document upon which the plaintiff sues is not produced with the plaint, as directed by s. 39 of Act VIII of 1859, and that the High Court has power to set aside such an order of rejection, as well as the decision of the District Court confirming it on appeal, and to direct that the plaint be received. EX-PARTE RAYCHAND AMICHAND

[2 Bom., 391: 2nd Ed., 369

See GOPAL GUNDAPA NAIK *v.* VISHNU KRISHNA NAIK . . . I. L. R., 22 Bom., 971

208. ———— *Reference to document not in plaint—Claim for damages for malicious prosecution.*—A Judge, in considering, under s. 32 of the Civil Procedure Code, whether he should admit or reject a plaint, is wrong in referring to documents and facts not stated in, or annexed to, the plaint, nor ascertained by him by interrogation of the plaintiff, although such documents and facts may have been on record in other proceedings in the Judge's Court. In a plaint claiming damage for an unsuccessful criminal prosecution of the plaintiff by the first defendant, and sanctioned by the second defendant as a Subordinate Judge, the plaintiff (though stating in the plaint that the second defendant "maliciously and without authority" sanctioned the prosecution, and that the Magistrate before whom it was brought held that there was no cause whatever for the charge) did not allege in the plaint that the first defendant prosecuted him (plaintiff) maliciously and without any reasonable or probable cause, or that the prosecution was sanctioned by the second defendant without reasonable or probable cause. *Held* that the plaint was properly rejected, and that there was no good ground for allowing the plaint to be amended, the plaintiff having delayed the filing of it until the last day but one allowed by the law of limitation. GIRDHARLAL DAYALDAS *v.* JAGANATH GIRDHARBHAI . . . . 10 Bom., 182

209. ———— *Civil Procedure Code, 1859, s. 32—Omission of specific statement of time cause of action arose.*—Where the plaint, in a

PLAINT—*continued*

7 REJECTION OF PLAINT—*continued*

suit to establish a right to landed property and to recover arrears of rent, alleged no specific acts of ownership since 1845 but contained a statement general

appeared to the Court that the right of action was barred by lapse of time UDAYA VARMA v NAYAR CHAMBITHU 1 Mad, 322

210 ——— *Plea of misjoinder when sustainable—Suit against several persons claiming under different titles, Effect of—Civil Procedure Code, ss 31 and 53*—A an auction purchaser at a revenue-sale brought a suit against a number of persons for possession of some chur land The defendants claimed portions of the land under different titles and pleaded misjoinder The Court, upon the Amin's report, gave A the option to amend the plaint by withdrawing the suit against any particular sets of defendants A elected to go to trial on the suit as brought and it was dismissed *Held that, having regard to the provisions of* ss 31 and 53 of the Civil Procedure Code, the proper order of the Court should have been to reject the plaint and not dismiss the suit on the ground of misjoinder SUDHENDU MOHUN ROY v DURGA DASI I L R, 14 Calc, 435

211 ——— *Suit brought different from suit sanctioned—Religious Endowments Act (XX of 1863), s 18*—A and B, being worshippers at a Hindu temple obtained sanction

the plaint was properly rejected SRINIVASA v VENKATA I L R., 11 Mad., 148

212 ——— *Civil Procedure Code 1882 ss 50 and 53 sub-section (d)—Amendment of plaint—Rejection of plaint*—After an examination of the plaintiff's pleader by the Court to discover whether there were grounds which did not appear for an amendment a suit was dismissed on the defects of the plaint which charging fraud did not set forth a good cause of action in regard to the above *Held* that dismissal was not the proper mode of disposal of the suit, but the plaint should have been rejected a course which would have enabled the plaintiff if he found himself at a future time in a position to make averments giving relevancy to an action to present a fresh plaint GUNGA NARAIN GUPTA v TILUCKRAM CHOWDHRY I. L. R., 15 Calc., 533 [L R, 15 I A., 119

213 ——— Time for rejection—*Civil Procedure Code 1877, s 54*—A plaint can only be rejected under s 54 of Act X of 1877 before it is registered HURIBUL HOSSEIN v MAHOMED REZA [I L. R., 8 Calc., 102: 10 C. L. R., 385

PLAINT—*continued*

7 REJECTION OF PLAINT—*concluded*

214 ——— *Rejection of plaint after registration*—Though a plaint has been registered the Court may reject it under Act VIII of 1859, s 32 as barred by the Act of Limitation CHETTI GAUNDAN v SUNDARAM PILLAI [2 Mad., 51

215 ——— *Civil Procedure Code (1882), s 54—Rejection of plaint already*

in respect of his judgment-debt The defendant subsequently applied for execution of this decree The trustees, to whom the debtors' assets were made over under the deed together with the debtors now brought a suit in the same Court for an injunction restraining the defendant from executing or proceeding to execute his decree The plaint was rejected by the District Judge after it had been registered and numbered and a written statement had been filed *Held that the Court* had jurisdiction to reject the plaint under the Civil Procedure Code, s 54 at that stage of the suit VENKATESA TAWKER v RAMASAMI CHETTIAR [I L R., 18 Mad, 338

216 ——— Effect of rejection—*Right to sue on same cause of action—Limitation*—Where a plaint is rejected under s 32 Act VIII of 1859, the plaintiff can bring a suit on the same subject-matter provided he is not barred by lapse of time KADUMBINEE DOSSIA v UNNOPOORNA DAYE [14 W R., 289

8 PROCEDURE.

217. ——— Assumption of facts as stated in plaint—*Decision on issues of law*—Where a plaintiff on certain alleged facts seeks relief and is unable to obtain a trial of the facts by reason of certain conclusions of law which the Judge forms on the case in its then condition the Courts are

10 Moore's I A., 540

PLAINTIFFS,

See COSTS—SPECIAL CASES—PLAINTIFFS.

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS

See CASES UNDER PARTIES—CONSTITUTION OF PARTIES—PLAINTIFFS

See CASES UNDER PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS

PLAINTIFFS—*concluded.*

——— Appeal between—

See PRACTICE—CIVIL CASES—APPEAL.
[I. L. R., 5 Bom., 264
I. L. R., 15 Bom., 145

——— Death of—

See ABATEMENT OF SUIT—SUITS.

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

See CASES UNDER REPRESENTATIVE OF DECEASED PERSONS.

PLEA.

——— of guilty on one of two contradictory charges.

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . 8 B. L. R., Ap., 25

——— Record of—

See PRACTICE—CRIMINAL CASES—AFFIDAVIT . I. L. R., 19 Mad., 209

1. ——— Plea of not guilty—*Procedure—Plea by counsel.*—An accused should plead by his own mouth and not through his counsel or pleader, though his counsel or pleader may at the proper time address the Court on his behalf. QUEEN *v.* ROOPA GOWALLA . . 15 W. R., Cr., 42

2. ——— Nature of plea—*Charge of grievous hurt—Illegal conviction—Misconstruction of statement of accused.*—In a case of causing grievous hurt to *B*, the prisoner, on having the charge read to him, stated that he had had a quarrel with *B*, and struck him twice with a stick in anger. *Held* that the Sessions Judge was wrong in treating this statement as a plea of guilty and in convicting thereon, and the conviction was quashed and the case remanded for trial. QUEEN *v.* JAIPAL KOIREE
[11 W. R., Cr., 6

3. ——— *Penal Code, s. 211—False charge—Irregular procedure.*—A prisoner, charged under s. 211 of the Penal Code with having brought a false charge with intent to injure, by accusing *A* of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304A, stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea, as required by s. 237 of the Criminal Procedure Code, appeared on the proceedings, nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A. *Held* that the conviction was bad. EMPRESS *v.* GOPAL DHANUK
[I. L. R., 7 Calc., 90: 8 C. L. R., 471

4. ——— Qualified plea—*Denial of commission of offence.*—When a prisoner pleads guilty, but goes on to say that he did not commit the offence with which he is charged, the plea is really one of not guilty. QUEEN *v.* MITTUN CHOWDHRY
[11 W. R., Cr., 53

QUEEN *v.* SONAOOLLAH . 25 W. R., Cr., 23

5. ——— *Charge of murder, Statement by the accused in answer to—Penal Code, ss. 302, 300, exc. 1, and expl.—Criminal Procedure Code (Act X of 1882), ss. 271, 299.*—An accused person, in answer to a charge of murder, stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adultery on the previous day. *Held* that such a statement did not amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence. NETAI LUSKAR *v.* QUEEN-EMPRESS
[I. L. R., 11 Calc., 410

6. ——— *Qualified plea of guilty—Capital charge—Procedure—Practice.*—In capital cases where there is any doubt as to whether an accused person fully understands the meaning and effect of a plea of guilty, it is advisable for the Court to take evidence, and not to convict solely on the plea of the accused. QUEEN-EMPRESS *v.* BHADU . . . I. L. R., 19 All., 119

7. ——— *Plea of guilty—Murder—Penal Code (Act XLV of 1860), s. 302—Confession—Procedure.*—The accused, who was a habitual ganja-smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife, because she quarrelled with him and objected to go to another village where he proposed a change of house on account of their poverty. He adhered to this statement when placed for trial before the Court of Session. The Sessions Judge treated this statement as a plea of guilty on the charge of murder, convicted the accused, and sentenced him to death, subject to confirmation by the High Court. *Held* (*per* JARDINE and CANDY, *JJ.*) that the accused's statement did not amount to a plea of guilty on the charge of murdering his wife. He alleged a sudden provocation: he ought therefore to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. QUEEN-EMPRESS *v.* SAKHARAM . I. L. R., 14 Bom., 564

PLEADER.

PLEADER—*continued.*

See ATTORNEY AND CLIENT . 1 N. W., 1

See BARRISTER . I. L. R., 3 Mad., 138
[I. L. R., 9 All., 180

See CONSIDERATION . . 3 N. W., 25

See COSTS—SPECIAL CASES—PLAINTIFFS.
[8 Bom., A. C., 241
I. L. R., 18 Mad., 128

See MINOR—REPRESENTATION OF MINOR IN SUITS . . . 11 C. L. R., 15

See PRESIDENCY MAGISTRATE
[I. L. R., 23 Bom., 490

——— Authority of—

See LIMITATION ACT, s. 19—ACKNOWLEDGMENT OF DEBTS
[I. L. R., 8 Bom., 99
I. L. R., 23 Calc., 374
I. L. R., 18 All., 384
I. L. R., 22 Bom., 722

See LUNATIC . I. L. R., 19 Bom., 135

See OATHS ACT, s. 9
[I. L. R., 14 Bom., 455

——— Inquiry into professional conduct of—

See REFERENCE TO HIGH COURT—CIVIL CASES I. L. R., 12 Bom., 78

——— Liability of, in conduct of case

See FORGERY I. L. R., 22 Bom., 317

——— Negligence of—

See COSTS—SPECIAL CASES—PLAINTIFFS
[I. L. R., 18 Mad., 128

——— Privilege of—

See DEFAMATION . . 2 N. W., 473
[I. L. R., 19 Bom., 340

——— Suspension of—

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.
I. L. R., 2 All., 511
L. R., 7 I. A., 8

——— Withdrawal of license to practise as—

See RECORDER'S ACT . 6 B. L. R., 180

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
6 B. L. R., 180

1. APPOINTMENT AND APPEARANCE

1. ——— Appointment—*Power of others than mukhtars to appoint.*—Not merely authorized mukhtars, but other persons generally, are at liberty to appoint pleaders by vakalatnamas. IN THE MATTER OF NUBEE BUKSH . 7 W. R., 481

2. ——— *Vakalatnama, Nature of.*—The acceptance of a vakalatnama by a pleader of the High Court should in all cases be unconditional. IN THE MATTER OF GOPEENATH MUDDUCK . . . . . 14 W. R., 7

PLEADER—*continued*

1. APPOINTMENT AND APPEARANCE—*continued*

3. ——— *Civil Procedure Code (1882), ss. 36 and 37—Ben. Reg. XXVII of 1814, ss. 13 and 21—Civil Procedure Code (Act VIII of 1859), ss. 16, 17, and 18—Pleaders and Mooktars Act (XX of 1865)—Civil Procedure Code (Act X of 1877), s. 39. Vakalatnama—Vakalatnama authorizing pleader to present an appeal signed by person having only a verbal authority from the appellant to do so.*—Under the provisions of the Civil Procedure Code (Act

[illegible]

I. L. R., 18 All., 140

4. ——— *Civil Procedure Code (1882), s. 39—Civil Procedure Code Amendment Act (VI of 1892), s. 4—Application for execution of decree—Proceedings in the suit. Vakalatnama.*—Applications for execution of the decree are proceedings in the suit within the meaning of s. 39 of the Civil Procedure Code. A vakalatnama remains in force until all proceedings in the suit are ended. SADASHIV GANPATRAO *v.* VITHALDAS NANCHAND I. L. R., 20 Bom., 198

5. ——— *Civil Procedure Code (1882), s. 39—Delegation of authority by duly*

[illegible]

dant No. 1) appointed separate pleaders (K and W) to conduct their case. On the day of hearing the

[illegible]

him *ex parte*. The Full Court refused the application, holding that the appeal

[illegible]

PLAINTIFFS—*concluded.*

——— **Appeal between—**

See PRACTICE—CIVIL CASES—APPEAL.
[I. L. R., 5 Bom., 264
I. L. R., 15 Bom., 145

——— **Death of—**

See ABATEMENT OF SUIT—SUITS.

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

See CASES UNDER REPRESENTATIVE OF DECEASED PERSONS.

PLEA.

——— **of guilty on one of two contradictory charges.**

See FALSE EVIDENCE—CONTRADICTORY STATEMENTS . 8 B. L. R., Ap., 25

——— **Record of—**

See PRACTICE—CRIMINAL CASES—AFFIDAVIT . . I. L. R., 19 Mad., 209

1. ——— **Plea of not guilty**—*Procedure—Plea by counsel.*—An accused should plead by his own mouth and not through his counsel or pleader, though his counsel or pleader may at the proper time address the Court on his behalf QUEEN *v.* ROOPA GOWALLA . . 15 W. R., Cr., 42

2. ——— **Nature of plea**—*Charge of grievous hurt—Illegal conviction—Misconstruction of statement of accused.*—In a case of causing grievous hurt to *B*, the prisoner, on having the charge read to him, stated that he had had a quarrel with *B*, and struck him twice with a stick in anger. *Held* that the Sessions Judge was wrong in treating this statement as a plea of guilty and in convicting thereon, and the conviction was quashed and the case remanded for trial. QUEEN *v.* JAIPAL KOIREE
[11 W. R., Cr., 6

3. ——— *Penal Code, s. 211—False charge—Irregular procedure.*—A prisoner, charged under s. 211 of the Penal Code with having brought a false charge with intent to injure, by accusing *A* of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304A, stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea, as required by s. 237 of the Criminal Procedure Code, appeared on the proceedings, nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A. *Held* that the conviction was bad. EMPRESS *v.* GOPAL DHANUK
[I. L. R., 7 Calc., 90: 8 C. L. R., 471

4. ——— **Qualified plea**—*Denial of commission of offence.*—When a prisoner pleads guilty, but goes on to say that he did not commit the

PLEA—*concluded.*

offence with which he is charged, the plea is really one of not guilty. QUEEN *v.* MITTUN CHOWDHRY
[11 W. R., Cr., 53

QUEEN *v.* SONAOOLLAH . 25 W. R., Cr., 23

5. ——— *Charge of murder, Statement by the accused in answer to—Penal Code, ss. 302, 300, exc. 1, and expl.—Criminal Procedure Code (Act X of 1882), ss. 271, 299.*—An accused person, in answer to a charge of murder, stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adultery on the previous day. *Held* that such a statement did not amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence. NETAI LUSKAR *v.* QUEEN-EMPRESS
[I. L. R., 11 Calc., 410

6. ——— *Qualified plea of guilty—Capital charge—Procedure—Practice.*—In capital cases where there is any doubt as to whether an accused person fully understands the meaning and effect of a plea of guilty, it is advisable for the Court to take evidence, and not to convict solely on the plea of the accused. QUEEN-EMPRESS *v.* BHADU . . . I. L. R., 19 All., 119

7. ——— *Plea of guilty—Murder—Penal Code (Act XLV of 1860), s. 302—Confession—Procedure.*—The accused, who was a habitual ganja-smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife, because she quarrelled with him and objected to go to another village where he proposed a change of house on account of their poverty. He adhered to this statement when placed for trial before the Court of Session. The Sessions Judge treated this statement as a plea of guilty on the charge of murder, convicted the accused, and sentenced him to death, subject to confirmation by the High Court. *Held* (*per* JARDINE and CANDY, *JJ.*) that the accused's statement did not amount to a plea of guilty on the charge of murdering his wife. He alleged a sudden provocation: he ought therefore to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. QUEEN-EMPRESS *v.* SAKHARAM . I. L. R., 14 Bom., 564

PLEADER.

PLEADER—*continued.*

See ATTORNEY AND CLIENT . 1 N. W, 1

See BARRISTER I. L R., 3 Mad., 138
[I L R, 9 All., 180

See CONSIDERATION . . 3 N W, 25

See COSTS—SPECIAL CASES—PLAINTIFFS
[8 Bom, A C, 241
I. L. R, 16 Mad., 128

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[I. L R, 23 Bom, 490

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[I L. R, 8 Bom, 99
I L R, 23 Calc, 374
I. L. R, 18 All., 384
I L R, 22 Bom, 722

See LUNATIC . I. L. R, 19 Bom, 135

See OATHS ACT, s 9
[I. L. R, 14 Bom., 455

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——— Liability of, in conduct of case

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See COSTS—SPECIAL CASES—PLAINTIFFS
[I. L R, 16 Mad, 128

——— Privilege of—

See DEFAMATION 2 N. W., 473
[I L. R, 19 Bom, 340

——— Suspension of—

See PRIVY COUNCIL, PRACTICE OF—SPECIAL LEAVE TO APPEAL.
. L. R, 2 All, 511
L R, 7 I. A., 6

——— Withdrawal of license to practise as—

See RECORDER'S ACT . 6 B L R, 180

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s 15—CIVIL CASES
6 B L. R., 180

1 APPOINTMENT AND APPEARANCE

1. ——— Appointment—*Power of others than mukhtars to appoint.*—Not merely authorized mukhtars, but other persons generally, are at liberty to appoint pleaders by vakalatnamas IN THE MATTER OF NUBEE BUKSH 7 W. R., 481

2. ——— *Vakalatnama, Nature of.*—The acceptance of a vakalatnama by a pleader of the High Court should in all cases be unconditional. IN THE MATTER OF GOPEENATH MUDDUCK . . . . . 14 W. R., 7

PLEADER—*continued*

1. APPOINTMENT AND APPEARANCE—*continued*

3. ——— *Civil Procedure Code (1882), ss 36 and 37—Ben Reg XXVII of 1814, ss 13 and 21—Civil Procedure Code (Act VIII of 1859), ss 16, 17, and 18—Pleaders and Mooktars Act (XX of 1865)—Civil Procedure Code (Act X of 1877), s 39 Vakalatnama—Vakalatnama authorizing pleader to present an appeal signed by person having only a verbal authority from the appellant to do so*—Under the provisions of the Civil Procedure Code (Act XIV of 1882), the appointment of a pleader to make or do any appearance, application, or act in or to a Civil Court must be in writing and that writing [illegible]

[I L R., 16 All, 240

4 ——— *Civil Procedure Code (1882) s 39—Civil Procedure Code Amendment Act (VI of 1892), s 4—Application for execution of decree—Proceedings in the suit Vakalatnama*—Applications for execution of the decree are proceedings in the suit within the meaning of s 39 of the Civil Procedure Code A vakalatnama remains in force until all proceedings in the suit are ended. SADASHIV GANPATRAO v VITHALDAS NANCHAND I L. R, 20 Bom., 198

5 ——— *Civil Procedure Code (1882), s 39—Delegation of authority by duly appointed pleader—Ex-parte decree—Application for new trial*—The applicant (defendant No 2) was one of two defendants in a suit in the Court of Small C[illegible] Bombay [illegible]

[illegible] dants He did so A decree was passed against both the defendants The applicant subsequently applied to the Full Court under s 37 of the Presidency Small Cause Courts Act (XV of 1882) for a new trial on the ground that he had not been represented at the [illegible]

PLEADER—*continued.*

1. APPOINTMENT AND APPEARANCE —*continued.*

The High Court sent back the case to the Small Causes Court to deal with the application for a new trial on its merits. SHIVDAYAL RAMCHARAN *v.* KHETU GANGU . . I. L. R., 20 Bom., 293

6. ———— *Appointment by pleader of another without client's authority—Bom. Reg. II of 1827, s. 54—Civil Procedure Code (Act XIV of 1882), ss. 36, 39, and 652—Charter Act (24 & 25 Vict., c. 104), s. 15—Bombay High Court's Civil Circular Orders, cl. 18 (i)—Proviso as to the appointment of another pleader.*—The proviso to sub-cl. (*i*) of cl. 18 of the Civil Circular Orders of the High Court, namely, that a pleader may appoint another pleader on his behalf, and that in such case the hearing will proceed, unless the Court see reason to the contrary, is not *ultra vires.* IN RE SHIDAPA . . . I. L. R., 22 Bom., 654

7. ———— *Rule of Court of 22nd May 1883—Practice—Vakalatnama—Pleader handing over his brief to another—Civil Procedure Code, ss. 36, 37, 39, 635.*—The Rule of Court, dated the 22nd May 1883, and authorizing legal practitioners in certain cases to appoint other legal practitioners to hold their briefs and appear in their place, was passed to facilitate the work of the Court and for the convenience of the pleaders practising before it, and was fully within the powers conferred upon the High Court by s. 635 of the Civil Procedure Code. MATADIN *v.* GANGA BAI

[I. L. R., 9 All., 613

8. ———— *Pleaders and their clients, their rights and obligations inter se—Bom. Reg. II of 1827—Confidential communications made in the course of professional employment.*—The rules prevailing in England with regard to the rights and obligations of solicitors in relation to their clients apply, with slight difference, to pleaders practising in India. The principles deducible from the English cases are as follows: 1. A party to a judicial proceeding is entitled to such professional assistance as he thinks will best suit him. 2. A pleader is free to place his services at the disposal of any such party upon such terms as he may think most advantageous to himself consistently with the honour of his profession and the due administration of justice. 3. A pleader who receives any confidential information from his client in the course of his professional employment is not at liberty to carry that information into the service of his antagonist, or any one who in that very litigation or in any subsequent litigation may be opposed to the client furnishing the information. 4. Under Regulation II of 1827, pleaders receive certain fees, in return for which they are not at liberty to act against those retaining them, whether they are retained by one client singly or by two or more clients jointly. A pleader who has acted for several persons will not be restrained from afterwards acting for some of them only as against the others, unless it be shown that he is possessed of knowledge arising from his previous employment which might be prejudicial to his other clients. As a general rule, the Court will require a very strong case to be made out before it will interfere by way of injunction, restraining a pleader from appearing for a client, and there must be clear affidavits made to show that special knowledge was acquired by the pleader during his employment by the former client. In case of his possessing such knowledge, he will not be allowed to throw up the conduct of the case and transfer his services. He will never be allowed to discharge himself from the conduct of the case if the case raises even a probability of prejudice to his former employers. *K*, a pleader, was at first retained by *P* and *N* jointly to defend a suit on their behalf. At a later stage of the case, *P* and *N* quarrelled. Thereupon *K* applied to the Court for leave to withdraw from the conduct of the case, on the ground that he could not attend to the interests of both *P* and *N*. The Court allowed him to withdraw. A few days afterwards *K* appeared in Court, and filed a vakalatnama, or warrant or attorney, signed by *N*, and claimed to conduct the case on behalf of *N* alone. *P* objected to this, but the Court disallowed this objection. Thereupon *P* made an application to the High Court for an injunction restraining *K* from acting on behalf of *N* alone. *Held* that, as it was not made out that *K* was in possession of any confidential information either from *P* or from *P* and *N* together, such as would give him an unfair advantage when acting on behalf of *N*, the Court would not interfere or restrain *K* from serving *N* alone. *Held*, further, that a pleader in such circumstances should take the direction of the Court as to which of two or more clients he is to serve, and as to the disposal of the fees he has received from them jointly. PALLONJI MERWANJI *v.* KALLABHAI LALLUBHAI

[I. L. R., 12 Bom., 85

REG. *v.* BEZONJI NOWROJI

[I. L. R., 12 Bom., 91 note

9. ———— *Pleader's absence from Court owing to his temporary appointment as a Subordinate Judge—"Necessary cause"—Bom. Reg. II of 1827, s. 54.*—On the day fixed for the hearing of a suit, neither the plaintiff nor his pleader was present; the defendant, not having been served, was also absent. Plaintiff's pleader, however, sent intimation to the Court in writing that he had been appointed to act as a Subordinate Judge, and as he was going that day to join his appointment, he was unable to attend the Court. He therefore requested that the case should be adjourned till his return, or that a notice be issued to his client to enable him to make the necessary arrangements for the conduct of his case. *Held* that the pleader, having been temporarily appointed to act as a Subordinate Judge, was unable to attend the Court in consequence of a "necessary cause" within the meaning of s. 54 of Regulation II of 1827; and as he had sent the necessary notification in writing to the Court, the suit should not be dismissed, but adjourned for a reasonable time. IN RE NARAYAN SADASHIV KALE I. L. R., 23 Bom., 657

PLEADER—*continued*

1 APPOINTMENT AND APPEARANCE —*continued*

10 ———— Appearance—*Filing vakalatnama—Criminal Procedure Code 1872 s 186*—An authorized pleader appearing in defence of an accused person under s. 186 Criminal Procedure Code, should not be required to file a vakalatnama. ANONYMOUS 7 Mad., Ap, 41

11. ———— *Civil Procedure Code 1859 s 18—Right of pleader to appear in Appellate Court and subsequent stages of suit*—When a pleader appears in a regular appeal before the High Court he is competent under that vakalatnama, unless it is revoked to appear for the client in the subsequent stages of that case and in the appeal if preferred to the Privy Council s. 18 of Act VIII of 1859 applying to Appellate as well as Original Courts MUKHUN LALL *v* SREEKISHEN SINGH [8 W R, 92

12. ———— *Vakil—Claim under s 246 Act VIII of 1859—Fresh vakalatnama*—The vakil retained by the plaintiff in a suit in which a decree has been given for the plaintiff is competent to plead for his client in answer to a claim advanced (under the first portion of s 246 of the Civil Procedure Code) to property attached in execution of such decree without the production of a fresh vakalatnama. GOPAL JAYACHAND *v* HARGOVIND KHUSHAL 5 Bom., A C, 83

13 ———— *Fresh vakalatnama—Application for new trial*—A fresh vaka

[12 W R., 465

14 ———— *Civil Procedure Code s 39 Pleader retained by a Collector as agent of Court of Wards—Validity of vakalatnama after the Collector's death*—The Collector of a district who was agent for the Court of Wards filed a suit on behalf of a ward of the Court of Wards and executed a vakalatnama to a pleader whom he retained to conduct it The Collector died before the suit was determined *Held* that it was not necessary for a new vakalatnama to be executed to enable the pleader to proceed with the conduct of the suit KRISHNA VIJAYA PUCHAYA NAICKER *v* MARUDANAYAGAM PILLAI I L. R., 15 Mad, 135

15 ———— *Application for restoration of an appeal dismissed for default—Vakalatnama*—Where a vakil had been duly empowered by a vakalatnama drawn in the customary form to file and conduct an appeal in the High Court and that appeal had been dismissed for default—*Held* that such vakil was competent ...

[I. L. R., 15 All., 55

16 ———— *Vakalatnama executed in favour of two vakils accepted by only one—Presentation of appeal under such vakalatnama—Principal and agent—Civil Procedure Code* ... our of ... ly by ... The ... Judge ... bord

nate Judge ... that it had not been duly presented and made an order rejecting it *Held* that the appeal had been duly presented. AYYANNA *v* NAGABHOOSHANAM I L R., 16 Mad, 285

17 ———— *Legal Practitioners Act (XVIII of 1879) sch II Pt I cl (d)—Pleader holding certificate on Rs stamp—Right to practise*—A pleader who holds a certificate on a 5-rupee stamp is entitled to practise before a Munsif when exercising Small Cause Court powers IN THE MATTER OF PAKAL CHANDER TEWARY [1 C W N, 118

18 ———— *Remand of case*— ...

for the party opposed to the one for whom he appeared at the first hearing ANONYMOUS [4 Mad., Ap, 43

19 ———— *Act XX of 1865*—There is nothing in the provisions of Act XX ...

e g of a mooktear standing behind the pleader IN THE MATTER OF GUGRAJ SINGH 10 W R, 355

20 ———— *Act XX of 1865 s 20—Appearance of party by pleader*—*Held* in a case under Act X of 1859 in which the plaintiff had appeared at the preliminary hearing when the issues were framed and where he was not required to appear in person on the day of the trial that the

21 ———— *Vakil of High Court—Right to plead in Small Cause Court*—

22 ———— *Act XX of 1865 s 12—Small Cause Court Calcutta*—A pleader holding a certificate under s. 12 of Act XX of 1865 is not thereby entitled to be admitted to practise

PLEADER—*continued.*

1. APPOINTMENT AND APPEARANCE —*continued.*

in the Court of Small Causes at Calcutta. IN RE SHASHI BHUSHAN BHADURY [1 B. L. R., A. C., 45: 10 W. R., 82

23. ———— *Barristers—Attorneys—Civil Procedure Code (Act XIV of 1882), ss. 2 and 36—Presidency Small Cause Court Act (XV of 1882), ss. 38 and 76—Right to practise—Rules—Power to make rules.*—*Per* BAYLEY, WEST, and LATHAM, JJ. None but barristers and attorneys have a legal right to practise in the Bombay Court of Small Causes. Neither ss. 2 and 36 of the Code of Civil Procedure (Act XIV of 1882) nor ss. 38 and 76 of the Presidency Small Cause Court Act (XV of 1882) give the pleaders of the Bombay High Court that right. The provisions of s. 47 of Regulation II of 1827, authorizing persons holding sanads from the High Court to practise in the mofussil Courts, are still in force. *Per* BAYLEY, WEST, PINHEY, and LATHAM, JJ.—S. 2 of the Code of Civil Procedure, 1882, does not give every pleader a title to appear and plead; it only enacts that "pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil, and an attorney of a High Court. Consequently, if pleaders or vakils, who are the same class of practitioners, are not entitled by law to appear or plead for another in Court, the definition of "pleader" gives them no new right or status. The words in s. 36 of the Code of Civil Procedure (Act XIV of 1882) "by a pleader duly appointed to act on his behalf," do not simply mean a person duly appointed by the party in the suit, but a pleader duly appointed according to the law regarding pleaders in force in the particular Court. *Per* PINHEY, SCOTT, and LATHAM, JJ. (WEST, J., *dissentiente*).—The High Court has the power of making rules for the admission of pleaders to practise in the Bombay Court of Small Causes; and the Bombay Court of Small Causes, under s. 9 of the Presidency Small Cause Court Act (XV of 1882), also has the power of making similar rules with the sanction of the High Court. IN RE PLEADERS OF THE HIGH COURT, BOMBAY I. L. R., 8 Bom., 105

24. ———— *Practice of Privy Council—Admission to practise in the Privy Council—Rules of 31st March 1871—Vakil of High Court.*—The words of ss. 2 and 3 of the Rules of 31st March 1871 are such that classes of persons to be admitted to practise in the Privy Council must be either solicitors or others practising in London, or solicitors admitted by the High Court in India or in the Colonies respectively, and have not left an undefined class admissible at the discretion of the Judicial Committee. IN THE MATTER OF THE PETITION OF TWIDALE . . . I. L. R., 16 Calc., 636 [L. R., 16 I. A., 163

25. ———— *Practice—Second Appeal—Vakil, Right of, to be heard without certified grounds of appeal or without any order admitting the appeal—Rules and Orders of Court (Appellate Side), 86 and 162.*—A vakil will not be heard on behalf of an appellant on second appeal, when neither duly certified ground or grounds of appeal have been filed, nor the appeal been admitted by order of Court under Rules 86 and 162 of Court. *Kishen Chunder Roy* v. *Hurrish Chunder Bose, 3 W. R., 216,* followed. OLIULLAH v. BACHU LAL KHOTTA [I. L. R., 15 Calc., 706

26. ———— *Prosecution—Right to appear in Criminal Courts.*—A counsel or pleader is entitled to appear and act on behalf of the prosecution in the Criminal Courts. CHANDI CHARAN CHATTERJEE v. CHANDRA KUMAR GHOSE [5 B. L. R., Ap., 70: 14 W. R., Cr., 23

27. ———— *Admitting vakils to defend in Criminal Courts.*—The practice of admitting private vakils to defend parties in Criminal Courts is not illegal. It was discretionary with the Magistrate to hear such agents or not under s. 186 of the Criminal Procedure Code, 1872. ANONYMOUS [7 Mad., Ap., 37

28. ———— *Right of pleader to appear—Inquiry under Criminal Procedure Code, s. 180.*—At an inquiry held by a Magistrate under s. 180 of the Criminal Procedure Code, 1861, a complainant has no right to be represented by a pleader. BINDACHARI v. DRACUP [8 Bom., A. C., 202

29. ———— *Private prosecutor—Criminal reference to High Court—Criminal Procedure Code (Act XXV of 1861), s. 434.*—Private prosecutor not allowed to appear by pleader on a reference to the High Court under s. 434 of the Criminal Procedure Code, 1861. QUEEN v. RAMJAI MAZUMDAR . . . . 6 B. L. R., Ap., 46

S. C. SUDDURUDDEEN SIRCAR v. RAM JOY MOZOOMDAR . . . . . 14 W. R., Cr., 51

Quære—Whether they could appear at all in such cases. LALOO v. ADAM SIRCAR. GOVERNMENT v. SURJAKANT ACHARJIA . . 17 W. R., Cr., 37

30. ———— *Criminal Procedure Code (1882), s. 340—"Accused," Meaning of—Right to be heard by pleader.*—Under the provisions of s. 340 of the Criminal Procedure Code, a Sessions Judge is bound to hear the pleader appointed by a person who (though not accused of any offence) is ordered to give security for good behaviour under s. 118 of the Criminal Procedure Code. The word "accused" means a person over whom the Magistrate or other Court is exercising jurisdiction. *Queen-Empress* v. *Mona Puna, I. L. R., 16 Bom., 661,* followed. JHOJA SINGH v. QUEEN EMPRESS [I. L. R., 23 Calc., 493

QUEEN-EMPRESS v. MUTASADDI LAL [I. L. R., 21 All., 109

QUEEN-EMPRESS v. MONA PUNA [I. L. R., 16 Bom., 661

31. ———— *Criminal Procedure Code, 1898, s. 123, Reference to Sessions Judge under.*—A Sessions Judge is bound to hear pleader

PLEADER—*continued.*

1 APPOINTMENT AND APPEARANCE
—*concluded*

who may appear on behalf of a person in a case referred to him under s 123, cl 2 of Civil Procedure Code *Jhoja Singh v. Queen-Empress, I L R, 23 Calc, 493,* referred to ABINASH MALAKAR v EMPRESS . . . . 4 C. W. N., 797

32. ——— *Act XX of 1865* s. *5—"Act"—Acting as private agent*—The word "act" in s 5 of the Pleaders and Mooktears Act (XX of 1865) means the doing something as

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of the defence rests IN THE MATTER OF THE PETITION OF FUZZLE ALI . 19 W. R., Cr, 8

33 ——— *Inability to go on with appeal—Duty of Judge*—When one of the pleaders for an appellant states his inability to go on with an appeal, the Judge is not bound to send for any other pleader for the appellant and ask him if he is ready to proceed with the case, but may at once dismiss the appeal BROJO SOONDUREE DOSSIA v. GILMORE 7 W. R, 336

34 ——— Non-appearance ...

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but the Subordinate Judge insisted upon the case being proceeded with *ex parte* *Held* that there had been a *failure on the part of the Court to exercise* a proper judicial discretion ACHUMBIT JHA v JEWUN . . . 11 C. L. R., 11

35 Control of case—*Senior pleader—Arguments*—The senior pleader who is present has the entire control of a case in the High Court and it is not open to the junior pleader to take any ground of appeal which his senior has not thought fit to argue except only when the senior has obtained the permission of the Court that the course should be taken SREENEEBASH ROY v UMBIKA CHURN ROY . . . 12 W. R., 375

2 AUTHORITY OF, TO BIND CLIENT

36 Statement by pleader—*Admissions made in conduct of suit*—When a pleader in the conduct of a suit makes admissions on behalf of a client, the client is bound by such admissions BERKELEY v. CHITTUR KOOAR . 5 N W., 2

37. ——— *Admission by pleader in conduct of case*—A party is bound by the admission of his duly constituted vakil, when the admission is one of a fact which, but for such admission, the opposite party would have had an opportunity of proving. NARAIN ROY v SREENATH MITTER 9 W. R., 485

38 ——— *Admission of vakil in criminal case*—Admissions of a vakil can not bind his client in a criminal case QUEEN v KAZIM MUNDLE . . 17 W R., Cr 49

39. ——— *Mofussil Courts—Questions of law and fact, Admissions in respect of*—*Per* JACKSON, J A vakil in the Courts of the mofussil is not empowered to make admissions on points of law on behalf of his client, although he may make admissions on points of fact JUSODA KOONWAR v. GOUREE BYJNATH PERSHAD

[1 Ind Jur, N S, 365

ABDOOL GUNNEE v GOUR MONEE DEBIA

[9 W. R., 375

40. ——— *Opinion expressed by vakil in argument*—The opinion expressed by a vakil in the course of argument adversely to a claim which he undertook to advocate is not binding on his client KRISHNASAMI AYYANGAR v RAJAGOPALA AYYANGAR I. L. R., 18 Mad, 73

41 ——— *Admission by pleader erroneous in law*—An admission by a pleader, if it is erroneous in law, is not binding on his client KRISHNAJI NARAYAN PARKHI v RAJMAL MANIKCHAND MAMADI I. L. R, 24 Bom., 360

42. ——— *Erroneous consent of vakil*—Where a vakil upon a mistaken view of the law goes beyond and contravenes his instructions his erroneous consent cannot bind his client RAM KANT CHOWDHRY v BRINDABUN CHUNDER DOSS 16 W. R., 246

43 ——— *Statements by vakil out of ordinary scope of his authority* The

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VELA ATCHIYAMMA . 6 Mad., 121

44. ——— *Verbal admission made by pleader*—In a suit to set aside a sale in execution on the ground of fraud,—*Held* in reference to the terms of certain statements made by the plaintiffs' pleader, from which the lower Appellate Court had inferred that the plaintiffs must have become aware of the fraud at a date earlier than that alleged by them, that verbal admissions made by the pleader of a party to a suit must be received with caution, must be taken as a whole, and must not be unduly pressed. NATHA SINGH v JODHA SINGH

[I. L. R., 6 All., 406

45. ——— *Power to make admissions or statements to bind client—Relinquishment of part of defence*—In a suit to recover possession, where defendants' pleader stated before the Munsif that if the thak map (which was not at the

PLEADER—*continued.*

2. AUTHORITY OF, TO BIND CLIENT —*continued.*

time in Court) could show that the lands in dispute had been surveyed as part and parcel of the plaintiff's talukh, his client would give up his claim,—*Held* that the statement was not one which was within the scope of the pleader's authority to make, and was not binding upon the client. CHUNDER COOMAR DEO *v.* SUDAKUT MAHOMED KHAN . . 18 W. R., 436

46. ———— *Consent of pleader—Effect of admission.*—The admission of a vakil made with due authority will bind his client, though not present at the time of making it. Where, therefore, an order was made for the payment of a certain sum, being the moiety of the profits of an estate founded on the amount for which security had been taken, as the rental of a zamindari when possession was given up, and that amount was admitted and assented to by the vakil in Court, and the order made accordingly,—*Held* by the Judicial Committee, affirming the judgment of the Court below, that such consent was binding on the client, and precluded him from afterwards opening the account. RAJUNDER NARAIN RAO *v.* BIJAI GOVIND SINGH [2 Moore's I. A., 253

47. ———— *Consent—Dekkan Agriculturists' Relief Act, s. 3, cl. 3—Consent to proceeding under Act, Withdrawal of.*—If a party or his pleader gives consent under cl. 3 of s. 3 of the Dekkan Agriculturists' Relief Act (XVII of 1879) to the disposal of a suit according to the provisions of Ch. II of the Act, the consent so given cannot be withdrawn after the hearing has begun, and the suit has proceeded on the footing of such consent. RUPCHAND KHEMCHAND *v.* BALVANT NARAYAN . . . I. L. R., 11 Bom., 591

48. ———— *Admission of liability by vakil.*—A distinct admission of liability made by a vakil, who represented the defendant and whose authority was not questioned, was held to be sufficient to warrant a decree in favour of the plaintiff. DOSSEE *v.* PITAMBUR PUNDAH [21 W. R., 332

49. ———— *Admission by vakil—Evidence of receipt of money.*—The admission of a defendant's vakil in Court was held to be legal evidence of the receipt of money, and to do away with the necessity for other proof. KALEEKANUND BHUTTACHARJEE *v.* GIREEBALA DEBIA [10 W. R., 322

50. ———— Power of pleader—*Power to compromise case.*—Ordinarily a vakil who is employed to conduct the case on behalf of his client has no implied authority to compromise it. In the absence of any express provision in the vakalatnama, he can make no compromise which will be binding upon his client, except with his consent. PREM SOOK *v.* PIRTHEE RAM . . . . . 2 Agra, 222

51. ———— *Power to compromise suit.*—Pleaders, unless specially empowered so to do, have no authority to compromise cases conducted by them. SIRDAR BEGUM *v.* IZZUT-OOL-NISSA [2 N. W., 149

PLEADER—*continued.*

2. AUTHORITY OF, TO BIND CLIENT —*continued.*

JAGAPATI MUDALIAR *v.* EKAMBARA MUDALIAR [I. L. R., 21 Mad., 274

52. ———— *Consent to matter beyond scope of suit.*—A consent by the vakil of a party to a decree being made binding on property other than what the parties to the suit may have an interest in, is a consent to what is beyond the scope of the suit, and can neither be binding on the party nor acted upon by the Court. AYUL KHADAR *v.* ANDHU SET . . . 2 Mad., 423

53. ———— *Relinquishment of defence.*—Where a pleader authorized only to conduct the defence in the usual way pledged his client to relinquish his defence if the plaintiff would assert on oath that the defendant was not the owner of the property in dispute, it was held that he had exceeded his power, and that his client was not bound by his act. HAKEEMOONNISSA *v.* BULDEO [3 Agra, 309

54. ———— *Unauthorized relinquishment by pleader.*—It is not within the ordinary scope of a pleader's duties to relinquish any portion of his client's case without express authority from the client, who is not bound by such relinquishment, unless it was authorized by himself. GOUR PERSHAD DOSS *v.* SOOKDEB RAM DEB [12 W. R., 279

55. ———— *Relinquishment of part of claim.*—A vakil has no authority under an ordinary vakalatnama to give up a portion of the claim already decreed, and any such abandonment will not be binding on his client. When a case is remanded with the specific declaration that the plaintiff shall obtain "possession of the disputed property," the lower Court has no jurisdiction to debar the plaintiff from any portion thereof by reason of a relinquishment made by the vakil. ABDUL SABHAN CHOWDHRY *v.* SHIBKISTO DAW 3 B. L. R., Ap., 15

56. ———— *Authority of Counsel, vakils, or other agents—Abandonment of issue—Scope of authority in conduct of litigation—Compromise—Civil Procedure Code (1882), s. 462.*—A vakil appointed to conduct a case on behalf of a client has power to ask for an issue to be framed, or to abandon one that has been framed, and, in the absence of fraud or misconduct or of express instructions prohibiting the adoption of such a course, his action will be binding on his client. There is no distinction in this respect between the acts of Counsel, vakils, and other agents. The abandonment of an issue does not amount to a compromise, and if the suit is being conducted by a guardian on behalf of the minor, leave of the Court is not necessary under s. 462 of the Code of Civil Procedure for such abandonment. VENKATA NARASIMHA NAIDU *v.* BHASHYAKARLU NAIDU [I. L. R., 22 Mad., 538

57. ———— *Withdrawal from suit—Vakalatnama.*—A vakalatnama given by a plaintiff, and couched in general terms, suffices

PLEADER—*continued*

2 AUTHORITY OF, TO BIND CLIENT —*concluded*

... to apply on behalf ... suit, ... the ... rwise ... ation, RAM COOMAR ROY *v* COLLECTOR OF BEERBHOOM [5 W. R., 80

58 ——— *Power of vakil to transfer decree* —A vakil by his ordinary employment as vakil enjoys no authority authorizing him to transfer a decree NOHUR *v* JAFFER HOSSEIN [2 N W, 195

3 REMUNERATION

59 ——— Amount of remuneration—*Vakil* —Although a vakil is entitled to whatever charge his client agrees to yet if he acts under an engagement constituting him his client s mooktear and legal adviser, he is bound by the same rules as an attorney, and is therefore entitled only to such reasonable remuneration as the law allows USMUT KOOWAR *v* TAYLER 2 W. R, 307

60 ——— *Suit for fees—Costs between party and party* —In a suit by a pleader for the balance of vakil s fees where it was ... in con- ... er Ap- ... what, ... allowed as costs between party and party JUDGONATH DUTT *v* RUSHAD ALI 10 W R., 105

61. ——— *Suit by vakil for fees—Act I of 1846, s 7—Beng Reg XXVII of 1814, s 25—Costs* —In a suit brought by a vakil against his client for the amount of his fees and instituted after the passing of Act I of 1846 but before the Pleaders and Mooktears Act (XX of 1865) came into operation —*Held* that, where the services in respect of which the fees were claimed consisted of the conduct of a suit which was dismissed for a deficient plaint, under s 29 of Act VIII of 1859 the vakil is not entitled to the full amount of costs under Act I of 1846 s 7, or the scale fixed by Regulation XXVII of 1814 s 25; but in the absence of an express agreement he is only entitled to a reasonable sum as remuneration for his work and labour as a pleader So much of Regulation XXVII of 1814 as was before January 1866 unrepealed and the whole of Act I of 1864, are repealed by Act XX of 1865 which came into operation on January 1st 1866. AMEERUNNISSA *v* CHAPMAN [1 Ind. Jur, N. S, 334: 0 W. R., 108

62. ——— *Costs as between* ... Reg II of 1827 s 52— ... by way of a percentage, relate only to costs as between party and party, and (inasmuch as s 52 of Regulation II of 1827 is by s. 6 of Act I of 1846, expressly rendered inoperative for any purpose except for the purposes of s 7 of the latter Act) there is not any statutable provision for costs as between pleader and client, so that in the absence of an agreement between them, the pleader is left to his remedy on a *quantum meruit* GANOJI VITHAL *v* SITARAM SHRIDHAR . 9 Bom., 33

PLEADER—*continued*

3 REMUNERATION—*continued*

63 ——— *Costs between pleader and client—Act I of 1846, s 6—Quantum meruit* —In a suit brought by *R in formâ pauperis* against the defendant, he had engaged the services of the plaintiff as his pleader, but no express agreement for the remuneration of the plaintiff was made The suit was numbered and after the evidence on either side had been gone into the trying Court made an order dispaupering *R* On an application by *R* who offered to pay the Court fees, the High Court under its extraordinary jurisdiction made an order directing the lower Court to receive the fees and to proceed with the suit *R* paid the fees, but the suit was compromised. The plaintiff did not attend to the suit after remand The plaintiff having sued the defendant for his fees the Subordinate Judge was of opinion that one fourth fee under s 6 of Act I of 1846 should be awarded to the plaintiff On reference to the High Court —*Held* that the plaintiff was entitled to a *quantum meruit* which was to be determined with reference to all the circumstances of the case, there being no express agreement in the case KESHAV GOVIND JOSHI *v* JAMSETJI CURSETJI [I. L. R., 12 Bom., 557

64 ——— Right of suit for fees—*Cause of action—Uncompleted case* —Where a vakil has undertaken the conduct of a suit he is bound to proceed with it, and cannot sue for his fee, in the ... suit is com- ...

65 ——— Right to additional fee— ...

[I. L. R., ... Bom., ...

66. ——— Agreement for further remuneration in successful case—*Inam patras—Act I of 1846, s 7* —Inam patras or agreements, oral or written, made contemporaneously with the vakalatnamas by clients with their pleaders for the payment of rewards in addition to the regulation fees, provided their cases are decided in their favour are not *nudum pactum*, and, having regard to s. 7 of

PLEADER—*continued.*

3. REMUNERATION—*continued.*

Act I of 1846, cannot be considered as illegal. PARASHRAM *v.* HIRAMAN . I. L. R., 8 Bom., 413

67. ———— *Suit by pleader for fees.*—An application was made for leave to sue defendant *in formâ pauperis*, and he agreed with certain vakils to give them full fees, according to the valuation of the claim, in case they should succeed in having the application rejected. *Held* that this was a valid agreement, and that the vakils, having performed their part, were entitled to recover upon it. RAM KANT NANDI *v.* SHIB NANDA RAI [2 C. L. R., 166

68. ———— Right to recover fee—*Legal Practitioners Act, ss. 27, 28, 30 - Suit by pleader to recover fee from client—Contract Act, s. 70—Civil Procedure Code, s. 622.*—The Legal Practitioners Act does not debar a pleader from recovering a fee from his client when no contract in writing is made. RAMA *v.* KUNJI . I. L. R., 9 Mad., 375

69. ———— Promissory note made by a party in favour of his pleader in respect of the fee agreed upon—*Legal Practitioners Act (XVIII of 1879), ss. 28, 29—Agreement not filed in Court.*—A party to a suit made and delivered to his pleader in respect of the fee agreed upon a promissory note which was not filed in Court in that suit. In a suit by the pleader upon his promissory note, *Held* that the promissory note was invalid, and that the plaintiff was entitled to recover only the amount to which he was found to be entitled for his labour. KRISHNASAMI *v.* KESAVA [I. L. R., 14 Mad., 63

70. ———— Suit by pleader to recover fee from client - *Legal Practitioners' Act (XVIII of 1879), ss. 27, 28, 29, 30—Agreement for fee—Agreement not in writing and filed in Court.*—Ss. 27, 28, and 29 of the Legal Practitioners' Act (XVIII of 1879) do not relate to any arrangements or agreement made between a litigant and his own pleader as to the receipt of his fees which are actually allowed upon taxation. They do not provide as to matters which relate to the opposite party, or the fees that he has to pay to the legal practitioner of the opposite party, but provide what, as between the pleader and his client, shall be the method in which certain special arrangements are to be entered into. They make provision for arrangements between pleaders and their clients, which relate to the payment of remuneration in excess of and apart from the amount allowed in the taxation, and were framed upon the principle which regards with jealous scrutiny contracts brought about by persons holding positions of active confidence towards others, such as a pleader necessarily occupies in reference to his client. They were intended to protect necessitous, improvident, or careless litigants, from being taken advantage of by unscrupulous legal advisers. *Rama* v. *Kunji, I. L. R., 9 Mad., 375,* approved and followed. RAZI-UD-DIN *v.* KARIM BAKHSH . . . I. L. R., 12 All., 169

71. ———— Agreement between pleader and person retaining him — *Legal Practitioners' Act (XVIII of 1879), s. 28 - Promissory note, Suit on—Quantum meruit.*—The defendants' brother engaged a vakil (since deceased) to defend certain suits on their behalf and made and delivered to him a promissory note for an agreed sum in respect of his fee. The note was not filed in Court, and it exceeded in amount the vakil's regulation fee. The defendants subsequently made a promissory note in substitution for the above, and the vakil's representatives now brought a suit upon the last-mentioned note. *Held* (1) that the agreement with the defendants' brother was invalid by reason of the Legal Practitioners' Act, s. 28, and the plaintiffs were not entitled to recover the amount of the note; (2) that the plaintiffs were entitled to recover in this action the amount due to the vakil independently of that agreement. ANANTAYYA *v.* PADMAYYA [I. L. R., 16 Mad., 278

72. ———— Suit on promissory note given for past professional services rendered under oral agreements - *Legal Practitioners' Act (XVIII of 1879), ss. 28 and 29—Guardian and ward—Services necessary or beneficial to minor.*—A guardian executed a promissory note in favour of a vakil (the plaintiff) as remuneration for his past professional service rendered under oral agreements with him. *Held* that a suit upon the note was barred by ss. 28 and 29 of Act XVIII of 1879, and that, as there was no such necessity for the proceeding in question as to render the contract binding on the minors, no suit would lie against them. SUNDARARAJA AYYANGAR *v.* PATTANATHUSAMI TEVAR . . I. L. R., 17 Mad., 306

73. ———— Oral agreement for pleader's remuneration—*Legal Practitioners' Act (XVIII of 1879), s. 28—Criminal proceedings—Quantum meruit.*—A pleader was retained by an accused person to conduct his defence. The accused did not pay the agreed fee, and the plaintiff thereupon declined to conduct his defence. The defendant, who was one of the accused, then undertook orally to pay the fee, but failed to do so after the plaintiff had conducted the defence of both accused persons. The plaintiff now sued the defendant to recover the agreed amount. *Held* that under Legal Practitioners' Act, s. 28, the plaintiff was not entitled to recover on the contract, but that he was entitled to recover reasonable remuneration for the services rendered by him. NARASIMMA CHARIAR *v.* SINNAVAN . I. L. R., 20 Mad., 365

74. ———— Suit by a pleader to recover fee from his client—*Legal Practitioners' Act (XVIII of 1879), s. 28—Contract Act, s. 70.*—The Legal Practitioners' Act (XVIII of 1879), s 28, debars a pleader from recovering a fee from his client when no contract in writing is made. *Rama* v. *Kunji, I. L. R., 9 Mad., 375,* and *Krishnasami* v. *Kesava, I. L. R., 14 Mad., 63,* dissented from. SARAT CHANDRA ROY CHOUDHRY *v.* CHUNDRA KANTA ROY . . I. L. R., 25 Calc., 805

PLEADER—*continued*

3 REMUNERATION—*continued*

75 ———— **Division of fee where more than one pleader**—*Mad Reg XIV of 1816, s 30—Fees, Division of, where two vakils appointed*—The rule under Reg XIV of 1816, s 30 that each of two vakils appointed by a party to a suit shall be entitled to a moiety of the fees payable, applies only to cases where they are appointed by the same vakalatnama KISARA RUKKAMMA RAU v CHIPATA VIYYANNA DIKSHATULU 1 Mad, 369

76 ———— **Fee allowed for registration petition**—*Act I of 1846 s 7* The fee to be allowed to a pleader upon a petition to the Court to establish the right to have a document registered under Act XX of 1866, s 84 was one-fourth of the fee allowable in a regular suit, as was provided by Act I of 1846 s. 7 COLLECTOR OF THANA v GANA RAMJI PATIL 7 Bom, A C, 132

77 ———— **Fees in suit under Registration Act, 1864, s 15**—*Regular suit*—A suit under s 15 Act XVI of 1864 was not a summary, but a regular suit, and full fees were awarded for pleaders MOWLA BUKSH v ALI KHAN [9 W. R., 101

78 ———— **Fees in suit for judicial separation**—*Divorce Act (IV of 1869)—Estimation of fees*—In a suit for a judicial separation and alimony decided under the Indian Divorce Act (IV of 1869) the only basis for the estimation of pleader's fees is ten times the amount of alimony for one year SCOTT v SCOTT 7 Mad, 394

79 ———— **Fees in partition suit**—*Hearing fee*—The ordinary rule for assessing the hearing fee according to the market value of the property in suit is not applicable to a suit for partition, and the Court in each such case ought to fix the amount of the fee KIRTEE CHUNDER MITTER v ANATH NATH DEB 13 C. L. R., 253

80 ———— **Fees in suit for pre emption**—*Act XX of 1865, s 37—Pleader's fees on what valuation of property calculated*—*Held*, in a

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payable by the defendant in respect of the fees of the plaintiff's pleader ought to be calculated, not on a valuation of the property which was found to be

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81. ———— **Suit by mortgagee instituted before payment into Court**—*Transfer of Property Act, ss 67, 83—Right of mortgagee to a decree and to full costs*—In a suit to recover money due on a mortgage, defendant paid the money into Court and a notice was issued to the mortgagee under s. 83 of the Transfer of Property Act The mortgagee filed his suit before notice was served on him and it was not proved that the mortgagee was aware of the fact of the payment into Court when he filed his suit *Held* that the plaintiff was not debarred by s. 67 of the Transfer of Property Act from obtaining a decree and that, under the rules of Court the pleader's fee was properly assessed as in a contested suit and not as in a case where there is a confession of judgment. SITARAMAYYA v VENKATRAMANNA [I L R. 11 Mad, 371

PLEADER—*continued*

3 REMUNERATION—*concluded*

82 ———— **Fee of pleader how calculated**—*Claim for maintenance by defendants in suit for partition—Fee of pleader of such defendants—Bom Reg II of 1827 s 52, App. L—Act I of 1846 s 7 Costs*—The plaintiff sued for partition and made two widows who were entitled to maintenance out of the estate co defendants in the suit The plaintiff and the male defendants compromised the suit and a decree was passed in terms of the compromise By the compromise the costs of the widows were to be paid by the estate and in estimating the costs the lower Court allowed each widow a separate set of costs and calculated the amount to be paid to each as pleader's fees on the value placed on his claim by the plaintiff On appeal to the High Court,—*Held* that the pleaders of the widows were not employed in prosecuting or defending an original suit of the value of the plaintiff's claim so as to be

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maintenance and their pleaders were entitled to a percentage only on the amount claimed by them for maintenance Case remanded for the amount of the pleader's fees to be correctly calculated When a case is decided on the merits the full percentage is to be paid in other cases one fourth only should be paid under s 7 of Act I of 1846 RAMCHANDRA PARSHARAM v BHAGUBAI I. L. R., 21 Bom, 42

83 ———— **Costs allowable as pleader's fees in a proceeding for revocation of probate**—*Application for revocation of probate—Probate and Administration Act (V of 1881) ss 55 83—Code of Civil Procedure (Act XIV of 1882) ss 220 582—General Rules and Circular Orders of High Court p 94 para 8—Power of High Court to make order for costs of lower Courts* S 83 of the Probate and Administration Act does not apply to an application for revocation of probate; the section applicable is s. 55 A proceeding instituted for revocation of probate cannot be regarded as a regular civil

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a suit or had given Rs.254 for pleader's fees,—*Held* the costs in a proceeding like this cannot be assessed at more than Rs80 the maximum pleader's fee allowed by the rules of the Court. PROTAP CHANDRA SHAHA v KALI BHANJAN SHAHA [4 C. W. N., 600

GARABINI DASSI v PRATAP CHANDRA SHAHA [4 C. W. N., 602

PLEADER—*continued.*

4. PRIVILEGES OF PLEADERS.

84. ——— **Pleader's taids**—*Mooktear—Legal Practitioners' Act (XVIII of 1879)—Ministerial duties of pleaders, Delegation of, to their bonâ fide clerks.*—A Judge has a right to control his Court premises in such way as is most convenient to the public and to persons working there, but does not act rightly in passing any general order by which he excludes as a general body from his Court any portion of the community acting in an orderly manner. The pleaders of this country are a body of men who, from the earliest times, have combined in their own persons the duties performed in England by barristers and attorneys, and in acting in this second and ministerial capacity are, on their own responsibility, entitled to work through any number of clerks or taids properly selected and paid by them; and no Court other than a High Court as established by Charter has the right to make rules defining the ministerial duties to be performed by them as distinct from the duties of their *bonâ fide* taids or clerks, nor does the Legal Practitioners Act of 1879 control in any way the privileges which have always existed in them or restrict their powers, the Act being one passed to bring mooktears under the control of the Court. IN THE MATTER OF THE PETITION OF KHODA BUX KHAN . . **I. L. R., 15 Calc., 638**

5. REMOVAL, SUSPENSION, AND DISMISSAL.

85. ——— **Removal**—*Power to remove vakil—District Judge.*—A District Judge has no power to remove a vakil against his will from a Court to which he has once been allotted, except for a criminal offence, misbehaviour, or neglect of duty. IN THE MATTER OF VAMANAJI KONERA . **1 Bom., 136**

86. ——— *Removal of pleader from one Court to another.*—A Zillah Judge has no authority to oblige a pleader to leave a Court in which he has been practising and to proceed to another. IN THE MATTER OF THE PETITION OF MAHOMED MANAFF . . . **10 W. R., 332**

87. ——— **Suspension**—*Act XX of 1865—Power to suspend pleader.*—A Zillah Judge has no power, under Act XX of 1865, to suspend a pleader of the High Court from practising in the Courts of his district on the ground of incompetency. His proper course is to make a representation to the High Court. IN THE MATTER OF KISHOREE LALL SIRCAR . . . . . **14 W. R., 217**

88. ——— *Act XX of 1865—Improper conduct.*—The omission of a pleader to examine the record of the case before making an application to stay execution proceedings upon the ground of a compromise was held not to amount to grossly improper conduct: and his not verifying the statement of the parties who came to him and made their statements (one of them being a mooktear) was considered at the most to amount to carelessness, but not grossly improper conduct; whilst his omission to obtain the authority or concurrence of the senior pleader in the case could not be said to be improper conduct within the meaning of Act XX of 1865—certainly not such grossly improper conduct as to call for the punishment of suspension for six months. IN THE MATTER OF THE PETITION OF SREENATH ROY **[17 W. R., 405**

PLEADER—*continued.*

5. REMOVAL, SUSPENSION, AND DISMISSAL—*continued.*

89. ——— *Unprofessional conduct—Commission to mooktears—Act XX of 1865—Criminal offence.*—*A*, a pleader, was engaged by *B*, who was acting on behalf of *C*, to defend certain persons charged with the offences of rioting and of having caused grievous hurt. Two of the accused persons were relatives of *C*. *A* agreed with *B* that, if all the accused were acquitted, his fee was to be R500; if the two who were the relatives of *C* were acquitted, then he was to receive R250; but in the event of none of the accused being acquitted, he was to receive only R40. Before the trial *B* paid *A* R475; this having come to the knowledge of *C*, he telegraped, saying that the fee was exorbitant, and *A*, upon being remonstrated with, handed over R250 to a banker to be placed to his (*A*'s) credit. *A* alleged that, out of R225 which remained with him, he paid R140 to *B* as commission, and that R25 were paid to his mohurir. *Held* that *A* was guilty of fraudulent and grossly improper conduct. He was suspended from practising for the period of one year. *Per* PONTIFEX, *J.*—If a mooktear, paid for his services by his employer, were to receive in addition, without the knowledge of his employer, a percentage or commission from the pleader, he would be answerable, not only in the Civil Court, but also in the Criminal Court, to a charge of obtaining money improperly from his employer. IN THE MATTER OF PEARY MOHUN GOOHO **[11 B. L. R., 312**

90. ——— *Power of interim suspension—Legal Practitioners' Act (XVIII of 1879), s. 14, cl. 5, and s. 40.*—The power of *interim* suspension given under s. 14 (cl. 5) of Act XVIII of 1879, when read with s. 40 of the same Act, can only be exercised after the pleader has been heard in his defence and pending the investigation and orders of the High Court. IN THE MATTER OF THE PETITION OF KRISTO LALL NAG **[I. L. R., 10 Calc., 256**

91. ——— *Legal Practitioners' Act (XVIII of 1879), s. 13—Grounds for suspension.*—A pleader's professional misconduct having amounted to "reasonable cause," within the meaning of s. 13 of the Legal Practitioners' Act (XVIII of 1879), for suspending him from practice, their Lordships declined to interfere with the decision of the High Court as to the punishment, it not being clearly shown that the *quantum* awarded was unreasonable and excessive. IN THE MATTER OF QUARRY . . . . **I. L. R., 13 All., 93 [L. R., 17 I. A., 199**

92. ——— *Letters Patent, High Court, N.-W. P., cl. 8—"Reasonable cause"—Offer to give a gratification, contrary to s. 36 of the Legal Practitioners' Act (XVIII of 1879)—Abetment—Penal Code (Act XLV of 1860), ss. 41 and 116.*—A vakil of the High Court signed and sent

PLEADER—*continued.*

5. REMOVAL, SUSPENSION, AND DISMISSAL —*continued*

a letter to another vakil of that Court, who practised in District Courts subordinate thereto The purport of this, which was one of several printed

conduct them in that Court And, "as a remuneration," the fees paid by the clients would be shared between the writer and the vakil who had sent the cases The Judicial Committee concurred substantially in the conclusions of the High Court that this was an incitement within s 116 (abetment) of the Penal Code to commit an offence made penal by s 36 (which was a special law within s 41 of that Code) of Act XVIII of 1879, the Legal Practitioners' Act This misconduct had been aggravated by the appellant having denied to the Vakils' Association, North-

17th, 1866 establishing the High Courts, for his suspension, to which, for four years from the date of that Court's order, his punishment was reduced IN THE MATTER OF PARBATI CHARAN CHATTERJI

I. L. R., 17 All., 498
L. R, 22 I. A, 193

93 ———— Misconduct of pleader—

s 32 of that Act only by the Court before which he has so practised IN THE MATTER OF THE PETITION OF GANGA DAYAL I. L. R., 4 All., 375

94. ———— *Refusal to argue case after signing memorandum of appeal — Semble*

95 ———— *Omission to examine record before certifying appeal* —A pleader

96. ———— *Legal Practitioners' Act (XVIII of 1879), ss 15 and 40—Interim suspension Police papers—Depositions of witnesses or confessions taken at a police investigation,*

client, however improperly the client may have become possessed of such documents provided the pleader is neither party nor privy to obtaining them IN THE MATTER OF THE PETITION OF KRISTO LALL NAG I. L. R., 10 Calc., 258

97. ———— *Legal Practitioners' Act (XVIII of 1879), s 14—Legal Practitioners' Act Amendment Act (XI of 1896), s 2, cl. (b)—"Grossly improper conduct"—Filing of petition containing grounds legally untenable*—The mere fact that a legal practitioner has filed a petition which may ultimately turn out to be based on grounds which are untenable in point of law, does not constitute on his part, improper conduct within the meaning of s 14 of Act XVIII of 1879 as amended by cl (b), s 2 of Act XI of 1896 IN THE MATTER OF SARAT CHANDRA GUHA

[4 C. W. N, 693

98 ———— *Unauthorized statement*—It having appeard that, without any instructions to that effect the pleader conducting a suit in the lower Appellate Court had suggested of his own motion, that the mother was a frail woman, and being in improper intimacy with the defendant had executed the kobalas for him,—*Held* that the pleader had acted with gross impropriety, and should be called up and censured by the District Judge GUNGA RAM SADHOOKHAN *v* PANCH COWREE PORAMANICK 25 W R., 366

99 ———— *Striking pleader off the rolls—Act XX of 1865, s 16*—Case in which the High Court declined on the facts to strike a pleader off the rolls for using improper expressions during the argument of a case before a

him to apologize IN THE MATTER OF CRUISE

[14 W. R, Cr, 53

100 ———— Power to suspend pleader —*Act XX of 1865*—A Zillah Judge had no power after the 1st January 1866 to make an order under

was liable to dismissal only on proof of conviction of a

t on as prescribed by s 4 IN THE MATTER OF THE PETITION OF AHMEEYOODDEEN AHMED

[6 W. R, Mis., 5

101. ———— Procedure—*Pleader or mookhtear, Charge of misconduct against*.—Any charge

PLEADER—*continued.*

5. REMOVAL, SUSPENSION, AND DISMISSAL —*continued.*

of misconduct against a pleader or mooktear holding a certificate under Act XX of 1865, other than a recorded conviction of a criminal offence, must be made and substantiated, and a report submitted to the High Court, as provided by s. 16. IN THE MATTER OF SUDDEROODEEN MAHOMED . . 7 W. R., 316

102. ———— *Act XX of 1865, s. 14—Misconduct of pleader.*—When conduct is charged against any pleader of a subordinate Court, which, if proved, would amount to an offence, that conduct should be inquired into not simply as improper conduct, but as an offence to be made the ground, if established, of his dismissal under s. 14, Act XX of 1865. IN THE MATTER OF GUNESH CHUNDER GANGOOLY . . . 13 W. R., 456

103. ———— *Act XX of 1865, s. 16—Power of Zillah Judge.*—A Zillah Judge has no authority to initiate proceedings against a pleader of the lower grade under s. 16, Act XX of 1865, which requires that the inquiry should be made by the Court in which the pleader committed the act of misconduct. IN THE MATTER OF THE PETITION OF KOMLAKANT DEGHAL . . 11 W. R., 127

104. ———— *Act XX of 1865—Report to Judge on acquittal of pleader by subordinate Court.*—In a case tried under the provisions of s. 16, Act XX of 1865, where the subordinate Court is of opinion that the pleader should be acquitted, it is not necessary that there should be any report to the Judge. IN THE MATTER OF RAM KINKUR SEIN . . . 13 W. R., 67

105 ———— *Legal Practitioners' Act (XVIII of 1879), s. 12—Conviction of pleader of criminal offence—Case reported to the High Court—Argument allowed to show that conviction was illegal.*—A District Judge reported to the High Court for orders the case of a pleader who had been convicted of cheating under s. 417 of the Penal Code, and who, in the opinion of the District Judge, was unfit to be allowed to practise. Upon the hearing of the case, counsel was permitted to go behind the conviction in order to show that the acts of the pleader did not amount at law to the offence of cheating. IN THE MATTER OF DURGA CHARAN . . . I. L. R., 7 All., 290

106. ———— *Letters Patent, High Court, North-Western Provinces, cl. 8—Conviction of vakil for criminal offence—Vakil called upon to show cause why he should not be struck off the roll—Argument not allowed to show that conviction was wrong.*—A vakil practising in the High Court was convicted by a Court of Session of the offence punishable under s. 471 of the Penal Code, and the conviction was affirmed by the High Court on appeal. The vakil was subsequently called upon to show cause why he should not, in consequence of such conviction, be struck off the roll of vakils of the Court. On appearance in answer to this rule, it was held that the vakil was not entitled to question the propriety in law or in fact of the conviction, but that it was open to him to show, if he could, that his conduct in the matter in respect of which he had been convicted was not such as to render him an unfit person to be retained on the roll of vakils of the Court. IN THE MATTER OF RAJENDRA NATH MUKERJI . . . I. L. R., 18 All., 174

Held (on appeal to the Privy Council) that in the present case the conviction, followed by the sentence, was sufficient, without further inquiry, to justify the High Court in making that order. The appellant could not be allowed to have an indirect appeal against the judgment of the Sessions Judge confirmed by the High Court. The judgment of Lord Mansfield in *Ex-parte Brounsall, 2 Cowp. Rep., 829,* referred to as well explaining the disqualification of a member of the legal profession that attends such a conviction and sentence. *In re Weare, L. R., 2 Q. B., 439,* where the Court of Appeal looked to see what was the nature of the offence, and would not, as a matter of course, strike a solicitor off the roll because he had been convicted, distinguished from the present case. *In re Durga Charan, I. L. R., 7 All., 290,* dealt with under s. 12 of Act XVIII of 1879, referred to as a case where the nature of the offence admitted of further inquiry and also distinguished. In regard to the finality of the judgment of the High Court in deciding the appeal from the conviction and sentence, *In re the petition of Macrea, L. R., 20 I. A., 90 : I. L. R., 13 All., 310,* was referred to. IN THE MATTER OF RAJENDRO NATH MUKERJI . . I. L. R., 22 All., 49
[L. R., 26 I. A., 242
3 C. W. N., 736

6. PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE.

107. ———— **Purchase by pleader of decree in suit which he has conducted**—*Right to execute decree.*—It is not expedient that pleaders should by purchase become the persons entitled to execute decrees in suits in which they have been engaged. GOSHAIN JUG ROOP GEER *v.* CHINGUN LALL . . . 2 N. W., 46

108. ———— *Sale in execution of decree—Collusion of vakil of judgment-debtor with decree-holder.*—The conduct of a vakil who, having acted in that capacity on behalf of a judgment-debtor in certain proceedings in execution of a decree, subsequently became partner with the decree-holder in the purchase of the property, remarked upon. *Quære*—Whether, under such circumstances, the purchase by the vakil, or the purchase by the decree-holder in conjunction with him, could not be set aside. ROY NANDIPAT MAHATA *v.* URQUHART
[4 B. L. R., A. C., 181 : 13 W. R., 209

WAJED HOSSEIN *v.* AHMED REZA 17 W. R., 480

109. ———— *Civil Procedure Code, 1882, s. 292—Pleaders not officers of the Court within the meaning of that section.*—

PLEADER—*concluded.*

6 PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE—*concluded.*

Pleaders of parties to a suit are not debarred by s 292 of the Code of Civil Procedure from purchasing property sold in execution of the decree. ALAGIRISAMI v RAMANATHAN

[I. L. R., 10 Mad., 111

110 ——— *Civil Procedure Code, ss. 292, 311—Suit to set aside sale in execution of decree—Duty of vakil purchasing at Court-sale—Fraud*—A mortgagee, having obtained a decree on her mortgage, brought the mortgage-property to sale, and her vakil bid through an agent at the Court sale and became the purchaser. It appeared that the vakil had not informed his client that he intended to bid nor obtained the sanction of the Court, but he had been instructed by his client and had obtained the permission of the Court to bid

SUBBARAYUDU v. KOTAYYA

[I. L. R, 15 Mad., 389

PLEADERS AND MOOKTEARS ACT (XX OF 1865)

See CASES UNDER MOOKTEAR

See CASES UNDER PLEADER

PLEADERSHIP EXAMINATION

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS . I L R., 6 All., 163

See BOARD OF EXAMINERS

[I. L. R., 9 All., 611

PLEADINGS.

See CASES UNDER ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS

See CASES UNDER ESTOPPEL—STATEMENTS AND PLEADINGS

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—PLEADINGS

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION

[I. L R., 17 Calc., 337

See LIEN I. L. R., 4 Calc., 322

See CASES UNDER PLAINT.

See RAILWAYS ACT, 18 0, s 77.

[I. L. R., 24 Calc., 306

See CASES UNDER VARIANCE BETWEEN PLEADING AND PROOF.

PLEADINGS—*concluded.*

See VENDOR AND PURCHASER—CONSIDERATION . 6 B. L. R., 530

[14 Moore's I. A., 1

See CASES UNDER WRITTEN STATEMENT

——— Admission in—

See LIMITATION ACT, s 19—ACKNOWLEDGMENT OF DEBTS

[I. L. R., 18 All., 384

I. L. R., 23 Calc., 374

——— Defamatory statement in—

See LIBEL I. L. R., 14 Bom., 97

[I. L. R, 23 Calc, 867

——— Reference to—

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES

[I. L. R., 18 All., 344

1. ——— Rules of pleading in India—*The Courts in India are not governed by the technical rules of pleading which obtain in Courts administering English law* PITUMBUR PANE v TOOLSEE DOSSEE 7 W. R., 39

2 ——— Object of pleadings—*Issue not in terms fixed, but afterwards raised—Appointment of the religious superior of a Mahomedan institution—Custom as to such appointment*—The object of any system of pleading is that each side may be made fully aware of the questions that are about to be argued in order that each may bring forward evidence appropriate to the issues. The claim here made was that the last preceding

mind at the time but the Chief Court on appeal reversed this finding, and added that he had been, in their opinion, unduly influenced As these questions, though not formally stated in the issues, had been sufficiently open upon the proceedings to give to each Court a right to form a judgment upon them, the Judicial Committee decided which was correct, and affirmed the finding of the first Court as to the soundness of mind of the deceased. SAYAD MUHAMMAD v FATTEH MUHAMMAD

[I. L. R., 22 Calc., 324

L. R., 22 I. A., 4

PLEDGE.

See STAMP ACT, 1879 SCH I ART. 41

[I. L. R., 21 Calc., 241

——— of goods.

See BAILMENT . 5 B. L. R., Ap., 31

POLICE ACT (V OF 1861)—*continued.*

their refusal to do so, to order them extra drill. IN THE MATTER OF THE PETITION OF BHOLA NATH DAS [I. L. R., 12 Calc., 427

11. ———— *Criminal Procedure Code, 1872, s. 148—Summons cases.*—Acts or omissions punishable under Act V of 1861, s. 29, come within the category of "offences punishable under any law other than the Penal Code" (Code of Criminal Procedure, s. 8), and those offences likewise fall within the terms of s. 148 of the same Code. QUEEN v. GOLAM ARABEE . . 25 W. R., Cr., 20

12. ———— *Power to make rules under Act V of 1861—District Superintendent of Police, Power of—A rule or regulation and a lawful order distinguished.*—There is no express power given by Act V of 1861 to any officer save the Inspector-General of Police to make rules; therefore the violation of a general rule alleged to have been made by a District Superintendent of Police to the effect that constables are to be within the lines at a particular time or at roll-call is not punishable under s. 29 of the Act. *Semble*—The violation of a special order made by a District Superintendent of Police requiring the presence of an officer or of certain officers within the police lines and issued expressly to him or each of them would come within s. 29 of the Act as being not "a rule or regulation," but a "lawful order" made by a competent authority and relating to the duties of the officer or officers. IN THE MATTER OF THE PETITION OF ABDUL HOSSEIN. QUEEN-EMPRESS v. ABDUL HOSSEIN [I. L. R., 15 Calc., 194

13. ———— and s. 8—*Police officer—Suspension—Breach of order.*—A police constable was suspended and ordered to remain in the lines during suspension. Despite the order, he absented himself therefrom without leave. He was convicted under s. 29 of Act V of 1861. *Held* s. 29 of Act V of 1861 contemplates that the person to be charged with an offence under it must have been, at the time of his doing the act in respect of which the charge is preferred, a police constable within the meaning of that Act. When a police officer is suspended, he ceases to be a police officer; the conviction was therefore wrong. *Queen* v. *Dinonath Gangooly, 8 B. L. R., Ap., 58*, followed. QUEEN-EMPRESS v. DURGA . . . I. L. R., 10 All., 459

1. ———— s. 34—*Police Act Amendment Act (VIII of 1895), s. 13—Slaughter of cow—Open verandah—Annoyance to residents of locality—"Open place," Meaning of—General police.*—The slaughtering of a cow in an open verandah, so as to cause annoyance to the residents of the locality, and in spite of their remonstrances, is a breach of the law, being an act in an "open place" within the terms of s. 34 of Act V of 1861 as amended by Act VIII of 1895. The words "open place," coupled with "road, street, or thoroughfare," should not be interpreted *ejusdem generis.* It seems rather that the addition of these words was intended to have a wider significance, and this is shown by another amendment in the same section made at the same time in which the annoyance, etc., caused must be not to the residents and passengers, but to the residents or passengers. The intention of the Legislature was to extend the Act not only to passengers who would not be on such a road, street, or thoroughfare, but to residents, who are not passengers. KHAN BAPUTI DEWAN v. BISPATI PUNDIT . . . I. L. R., 27 Calc., 655

2. ———— *Placing tanbans in public road.*—Placing tanbans in a public thoroughfare is an offence under s. 34, Act V of 1861. QUEEN v. AMEER . . . . . . 2 N. W., 5

———— s. 42.

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—NOTICE OF SUIT. [2 W. R., 425

1. ———— *Objection to want of notice of action.*—A suit against a police officer under Act V of 1861 should not be dismissed *merely* because notice under s. 42 has not been given, unless the objection be taken in the first Court. NARAIN DEEN TEWAREE v. RAM DASS . . . . 8 W. R., 425

2. ———— and s. 29.—S. 42 of Act V of 1861 has no bearing on, or connection with, s. 29 of the Act. QUEEN v. HAZAR MIR KHAN [7 N. W., 237

———— s. 44.

See PENAL CODE, s. 177. [21 W. R., Cr., 30

POLICE ACT AMENDMENT ACT (VIII OF 1895).

See POLICE ACT (V OF 1861), s. 34. [I. L. R., 27 Calc., 655

POLICE CONSTABLE.

See MALICIOUS PROSECUTION. [I. L. R., 18 Mad., 136

———— Threat to obtain dismissal of—

See CRIMINAL INTIMIDATION. [I. L. R., 20 Bom., 794

POLICE DIARIES.

See ACCUSED PERSON, RIGHT OF.
[I. L. R., 19 Mad., 14
I. L. R., 19 All., 390
I. L. R., 20 Mad., 189

See CASES UNDER EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, ETC.

See CASES UNDER EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS.

POLICE INQUIRY.

See COMPLAINT—POWER TO REFER TO SUBORDINATE OFFICERS.
[I. L. R., 9 Mad., 282
I. L. R., 12 Bom., 161
I. L. R., 20 Mad., 387

See DETENTION OF ACCUSED BY POLICE. [I. L. R., 11 Mad., 98

POLICE INQUIRY—*continued*

1. ———— **Power of Magistrate**—*Criminal Procedure Code (Act XXV of 1861) ss 133, 180*—*Held per* GLOVER, J—Under s. 133 Act XXV of 1861 a Magistrate may order a police inquiry "into any offence punishable under the Penal Code" *Held per* LOCH J—The Magistrate had no authority to order a police inquiry in a case under Ch XIV of the Criminal Procedure Code s 180 not having been extended to cases under that chapter QUEEN v FOKTU SHAH

[2 B L R, 8 N, 6. 10 W. R., Cr, 49

2 ———— **Order for further detention in custody**—*Criminal Procedure Code, 1861, ss 152 116*—*Offering inducement to disclosures*—Circumstances may exist in which a special order of the nature contemplated in s 152 of the Criminal Procedure Code may properly be passed for instance if, in the case into which the police are inquiring the

four hours the power which the above-mentioned section confers on a Magistrate may be rightly exercised But to return accused persons to the police that they may be forced to give a clue to the stolen property is to abuse the provisions of s 152 with a view to the breach of the injunctions of s 146 of the Criminal Procedure Code QUEEN v RUGO NATH PERSHAD 3 N. W, 275

3 ———— **Irregular inquiry**—*Cases under Ch XIV Criminal Procedure Code 1861*—An inquiry by the police into complaints falling under Ch XIV of the Code of Criminal Procedure was not warranted by law QUEEN v HARRAKCHAND NOWLAKA 8 W. R., Cr, 12

S 155 of the Criminal Procedure Code (Act V of 1898) enacts that, when a police officer in charge of a police station receives information of the commission of a non cognizable offence within the limits of his station, he shall enter the substance of such information in a book and refer the informant to the Magistrate and no police officer shall in

Presidency Magistrate

QUEEN EMPRESS v SAMINADA

[I. L. R., 7 Mad., 274

5. ———— *Criminal Procedure Code, 1882, ss 155, 202, and 203*—*Magistrate's power to direct a local investigation by the police*—S 155 of the Code of Criminal Procedure (Act X of 1882) deals only with the powers of police officers. It confers no power or authority on Magistrates to direct a local investigation by the police or call for a police report IN RE JANKIDAS GURU SITARAM I. L. R, 12 Bom., 161

6 ———— *Criminal Procedure Code (1898) ss 157, 159*—*Basis of police inquiry*—An inquiry can be made under s 159, Criminal Procedure Code only on a report submitted within the terms of s 157 MOULI DURZI v NAURANGI LALL 4 C W. N, 351

POLICE MAGISTRATE

See TRANSFER OF CRIMINAL CASE—GENERAL CASES 15 B L. R, Ap, 14
[12 Bom., 217

1. ———— **"Police office"**—*Clerk of Magistrate of Police*—*Act XLVIII of 1860 s 2*—A clerk in the Police Magistrate's office having been convicted under s 2 of Act XLVIII of 1860 as a person employed in a police office a rule for quashing the conviction was made absolute *Held* that the words "Police Office" in s 2 Act XLVIII of 1860 did not apply to a Police Magistrate IN RE JUDOO NATH MOOKERJEE Bourke, O C, 186

2 ———— **Power of Magistrate**—*Beng Act IV of 1866 s 26*—*Penal Code (Act XLV of 1860) s 116*—A Police Magistrate had power to convict summarily, under Bengal Act IV of 1866, s 26 for an offence punishable under s 116 of the Penal Code QUEEN v MAHBUB KHAN
[1 B L R., O Cr, 39

POLICE OFFICER

See ARREST—CRIMINAL ARREST
[I. L. R, 27 Calc, 457

See MADRAS ABKARI ACT s 26
[I L R., 9 Mad., 97

See PENAL CODE, s 221
[I. L R., 3 All., 60

———— **Confession and statements to**—

See CASES UNDER CONFESSION—CONFESSIONS TO POLICE OFFICERS

See CASES UNDER EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE OFFICERS

Duty of—

See ABETMENT I. L. R., 20 Bom, 394

———— **Liability of**—

See OPIUM ACT s 9
[I L. R, 21 Calc, 691

See WRONGFUL CONFINEMENT
[I. L. R., 19 Bom., 72

———— **Resistance and obstruction to**—

See BENGAL EXCISE ACT 1878 s 4
[I. L. R., 21 Calc., 324

POLICE OFFICER—*concluded.*

See PENAL CODE, s. 186.
[I. L. R., 24 Calc., 320

See PENAL CODE, s. 332.
[I. L. R., 18 All., 246

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 19 Calc., 105

See WRONGFUL RESTRAINT.
[I. L. R., 12 Bom., 377

1. ——— Powers of arrest—*Detention of prisoners—Torture.*—Exposition of a police officer's power of arrest and detention of accused persons and witnesses, with a view to the suppression of the practice of torture. QUEEN *v.* BEHARY SINGH
[7 W. R., Cr., 3

2. ——— Powers in discharge of his duties—*Rioting.*—Where a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court. QUEEN *v.* DAMOO SINGH
[8 W. R., Cr., 36

3. ——— Liability of police officer—*Penal Code, s. 79—Criminal Procedure Code, 1861, s. 100, cl. 5—Illegal arrest by police officer.*—The general exception provided by s. 79 of the Penal Code, and the power conferred by cl. 5, s. 100 of the Code of Criminal Procedure, was held not to protect a police officer who did not act in good faith, that is, with due care and intention. Cl. 5, s. 100, Code of Criminal Procedure, refers to property which is proved to have been stolen, and not to anything which a police officer may choose to imagine has been stolen. SHEO SURUN SAHAI *v.* MAHOMED FAZIL KHAN . . . . 10 W. R., Cr., 20

POLICE REPORT.

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.
[5 B. L. R., 274
8 Bom., Cr., 113
I. L. R., 14 Calc., 707
4 C. W. N., 242

See CASES UNDER EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS.

See EVIDENCE ACT, s. 74.
[I. L. R., 20 Mad., 189

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 3 B. L. R., A. Cr., 4

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE.
[I. L. R., 7 Calc., 46
I. L. R., 13 Calc., 175
I. L. R., 20 Calc., 513, 520

POLICE REPORT—*concluded.*

See RECOGNIZANCE TO KEEP PEACE—CREDIBLE INFORMATION.
[10 W. R., Cr., 41
4 B. L. R., F. B., 46
12 W. R., Cr., 60
21 W. R., Cr., 28

POLICY OF INSURANCE.

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER.
[I. L. R., 18 Mad., 24

See CASES UNDER INSURANCE.

See STAMP ACT, 1869, ss. 34, 41.
[I. L. R., 3 Calc., 347

See STAMP ACT, 1879, s. 3, CL. 15.
[I. L. R., 19 Calc., 499
I. L. R., 19 Bom., 130

POLITICAL AGENT.

——— Certificate of—

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.
[I. L. R., 19 Bom., 145

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R., 17 Mad., 14

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 13 Mad., 423

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING.
[I. L. R., 19 All., 109

——— Court of—

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[I. L. R., 17 Bom., 162

——— Order made by, in his executive capacity.

See JUDICIAL OFFICERS, LIABILITY OF.
[7 B. L. R., 452 note

POLITICAL RESIDENT AT ADEN, COURT OF—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER.
[I. L. R., 10 Bom., 258, 263

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 10 Bom., 274

POLL.

See COMPANY—MEETINGS AND VOTING.
[I. L. R., 15 Bom., 164

PORT OF CALCUTTA.

———— Limits of port—*Act XVII of 1855—Suit for damages for breach of contract—P & Co,* agents for the ship *F A*, contracted by a shipping order with *G* for freight, with option to *G* to cancel the contract if the *F A* should not arrive at the port of Calcutta by the 15th of January On that day she anchored at Atcheepore and remained there till the morning of the 16th *G* refused to fulfil the contract and *P & Co* sued him thereupon *Held* that there is no custom governing the construction of the words "the port of Calcutta" in shipping orders; and that an arrival at Atcheepore is not an arrival at the port of Calcutta POTTER *v* GENTLE
[Bourke, O C, 41

PORT RULES (BOMBAY)

See SHIPPING LAW—COLLISION
[6 Bom, O C, 98

———— (CALCUTTA) 1856

See SHIPPING LAW—COLLISION
[Bourke, Ad, 1, 15

PORT TRUSTEES, BOMBAY

See SALE OF GOODS
[I. L. R., 17 Bom, 62

PORTS ACT (XII OF 1875), s 22

See MASTER AND SERVANT
[I. L. R, 9 Calc., 849

PORTS ACT (X OF 1889)

1. ———— s 6, cl. (k)—*Rules made by Local Government—Boats plying and not plying for hire—Ultra vires*—It is only with regard to boats plying for hire that s. 6 of Act X of 1889 gives the Local Government authority to make rules Rules purporting to make it obligatory on boat owners to ply for hire are *ultra vires* QUEEN EMPRESS *v* THOMMAYYA CHETTI
[I. L. R., 17 Mad., 397

2. ———— and s 8—*Order purporting to be under the Act by Conservator of Port—Public body authorised by Legislature to make rules Powers of—Delegation of power—Rules made by Local Government*—The Conservator of the Port of Negapatam purporting to act under the Indian Ports Act s 8 made and published an order that when a certain flag was flying at the signal station all boats returning from the sea should cast anchor and not come inside the river The Local Government had made a rule with reference to s. 6 (*k*) of the above Act requiring boat owners to carry out at all times all orders issued by the Conservator in connection with the plying of their boats and which are not inconsistent with the regulation issued by Government." A charge was brought against two persons being the owner and tindals of licensed cargo

PORTS ACT (X OF 1889)—*concluded*

[illegible] the aforesaid order [illegible]

vires and the conviction was accordingly illegal. *Per curiam*—A public body whether the Executive Government or a corporation being entrusted by the Legislature with the duty of making rules [illegible] 18

PORTS, AND PORT DUES.

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—ACT XXII OF 1855
[5 Bom, Cr, 14

PORTUGUESE CONVENTION ACT (IV OF 1880)

See OFFENCE ON THE HIGH SEAS
[I. L. R., 14 Bom., 227

PORTUGUESE SUCCESSION

See ENGLISH LAW—PRIMOGENITURE
[5 Bom, O C., 172

POSSESSION

See CASES UNDER CLAIMS TO ATTACHED PROPERTY

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—POSSESSION

See CASES UNDER DECREE—FORM OF DECREE—POSSESSION

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—POSSESSION FACT OF 4 B L. R., F B., 97
[9 W. R., 79

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION POSSESSION

See CASES UNDER LIMITATION ACT 1877, ART 142

See CASES UNDER LIMITATION ACT 1877, ART 144 (1859 s 1 CL. 12)—ADVERSE POSSESSION

POLICE OFFICER—*concluded.*

See PENAL CODE, s. 186.
[I. L. R., 24 Calc., 320

See PENAL CODE, s. 332.
[I. L. R., 18 All., 246

See SENTENCE—CUMULATIVE SENTENCES.
[I. L. R., 19 Calc., 105

See WRONGFUL RESTRAINT.
[I. L. R., 12 Bom., 377

1. ——— **Powers of arrest**—*Detention of prisoners—Torture.*—Exposition of a police officer's power of arrest and detention of accused persons and witnesses, with a view to the suppression of the practice of torture. QUEEN *v.* BEHARY SINGH [7 W. R., Cr., 3

2. ——— **Powers in discharge of his duties**—*Rioting.*—Where a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court. QUEEN *v.* DAMOO SINGH [8 W. R., Cr., 36

3. ——— **Liability of police officer**—*Penal Code, s. 79—Criminal Procedure Code, 1861, s. 100, cl. 5—Illegal arrest by police officer.*—The general exception provided by s. 79 of the Penal Code, and the power conferred by cl. 5, s. 100 of the Code of Criminal Procedure, was held not to protect a police officer who did not act in good faith, that is, with due care and intention. Cl. 5, s. 100, Code of Criminal Procedure, refers to property which is proved to have been stolen, and not to anything which a police officer may choose to imagine has been stolen. SHEO SURUN SAHAI *v.* MAHOMED FAZIL KHAN . . . . . 10 W. R., Cr., 20

POLICE REPORT.

See COMPLAINT—INSTITUTION OF COMPLAINT, AND NECESSARY PRELIMINARIES.
[5 B. L. R., 274
8 Bom., Cr., 113
I. L. R., 14 Calc., 707
4 C. W. N., 242

See CASES UNDER EVIDENCE—CRIMINAL CASES—POLICE EVIDENCE, DIARIES, PAPERS, AND REPORTS.

See EVIDENCE ACT, s. 74.
[I. L. R., 20 Mad., 189

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 3 B. L. R., A. Cr., 4

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE.
[I. L. R., 7 Calc., 46
I. L. R., 13 Calc., 175
I. L. R., 20 Calc., 513, 520

POLICE REPORT—*concluded.*

See RECOGNIZANCE TO KEEP PEACE—CREDIBLE INFORMATION.
[10 W. R., Cr., 41
4 B. L. R., F. B., 46
12 W. R., Cr., 60
21 W. R., Cr., 28

POLICY OF INSURANCE.

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER.
[I. L. R., 18 Mad., 24

See CASES UNDER INSURANCE.

See STAMP ACT, 1869, ss. 34, 41.
[I. L. R., 3 Calc., 347

See STAMP ACT, 1879, s. 3, cl. 15.
[I. L. R., 19 Calc., 499
I. L. R., 19 Bom., 130

POLITICAL AGENT.

——— **Certificate of—**

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.
[I. L. R., 19 Bom., 145

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R., 17 Mad., 14

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 13 Mad., 423

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—KIDNAPPING.
[I. L. R., 19 All., 109

——— **Court of—**

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[I. L. R., 17 Bom., 162

——— **Order made by, in his executive capacity.**

See JUDICIAL OFFICERS, LIABILITY OF.
[7 B. L. R., 452 note

POLITICAL RESIDENT AT ADEN, COURT OF—

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—MURDER.
[I. L. R., 10 Bom., 258, 263

See TRANSFER OF CRIMINAL CASE—GENERAL CASES . I. L. R., 10 Bom., 274

POLL.

See COMPANY—MEETINGS AND VOTING.
[I. L. R., 15 Bom., 164

PORT OF CALCUTTA.

————Limits of port—*Act XXII of 1855—Suit for damages for breach of contract*—*P & Co*, agents for the ship *F A*, contracted by a shipping order with *G* for freight, with option to *G* to cancel the contract if the *F A* should not arrive at the port of Calcutta by the 15th of January On that day she anchored at Atcheepore and remained there till the morning of the 16th *G* refused to fulfil the contract, and *P & Co* sued him thereupon *Held* that there is no custom governing the construction of the words "the port of Calcutta" in shipping orders; and that an arrival at Atcheepore is not an arrival at the port of Calcutta POTTER *v* GENTLE
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PORT RULES (BOMBAY)

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[6 Bom, O. C, 98

———— (CALCUTTA), 1856

See SHIPPING LAW—COLLISION
[Bourke, Ad, 1, 15

PORT TRUSTEES, BOMBAY.

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[I. L R, 17 Bom, 62

PORTS ACT (XII OF 1875), s. 22.

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[I L. R., 9 Calc., 849

PORTS ACT (X OF 1889)

1. [illegible] s. 6, cl. (k) Rules [illegible]

[illegible] the Local Government authority to make rules. Rules purporting to make it obligatory on boat owners to ply for hire are *ultra vires* QUEEN-EMPRESS *v* THOMMAYYA CHETTI
[I. L. R., 17 Mad., 397

2. ———— and s. 8—*Order purporting to be under the Act by Conservator of Port—Public body authorized by Legislature to make rules, Powers of—Delegation of power—Rules made by Local Government*—The Conservator of the Port of Negapatam, purporting to act under the Indian Ports Act, s 8, made and published an order that when a certain flag was flying at the signal station, all boats returning from the sea should cast anchor and not come inside the river The Local Government had made a rule with reference to s. 6 (*k*) of the above Act requiring boat owners to "carry out at all times all orders issued by the Conservator in conection with the plying of their boats, and which are not inconsistent with the regulation issued by Government." A charge was brought against two persons, being the owner and tindals of licensed cargo

PORTS ACT (X OF 1889)—*concluded*

boats, for neglecting to obey the aforesaid order, and they were convicted, under the Indian Ports Act, s 8 (2), by the Conservator in his capacity as special first class Magistrate *Held* that the order was *ultra vires*, and the conviction was accordingly illegal. *Per curiam*—A public body, whether the Executive Government or a corporation being entrusted by the Legislature with the duty of making rules, cannot relieve itself of the responsibility and depute other agencies to discharge the duty QUEEN-EMPRESS *v* MARIAN CHETTI
[I. L R, 17 Mad, 118

PORTS, AND PORT DUES.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—ACT XXII OF 1855.
[5 Bom, Cr, 14

PORTUGUESE CONVENTION ACT (IV OF 1880)

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[I L. R, 14 Bom, 227

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[5 Bom, O C., 172

POSSESSION.

See CASES UNDER CLAIMS TO ATTACHED PROPERTY

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—POSSESSION

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See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—POSSESSION, FACT OF
4 B. L. R., F. B, 97
[9 W. R., 79

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION

See CASES UNDER LIMITATION ACT 1877, ART 141

See CASES UNDER LIMITATION ACT, 1877, ART 144 (1859, s. 1, CL. 12)—ADVERSE POSSESSION

POSSESSION—*continued.*

See CASES UNDER ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

See CASES UNDER ONUS OF PROOF—POSSESSION AND PROOF OF TITLE.

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See CASES UNDER RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.

See CASES UNDER TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.

See CASES UNDER TRANSFER OF PROPERTY WHILE TRANSFEROR IS OUT OF POSSESSION.

See WRONGFUL POSSESSION.
[I. L. R., 4 Calc., 566

——— Constructive or symbolical—

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION
[I. L. R., 18 Calc., 520
1 C. W. N., 569
I. L. R., 16 Bom., 722
I. L. R., 18 Bom., 37
I. L. R., 21 All., 269
I. L. R., 19 Bom., 620
I. L. R., 24 Calc., 715
I. L. R., 19 All., 499

See SPECIFIC RELIEF ACT, s. 9.
[I. L. R., 14 Calc., 649
I. L. R., 18 Calc., 80
I. L. R., 19 Calc., 544

——— Delivery of—

See CASES UNDER HINDU LAW—GIFT—REQUISITES FOR GIFT.

See CASES UNDER MAHOMEDAN LAW—GIFT—VALIDITY.

See CASES UNDER VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

——— Discontinuance of—

See CASES UNDER LIMITATION ACT, 1877, ART. 142.

See CASES UNDER VENDOR AND PURCHASER—POSSESSION.

——— Obstruction of—

See PRACTICE—CIVIL CASES—SALE BY RECEIVER . I. L. R., 21 Calc., 479

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

——— of goods.

See BAILMENT . 5 B. L. R., Ap., 31

See CONTRACT ACT, s. 108.
[12 B. L. R., 42
I. L. R., 11 Bom., 704

POSSESSION—*continued.*

See CONTRACT ACT, s. 178.
[I. L. R., 4 Calc., 497
I. L. R., 3 Calc., 264
I. L. R., 24 Bom., 458

See CASES UNDER INSOLVENCY—ORDER AND DISPOSITION.

——— Suit for—

See CASES UNDER BENGAL RENT ACT, 1869, s. 27.

See CASES UNDER CO-SHARERS—SUITS BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY—POSSESSION.

See CASES UNDER LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.

See CASES UNDER RIGHT OF SUIT—POSSESSION, SUITS FOR.

See CASES UNDER SPECIFIC RELIEF ACT, s. 9.

See CASES UNDER VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—POSSESSION, SUIT FOR.

1. EVIDENCE OF POSSESSION.

1. ——— Statement as to fact of possession—*Evidence.*—A statement by a witness that a party was in possession is, in point of law, admissible evidence of the fact that such party was in possession. MANIRAM DEB *v.* DEBI CHARAN DEB
[4 B. L. R., F. B., 97 : 13 W. R., F. B., 42

2. ——— *Acts of ownership.*—A witness's statement that a party "is in possession" is no evidence of the fact. The question of possession is a mixed one of law and fact, and the evidence produced must give the various acts of ownership which go to constitute possession, so that the Court may arrive at its own conclusion. ISHAN CHUNDER BEHARA *v.* RAM LOCHUN BEHARA
[9 W. R., 79

3. ——— Visiting and making use of house—*Possession as of right.*—Occasionally visiting and making use of a house is ample evidence of possession, unless shown to have been done by the claimant in the capacity of a visitor, and not in his own right. UNUNTO RAM SEAL *v.* BROJO BULLUB SEAL . . . . . 11 W. R., 136

4. ——— Acts of ownership—*Omission to show acts of ownership.*—In special appeal, the High Court held that evidence which did not allude to any specific acts of ownership was not sufficient evidence to prove possession. The finding of the fact of possession by the lower Appellate Court upon such evidence reversed on special appeal. JAGABANDHU DAS GAJENDRA MAHAPATRA *v.* DINABANDHU DAS GAJENDRA MAHAPATRA
[2 B. L. R., Ap., 30

5. ——— *Suit for recovery of forest land from Government.*—Where a tract of land with a defined boundary has been throughout claimed by a person as owner, and acts of ownership

POSSESSION—*continued*

1. EVIDENCE OF POSSESSION—*continued.*

have been done on various portions of it, such acts may be accepted as evidence of the possession of the whole tract *Bhaskarappa* v. *Collector of North Kanara, I. L. R., 3 Bom., 452*, distinguished. SIVASUBRAMANYA v. SECRETARY OF STATE FOR INDIA

[I. L. R., 9 Mad., 285

6. —— Thakbust award—*Boundary, Question of.*—A thakbust award of boundary would in any case be material evidence of possession. PRAHLAD SEN v. RAJENDRA KISHORE SINGH

[2 B. L. R., P. C., 111 (137): 12 W. R., P. C., 6
11 Moore's I. A., 293

7. —— Survey proceedings—*Survey by revenue authorities—Records in Government maps.*—Plaintiff sued in 1876 to recover certain alluvial lands which had been in existence over twelve years, together with recent accretions thereto which, he alleged, appertained to his talukh. The alluvial lands had been surveyed by the revenue authorities in 1863, as appertaining to no permanently-settled estate, and claimed by the Government. The plaintiff's predecessor, however, subsequently in 1864 laid claim to the lands, and the Collector, abandoning the claim of Government, recorded him in the Gov- [illegible]

JOGGODISHURY . . 7 C. L. R., 269

8. —— *Measurement of land by Government officers.*—The evidence of Government having sent its officers to measure the land and to surround it with pillars is the very best evidence of possession of a lately-formed chur. COLLECTOR OF FURREEDPORE v. KALEE DOSS HAZRAH

[17 W. R., 195

9. —— Decree for rent—*Subsequent suit for possession.*—A decree against the registered tenant, in a suit for rent against him and another, is not conclusive evidence of the possession of such tenant as between him and the other, in a subsequent civil action. HURRO NATH BHUTTACHARJEE v. HARVEY . . 25 W. R., 23

10. —— Receipt of rent—*Failure to show collection of rent for portion of property.*—Receipt of rent is good evidence of possession, but it does not necessarily follow that a party in possession has been disturbed because he cannot prove that he has collected rent of a particular portion of the property. PUDAR BINDOO MAHANTEE v. MOHESH CHUNDER SEN . 20 W. R., 183

Receipt of rent is only evidence of possession. ABDOOL ALI v. ABDOOR RUHMAN 21 W. R., 429

11. —— Receipt for revenue.—Possession of receipts for Government revenue, though evidence of possession, does not prove it. LALLEY SINGH v. AMRIT KOOER . . 17 W. R., 490

POSSESSION—*continued*

1. EVIDENCE OF POSSESSION—*continued.*

12. —— Registration of tenure—*Suit for possession—Registration under Beng. Act VII of 1876.*—*Quære*—Whether, in a suit founded upon possession alone, or in which the relief sought depends solely upon possession, registration under Bengal Act VII of 1876 ought not to be treated as *primâ facie* evidence of actual possession at the date when the registration was effected. RAM BUSHAN MAHTO v. JEBLI MAHTO I. L. R., 8 Calc., 853

13. —— *Decision of Collector—Beng. Act VII of 1876, s. 55.*—*Per* GARTH, C.J. *Semble*—That s. 55 of Bengal Act VII of 1876 constitutes the Collector a competent Court under particular circumstances for determining as between two disputants the question of possession, and his recorded decision upon that question in the register might be evidence of the fact of possession as between those two parties. *Ram Bushan Mahto* v. *Jebli Mahto, I. L. R., 8 Calc., 853*, explained. SARASWATI DASI v. DHANPAT SINGH

[I. L. R., 9 Calc., 431: 12 C. L. R., 12

14. —— Finding as to possession—*Mamlatdar—Magistrate—Criminal Procedure Code, 1872, s. 530—Irregularity in taking possession.*—A Mamlatdar's finding as to the point of actual possession is not conclusive. A Magistrate's finding is conclusive under s. 530 of Act X of 1872. LILLU v. ANNAJI PARASHRAM I. L. R., 5 Bom., 387

15. —— *Dispute as to possession between purchaser from heir and grantees from widows—Effect of decision of Magistrate as to possession.*—In a former suit appellant sought as purchaser from the heir to a former proprietor to establish her inheritance right to certain lands as against the grantees from the widows of such proprietor, upon the death of the last sur- [illegible] for arrears of rent due by H. S. the former patnidar, and which had been purchased by K. B and H. B, who had granted a dar patni of the same to the respondents in 1840. In 1841 there was a proceeding [illegible] of the respondents was tried as a regular suit between the objectors (respondents) as plaintiffs and the decree-holder (appellant) as defendant, and was decided in favour of the respondents in the lower Courts. On appeal to the Privy Council, their Lordships held that the proceeding in 1841 was conclusive of the present case, as showing that the actual possession then was in the grantees of the widows; that it was in the highest degree improbable that they, having established their possessory right against B. S., would, without a struggle, have allowed themselves to be

POSSESSION—*continued.*

1. EVIDENCE OF POSSESSION—*concluded.*

turned out of possession by their relatives as purchaser of the same *B S*'s right; that the possession of the grantees was obtained and continued under the widow title, and was referable solely to the title which was now vested in the appellant; and that the right of the appellant should in nowise be affected by the acquisition of the patni title in 1849. SHEROO COOMAREE DEBIA *v* KESHUB CHUNDER BOSOO

[18 W. R., P. C., 1

2. EVIDENCE OF TITLE.

16. — **Evidence of possession and enjoyment.**—Evidence of possession and enjoyment for a series of years is of itself, if unanswered, cogent evidence of title. BAGRAM *v.* COLLECTOR OF BHULLOOA. COLLECTOR OF RUNGPORE *v.* RAM JADUB SEIN

[W. R., 1864, 243

COLLECTOR OF BAREILLY *v.* GHUSEE RAM

[1 Agra, 260

KIRPA SHUNKUR *v.* PAL PANDEY

[1 Agra, Rev., 47

RUNG LALL MISSER *v.* RUGOOBUR SINGH

[9 W. R., 169

DINOBUNDHOO SUHAYE *v.* COURT OF WARDS

[11 W. R., 347

RAMRUDEEGOWDA *v.* DESSAI SAHIB

[17 W. R., P. C., 8

17. ———— *Onus of proof—Person out of possession.*—Possession is evidence of title, and is primarily exclusive. It is for him who impugns this exclusive title to show that the possession arose in some way which has preserved his own right. In every case the person who has been out of possession for more than twelve years must make out some *primâ facie* title, and some agreement or acknowledgment of that title, such that possession is deprived of its ordinary effect through being held on a joint right or a subordinate right. RAMCHANDRA NARAYAN *v.* NARAYAN MAHADEV

[I. L. R., 11 Bom., 216

See TATYA *v.* ANAJI

[I. L. R., 11 Bom., 220 note

and VITHOBA *v.* NARAYAN

[I. L. R., 11 Bom., 221 note

18. ———— **Length of possession.**—Possession need not be long in order to be some evidence of title. PURAN CHUNDER MOOKERJEE *v.* PROTAP NARAIN PAUL . . 9 W. R., 120

19. ———— **Proof of possession and forcible dispossession**—*Onus of proof.*—Possession is evidence of title, and if a plaintiff proves that he had possession and that the possession has been forcibly disturbed by defendant, he makes out a *primâ facie* title which it is for defendant to rebut. AYESHA BEEBEE *v.* KANHYE MOLLAH

[12 W. R., 146

20. ———— **Effect of possession as evidence of title**—*Onus of proof.*—Possession, except where it is of such a length and characte to constitute title, is merely evidence o so only because undisturbed possession v thing more is presumed to be referable title and to absolute ownership: it is ope side to show that such *primâ facie* pr ill-founded. KALEE CHUNDER SEIN *v.* A

[9

21. ———— *Pr*

A person in possession of property oug sumed to be in lawful possession until be shown. Beyond this, possession is c to be taken conjointly with other eviden lish or impugn a title. SELAM SHEIK NATH GHATAK

[3 B. L. R., A. C., 312 : 12

22. ———— *Eje*

Possession is evidence of title, and gives against a wrong-doer; but a person who possession cannot, without proof of another out of possession, even thoug may have no title; for possession is against any one who cannot prove a bette *v.* BINDABUN CHUNDER SIRCAR

[Marsh., 75 : W. R.

1 Ind. Jur., O. S., 97 :

23. ———— **Title by possess** *to retain possession.*—In India the title must prevail until a good title is shown trary. PEDDA VENKATAPA NAIDOO *v.* ROODRAPA NAIDOO

[6 W. R., P. C., 13 : 2 Moore's

WISE *v.* BROJENDRO COOMAR ROY

[18 W. R.

24. ———— *Righ possession.*—A person in possession with is entitled to remain in possession until son can disclose a better title. GOPEE I *v.* DYANIDHEE SUNDURA MOHAPATTUR

[7 V

SOODUKHINA CHOWDHRAIN *v.* RAJ MO

[11 V

25. ———— *Right possession against wrong-doer.*—When evidence fails to show title in him, but d title in another, the plaintiff may recov possession against a defendant wrong-doe KULLAMMAL *v.* KUPPU PILLAI I

26. ———— *Mere on the one side and unjustifiable dispo the other—Right of the possessor dispos wrong-doer, as against the latter.*—Law sion of land is sufficient evidence of righ as against a person who has no title wh who is a mere trespasser. The former c declaratory decree, and an injunction res wrong-doer. ISMAIL ARIFF *v.* MAHOMED

[I. L. R., 20

L. R., 2

POSSESSION—*continued*

2 EVIDENCE OF TITLE—*continued*

27 ——————— *Suit for damages for value of fruit taken from garden—Right of suit*—A suit for damages for the value of fruit crops taken away by the defendant from a garden alleged to be in the plaintiff's possession can be sustained on the finding that the plaintiff was in possession up to the date of the institution of the suit it is not necessary for him to prove his title to the land, unless . . . this case the . . . plaintiff's pos . . . defendant ha . . . suit was remanded for such findings LEP SINGH KHASIA *v* NIMAR KHASIA [I. L. R., 21 Calc., 244

28 ——————— *Suit by person in possession for declaration of title—Burden of proof—Failure of plaintiff or defendant to prove title—Effect of plaintiff's possession*—The plaintiff, who was in possession of certain land sued for a declaration that the defendant had no title to it, and that it belonged to him The plaint also contained a prayer for general relief At the trial both plaintiff and defendant failed to prove any title to the land but the plaintiff proved that he had been for ten years in possession and had built a shed on it *Held* that no declaration of the plaintiff's title . . .

GANGARAM CHIMNA PATIL *v* SECRETARY OF STATE FOR INDIA I. L. R., 20 Bom., 798

29 ——— *Possession commencing in wrong*—A possession on the part of one party, which is not shown to have commenced in wrong can only be disturbed by distinct proof of a superior title in another party ARUMUGAM CHETTY *v* PERRIYANNAN SERVAI . 25 W R, P. C., 81

30 ——————— *Right to sue for ejectment—Failure to prove title*—Possession is a good title against all persons except the rightful . . . eject . . . who . . . appli- . . . ance, . . . prove . . . oved

PEMRAJ BHAYANIRAM *v* NARAYAN SHIVARAM KHISTI I. L. R., 6 Bom., 215

KRISHNARAV YASHVANT *v* VASUDEV APAJI [I. L. R., 8 Bom., 371

31 ——————— *Undisputed and continuous possession*—Evidence of possession and enjoyment is good evidence of title as against the real owner only where it has been undisputed and continuous. GOOROO PERSHAD ROY *v* BYKUNTO CHUNDER ROY . 6 W. R., 82

RUTTUN BEBEE *v* MAKARUM ALI 2 Agra, 300

32. ——————— *Long possession*—A long possession would not confer any title on the occupant if it be proved that the possession was a permissive one GUNGA DEEN CHOWDHRY *v* HUR SAHAI SINGH 3 Agra, 201

TOOLSEERAM *v* NARUR SINGH 3 Agra, 271

ALI BUX *v* ROOP KOOER 2 N W., 106

33 ——————— *Limitation—Unoccupied and uncultivated land*—Where land the right to which is disputed has been uninhabited and uncultivated, and no acts of ownership by any person can be proved to have been exercised over it it is often necessary, for the purpose of deciding the question of limitation to rely upon slight evidence of possession and sometimes possession of the adjoining land, coupled with evidence of title such as grants of leases; and the Courts are justified in presuming, under such circumstances that the party who has the title has also the possession But where the land has been occupied, it is generally proper for purposes of limitation, to deal with the question of possession as distinct from the question of title for while the title may be in one person a twelve years possession may have barred that title MOHIMA CHUNDER DEY SIRCAR *v* HURRO LALL SIRCAR

[I. L. R., 3 Calc., 768 2 C. L. R., 364

34 ——————— *Limitation Act (XV of 1877), arts 143 144—Conflicting evidence of possession—Presumption of title*—Where two adverse parties are each trying to make out a possession of twelve years and the evidence is conflicting and not conclusive on either side—*Held* that the presumption that possession goes with the title must prevail DHARM SINGH *v* HUR PERSHAD SINGH I. L. R., 12 Calc., 38

35 —— *Conflicting evidence of possession—Presumption of possession from title—Title and possession—Onus probandi*—It is only when the evidence of possession is strong on both sides and apparently equally balanced . . . shal Singh, I. L. R., 12 Calc., 38 explained THAKUR SINGH *v* BHOOBRAJ SINGH

[I. L. R., 27 Calc., 25

36 —— *Long possession*—Uninterrupted possession for a long time is *prima facie* sufficient proof of title and the security which being in possession affords should not be weakened PUOHOO NATH RAI *v* CHUNDOO LALL [2 Agra, Pt. II, 195

37. ——————— *Mokurari title—Evidence*—Mere proof of possession for more than twelve years does not amount to proof of a mokurari title SHIB DAYAL PURI *v* MAHABIR PRASAD [2 B. L. R., Ap., 8

38 ——————— *Long possession—Omission to give notice*—Long possession itself does not give a title to a settlement if the parties asking for the settlement have not complied with the

POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*continued.*

requirements of the law. GOLUCK CHUNDER CHOWDHRY *v.* ALI MOLLAH . . 11 W. R., 378

39. ———— *Onus of proof.*—In a suit for possession of property the plaintiff relied on his previous twelve years' possession, and gave no further evidence of his title. *Held* that a previous possession for twelve years of the property sought to be recovered did not dispense with the necessity which lay on the plaintiff to prove his title to that property. He is not on that fact alone entitled to be replaced in possession of the property without regard to any right which may be alleged by the defendant. LAKHI KUMAR *v.* RAM DUTT CHOWDHRY [3 B. L. R., Ap., 44: 11 W. R., 447

40. ———— *Long possession.*—*A* brought a suit under Act X of 1859 to recover arrears of rent in respect of certain lands. *B* was made a party under s. 77, but *A* obtained a decree and ousted *B*. *B* therefore sued *A* in the Civil Court for possession and declaration of his right to the lands, alleging that they were his lakhiraj and devatra lands. The High Court held that proof by *B* of possession for twelve years was sufficient and gave him a decree. BISWANATH *v.* BRAJAMOHAN CHUCKERBUTTY . 1 B. L. R., S. N., 1: 10 W. R., 61

41. ———— *Onus of proof—Suit for possession.*—Where a plaintiff seeks to recover possession upon a title recently acquired, he is not invariably required to prove the origin of his vendor's title. Long and undisturbed possession on the part of the vendor, when positive evidence of title cannot be had, may in many cases constitute proof of title. In a suit to recover immoveable property in the possession of the defendant, a plaintiff cannot ordinarily succeed merely by showing that the title has accrued to him. JOYKISHEN MOOKERJEE *v.* RAJ KISHEN MOOKERJEE . 12 W. R., 315

42. ———— *Limitation Act, 1859, s. 15—Wrong-doer.*—In considering the subject of possession as creating title, irrespective of s. 15 of Act XIV of 1859,—*Held* that possession for a period of sixty years and upwards is sufficient to create a title in the possessor which no one in the world can question or repudiate; that adverse possession for any period sufficient under the Limitation Act is itself a title, even against the rightful owner himself; that prior possession, however short, is itself a title against a mere wrong-doer. ENAETOOLLAH CHOWDHRY *v.* KISHEN SOONDUR SURMA . . 8 W. R., 386

43. ———— *Previous possession, short of the statutory period of limitation—Dispossession—Suit brought more than six months after dispossession, Effect of—Failure to prove title.*—Mere previous possession for any period short of the statutory period of twelve years will not entitle a plaintiff to a decree for recovery of possession in a suit brought more than six months after dispossession, even if the defendant could not establish any title to the disputed land. *Wise* v. *Ameerunnissa Khatoon, L. R., 7 I. A., 73,* referred to. *Ismail Ariff* v. *Mahomed Ghous, I. L. R., 20 Calc., 834: L. R., 20 I. A., 99,* distinguished. *Enaetoollah Chowdhry* v. *Kishen Soondur Surma, 8 W. R., 386,* and *Mohabeer Pershad Singh* v. *Mohabeer Singh, I. L. R., 7 Calc., 591,* dissented from. NISA CHAND GAITA *v.* KANCHIRAM BAGANI [I. L. R., 26 Calc., 579
3 C. W. N., 579

44. ———— When a person who has been in possession is dispossessed, and brings his suit beyond six months from the date of dispossession, he is bound to prove his title, and cannot merely rely upon his previous possession for recovering in the action, although defendant may not prove his title. *Purmeshur Chowdhry* v. *Brijo Lall Chowdhry, I. L. R., 17 Calc., 256,* and *Ertaza Hossein* v. *Bany Mistri, I. L. R., 9 Calc., 130,* referred to. SHAMA CHURN ROY *v.* ABDUL JABEER [3 C. W. N., 158

45. ———— *Lost records—Proof of long possession.*—The plaintiff claimed a right of pre-emption as safee-sharikh, or partner in the thing sold. The Court of first instance gave him a decree on the ground of long possession as proprietor. The lower Appellate Court reversed the decision on the ground that the plaintiff's title depended on a deed of purchase, which it was admitted had been set aside in a former suit in 1855, and that the plaintiff had failed to show that the decision in that suit had been reversed. The plaintiff proved that he had preferred an appeal from that decision, and alleged that it had been overruled; but there was no proof of the result of the appeal, as the records of that suit had been burnt in the Mutiny. *Held* on appeal to the High Court that, under the circumstances, proof of long possession as proprietor was sufficient. TUFANI SINGH *v.* DURGABAN . 4 B. L. R., Ap., 21

46. ———— *Undisturbed possession.*—*Held,* on the evidence in the case, that defendants' long possession was confirmatory of their title based on mortgage-bond of old date, and that plaintiff's suit for possession was rightly dismissed. DEVAJI GAYAJI *v.* GODABHAI GODBHAI [2 B. L. R., P. C., 85: 11 W. R., P. C., 35

47. ———— *Limitation—Act XIV of 1859, s. 15—Dispossession.*—In a suit for recovery of possession of certain brahmatter land, of which the defendant had dispossessed the plaintiffs by virtue of an award passed under s. 15, Act XIV of 1859, declaring his right by purchase, the defence set up was that the deed of purchase was a forgery, and that the suit was barred by lapse of time. *Held* that, although the plaintiffs failed to prove their title-deeds, yet their title was sufficiently established by oral evidence of long possession prior to their dispossession two or three years previous to suit. RAM CHANDRA CHOWDHRY *v.* BRAJANATH SARMA [3 B. L. R., Ap., 109

48. ———— *Long possession—Limitation Act (IX of 1871), s. 29—Limitation Act (XIV of 1859)—Bom. Reg. V of 1827, s 1—Prescription—Adverse possession.*—Some lands in

POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*continued.*

proprietor who had been out of possession for more than twelve years happened to regain it, the person who had been in adverse possession must fail in any suit to eject the proprietor, unless he sued within six months under s 15 of the Act The effect of Act IX of 1871, s. 29, however, is not merely to bar the remedy, but to extinguish the title of the original proprietor after twelve years of a possession adverse to him RAMBHAT AGNIHOTRI v. COLLECTOR OF PUNA [I L. R, 1 Bom, 592

49. *Mirasdars—*

had failed to prove any right of perpetual cultivation, the District Court, on appeal, observing that no term of occupation as a tenant of inam land would confer a right of perpetual cultivation, and that nothing

[I. L. R., 3 Bom., 340

50. *Long possession as evidence of title—Pottah found to be forged—Permanent tenure—Service tenure—Presumption of title*—The plaintiff purchased a mirasi talukh at a sale in execution of a decree obtained against the talukhdar for arrears of rent of the talukh, and then sued to recover possession of certain lands held by the defendants within the talukh The defence was that the lands in question were held by the defendants under a pottah which had been granted to their ancestor in 1733 by the then talukhdars in respect of certain services to be performed by the grantees and their descendants. The Court of first instance found that the pottah was genuine, and dismissed the plaintiff's suit On appeal, the Subordinate Judge found that the pottah was a forgery; and that, although the lands had been granted to the defendants' ancestor in respect of services, yet the plaintiff was entitled to khas possession, as he did not require the services to be performed He therefore decreed the plaintiff's claim *Held* that the decree was right, for having found that the pottah on which the defendants chiefly relied was a forgery, the Subordinate Judge was not bound, as a matter of law, to presume that the

51. — — ——— *Mal and lakhiraj cases—Suit for possession*—In mal cases of title the question of possession is dependent on the question of title; whereas in lakhiraj cases the title may fail and yet if possession as lakhirajdars—that is to say, possession without paying rent—is proved it may be sufficient to give a lakhiraj title RADHAGOBIND DASS v PROKASH CHUNDER DASS [14 W. R., 108

52. *Finding by Mamlatdar as to possession—Subsequent contrary finding by Civil Court—Onus of proof*—The plaintiff brought this suit to recover possession of certain land which had belonged to her nephew, and of which, after his death in 1878, she had assumed the management In 1881 she brought a possessory suit against the first defendant in the Mamlatdar's Court, which suit was dismissed in January 1885, the Mamlatdar holding that she had not been in possession In a civil suit, however which (pending the proceedings in the Mamlatdar's Court) she had filed against the first defendant in the Court of the Subordinate Judge of Haveri, the Judge found that she had been in possession since 1880, and awarded her damages against the first defendant (who was held to be her farm servant) for crops which had been taken away by him In 1887 the second defendant as mortgagee from defendant No. 1 obtained a decree against plaintiff in the Mamlatdar's Court awarding him possession of the land, and in execution of that decree the plaintiff was dispossessed in December 1887 In 1890 the plaintiff filed this suit to recover possession and for mesne profits since 1887. The defendant pleaded that the plaintiff had no title to the land, and that the suit was barred by limitation, inasmuch as the plaintiff had not brought a suit to establish her right within three years after the Mamlatdar's order in 1885 dismissing her possessory suit. *Held* that the plaintiff's possession prior to 1887, confirmed as it was by the decree of the Civil Court in 1885 and by the finding of the lower Court of appeal in the present case, must prevail against the defendant, who claimed through plaintiff's farm servant only, and whose possession commenced with the disturbance

POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*continued.*

requirements of the law. GOLUCK CHUNDER CHOWDHRY v. ALI MOLLAH . . **11 W. R., 378**

39. ———— *Onus of proof.*—In a suit for possession of property the plaintiff relied on his previous twelve years' possession, and gave no further evidence of his title. *Held* that a previous possession for twelve years of the property sought to be recovered did not dispense with the necessity which lay on the plaintiff to prove his title to that property. He is not on that fact alone entitled to be replaced in possession of the property without regard to any right which may be alleged by the defendant. LAKHI KUMAR v. RAM DUTT CHOWDHRY

[3 B. L. R., Ap., 44: 11 W. R., 447

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POSSESSION—*continued.*

2 EVIDENCE OF TITLE—*continued.*

[illegible]

Limitation Act, twelve years' adverse possession barred the suit without extinguishing the title: so that, if a proprietor who had been out of possession for more [illegible]

[illegible] of 1871, s. 29, however, is not merely to bar the remedy, but to extinguish the title of the original proprietor after twelve years of a possession adverse to him RAMBHAT AGNIHOTRI v. COLLECTOR OF PUNA

[I. L. R., 1 Bom., 592

49. ——— *Mirasidars—Long possession—Local inam and custom—Sanad*—Where a plaintiff claimed to hold certain lands in miras and under a right of perpetual cultivation by [illegible] special appeal reversed the decrees of the Courts [illegible] on the [illegible] local [illegible] amity [illegible] rwise, previously to the [illegible], had acquired the right to hold the lands in perpetuity on payment of a fixed or other rent ascertainable by local usage BABAJI v. NARAYAN

[I. L. R., 3 Bom., 340

50. ——— *Long possession as evidence of title—Pottah found to be forged—Permanent tenure—Service tenure—Presumption of title*—The plaintiff purchased a mirasi talukh at a sale in execution of a decree obtained against the talukhdar for arrears of rent of the talukh, and then sued to recover possession of certain lands held by the defendants within the talukh. The defence was that the lands in question were held by the defendants under a pottah which had been granted to their ancestor in 1733 by the then talukhdars in respect of certain services to be performed by the grantees and their descendants. The Court of first instance found that the pottah was genuine, and dismissed the plaintiff's suit. On appeal, the Subordinate Judge found that the pottah was a forgery, and that although the lands had been granted to the defendants' ancestor in respect of services, yet the plaintiff was entitled to khas possession, as he did not require the services to be performed. He therefore decreed the plaintiff's claim. *Held* that the decree was right, for having found that the pottah on which the defendants chiefly relied was a forgery, the Subordinate Judge was not bound, as a matter of law, to presume that the tenure was a permanent one merely from the fact of long possession of the lands. NOBIN CHUNDER DUTT v. MODUN MOHUN PAL

[I. L. R., 7 Calc., 677: 9 C. L. R., 233

51. ——— *Mal and lakhiraj cases—Suit for possession*.—In mal cases of title the question of possession is dependent on the question of title, whereas in lakhiraj cases the title may fail, and yet if possession as lakhirajdars—that is to say, possession without paying rent—is proved it may be sufficient to give a lakhiraj title. RADHAGOBIND DASS v. PROKASH CHUNDER DASS

[14 W. R., 108

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POSSESSION—*continued.*

2. EVIDENCE OF TITLE—*concluded.*

which compelled the plaintiff to bring the suit. Possession is *primâ facie* evidence of title, and is primarily exclusive, and it is for him who impugns this exclusive title to show that the possession originated in a way not to affect his own right. KRISHNACHARYA *v.* LINGAWA . **I. L. R., 20 Bom., 270**

53. ———— *Buildings on land occupied under zamindars without evidence of grant—Evidence of reservation of interest.*—Where there was no evidence of any grant, and the owner of buildings had been for upwards of twelve years in possession of the plots of land on which the buildings were situated without in any way paying rent to or acknowledging the title of the zamindars, he was *primâ facie* entitled to the sites, and the mere fact that the sites were situated within the area of a permanently-settled mehal did not justify the presumption that the zamindars reserved to themselves reversionary right in the sites. GUR PARSHAD *v.* UMRAO SINGH . . . . **7 N. W., 218**

3. NATURE OF POSSESSION.

54. ———— *Possession under deed afterwards set aside as fraudulent—Effect of decree setting it aside.*—Where a person was in actual possession of property from the time when a deed conveyed it to him, a decision which declared that deed to be fraudulent did not have the effect of putting another claimant in possession; nor could possession be considered as having ceased in consequence of the decree, unless the holder were actually dispossessed under it; for the fact of the decree did not prevent the statute of limitation from running, and, in the particular case under consideration, the decree in question was still under appeal. MUKBOOL ALI *v.* WAJED HOSSEIN . . . **25 W. R., 249**

55. ———— *Possession in execution of decree—Possession otherwise than by Court—Civil Procedure Code, 1859, ss. 230, 264.*—Act VIII of 1859, s. 230, did not limit the applicant to any particular manner of obtaining possession; and s. 264 contained nothing to prevent the purchaser at an execution sale from obtaining possession if he could without the assistance of the Court. OBHOYA CHURN DEY *v.* RAJENDRO COOMAR GHOSE [**22 W. R., 406**

56. ———— *Possession without executing decree for possession.*—So long as a plaintiff obtains possession after a decree establishing his right to it, it is immaterial for the purpose of limitation whether he obtained it by executing his decree, or whether possession was yielded to him. If afterwards dispossessed, his cause of action does not date from the decree, but from his dispossession. SALIG RAM *v.* MEHEEN LALL . **2 Agra, 235**

57. ———— *Possession irregularly taken.*—Possession actually taken by a person having a right to it is not the less effective, as perfecting his title, by reason of an irregularity in taking it. Subsequent ouster will give rise to a new cause of action. LILLU *v.* ANNAJI PARASHRAM [**I. L. R., 5 Bom., 387**

POSSESSION—*continued.*

3. NATURE OF POSSESSION—*continued.*

58. ———— *Decree for possession, Non-execution of—Title—Possession taken by rightful owner without Court's intervention—Trespass—Specific Relief Act (I of 1877), s. 9.*—*B* purchased land from *M* and subsequently brought a suit against *M* to obtain possession. He got a decree, but did not execute it within three years. *M* died, and after his death and while his daughter (the plaintiff) was a minor, *B* took forcible possession of the land. Eight years afterwards the plaintiff attained her majority, and she then filed this suit to recover the land. The lower Court held that *B*, having failed to execute his decree for possession, was wrong in taking possession during the minority of the plaintiff without the intervention of a Court; that in so doing he was a trespasser; and that the plaintiff as *M*'s heir was entitled to have possession given to her, until ousted in due course of law. *Held* (reversing the decree) that, subject to the provision of s. 9 of the Specific Relief Act (I of 1877), there is no reason for holding that in India the rightful owner dispossessing another is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. BANDU *v.* NABA [**I. L. R., 15 Bom., 238**

59. ———— **Possession in execution of decree**—*Proclamation of sale—Suit for possession—Limitation.*—In a suit for possession of certain lands purchased by plaintiff at a sale in execution of a decree of the Sudder Ameen's Court, the lower Court held that "possession by proclamation of sale, through the Sudder Ameen's Court, was possession through the Court," and that the suit, being brought within twelve years of that proclamation, was in time. *Held* on appeal that such imaginary possession was no possession at all, and that the suit was barred by limitation. JOWHER ALY *v.* RAM CHAND [**2 B. L. R., Ap., 29: 24 W. R., 419**

60. ———— *Proclamation of sale—Possession of auction-purchaser.*—The possession of an auction-purchaser at a sale in execution of a decree runs from the date of delivery, as provided by s. 246, Act VIII of 1859,—*i.e.*, by publication of sale certificate and proclamation by beat of drum,—and not from the date of his possession. ASUDOOLAH *v.* AKBUR ALI . . . . **7 W. R., 60**

61. ———— *Civil Procedure Code, 1877, s. 264—Certificate of sale.*—It was not incumbent on the Court, under the Civil Procedure Code (Act X of 1877), s. 264, to put a purchaser into possession until he had his certificate of sale. *Quære*—Whether a purchaser who, without a certificate of sale, has been put into possession, could be lawfully ejected because he has not such a certificate. TUKARAM *v.* SATVAJI KHANDUJI [**I. L. R., 5 Bom., 206**

POSSESSION—*continued*

3 NATURE OF POSSESSION—*continued.*

See also BASAPPA *v* MARYA [I. L R., 3 Bom , 433

62 ——————— *Civil Procedure Code, 1859, s 224* —In order to a legal possession being given under s 224, Act VIII of 1859 it was essential that all the requirements of that section be carried out COURT OF WARDS *v* BURRA LALL OPENDRONATH DEO 15 W R , 09

63 ——————— *Civil Procedure Code 1859, s 224* —Where compliance with the formalities prescribed by s 224 Act VIII of 1859 and a legal receipt for possession were found as facts they were held to give such a right under a Civil Court's decree as would prevail over one founded on mere actual receipt of rent KHETTURNATH ROY *v* DURBESH MOONSHEE 9 W R , 358

64 ——————— *Possession Suit for—Civil Procedure Code, 1859, s 224* —A suit for possession of immoveable property is not barred by the law of limitation if the suit be brought within twelve years of possession having been delivered to the plaintiff under s 224 Act VIII of 1859, or if possession by the plaintiff has been admitted within twelve years by the party through whom the defendant claims BINDUBASHINI DASI *v* RENNY (RAINEY) 7 B L. R , Ap , 20 15 W. R , 307

65 ——————— *Decree for possession Effect of Civil Procedure Code, 1859 s 223* —Where plaintiff sued defendant as a trespasser, the prayer in the plaint being for khas

MOYEE . 11 W. R , 63

66 ——————— *Ameen Possession given by—Partition proceedings—Criminal Procedure Code, 1872 s 530* —The possession given by an Ameen in a batwara proceeding is simply one of ownership an

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KENZIE *v* SHEKE BAHDOOR SAHI [I. L. R , 4 Calc., 378

67 ——————— *Civil Procedure Code 1859 ss 223 224* —A person who has obtained symbolical possession under s 224 of Act VIII of 1859 may subsequently ask for actual possession under s. 223 if the terms of his decree warrant such possession being given ROBSON *v*. MASEYK [3 W. R., Mis , 2

68 ——————— *Formal possession—Fresh period of limitation—Act VIII of 1859, s 224* —Delivery of possession by going through the process prescribed by s 224 of Act VIII of 1859 is the only way in which the decree of the Court awarding possession to the plaintiff can be enforced; and as in contemplation of law, both parties must be considered as being present at the time when the delivery is made such delivery must, as against the defendant be deemed equivalent to actual possession As against third parties such symbolical possession is of no avail because they are not parties to the proceedings But if the defendant subsequently dispossesses the plaintiff by receiving the rent and profits the plaintiff will have twelve years from such dispossession to bring another suit JUGGOBUNDHU MUKERJEE *v* RAM CHUNDER BYSACK [I L R., 5 Calc., 584 5 C L R., 548

MOZUFFER WAHID *v* ABDUS SAMAD [6 C L R , 539

DHAPI *v* BARHAM DEO PERSHAD [4 C W N., 297

69 ——————— *Formal possession—Transfer of possession—Civil Procedure Code (Act VIII of 1859) ss 223 224* —In a suit for possession it appeared that in 18 3 the plaintiff had sued some of the present defendants for khas possession of the same land. In that suit the defendants pleaded that they were tenants of the plaintiff and entitled to hold under a pottah which they failed to prove and the plaintiff obtained a decree Three years afterwards the plaintiff was put into formal possession by the Court under s 224 of Act VIII of 1859 instead of under s 223 *Held that* as the plaintiff was put in possession under his decree by the officer of the Court the form in which execution was given was immaterial The formal possession given by a Civil Court under an execution operates, in point of law and fact as between the parties as a complete transfer of possession from the one party to the other LOKESSUR KOER *v* PURGUN ROY I. L. R ,7 Calc., 418

See DHONDIBA KRISHNAJI PATIL *v* RAMCHANDRA BHAGAT I L. R., 5 Bom , 554

70 ——————— *Symbolical possession—Obstruction or resistance to possession* —Symbolical possession, such as may be given by the Nazir of a Court by sticking a bamboo into the ground or the like of a dwelling house or of a share in a dwelling house of which actual possession might have been granted is not such a *bonâ fide* possession as will save limitation SHOTEENATH MOOKERJEE *v* OBHOY NUND ROY . I L. R., 5 Calc , 331

71 ——————— *Symbolical possession—Limitation—Fresh cause of action* —Symbolical possession given under a decree does not as against third parties, entitle the person to whom such possession has been given to count a fresh period of limitation from the date of the possession A person who prefers a claim to property attached under a decree but whose claim is disallowed, is not a party to the decree; and the decree holder on obtaining symbolical possession will not be entitled to count a fresh period of limitation as against him. DYRAVIRAY PANDA *v* KELAI PANDA . 11 C L R., 395

POSSESSION—*continued.*

3. NATURE OF POSSESSION—*continued.*

72. ——————— *Symbolical possession, Effect of.*—Where in execution proceedings symbolical possession is given to a person, such possession amounts to an actual transfer of possession as between the parties to the suit; but such possession has no such operation against third persons who are not parties to the suit. *Juggobundhu Mukerjee v. Ram Chunder Bysack, I. L. R., 5 Calc., 584,* explained. RUNJIT SINGH v. BUNWARI LALL SAHU [I. L. R., 10 Calc., 993

73. ——————— *Formal possession—Limitation.*—Where a plaintiff, who has obtained a decree for possession of immoveable property, undergoes the mere ceremony of receiving formal possession on the spot by beat of drum and posting of bamboos, and then allows twelve years to elapse without taking any steps to acquire and assert actual possession, he loses the title conferred by the decree. PYAREE MOHUN PODDAR v. JUGOBUNDHOO SEN [24 W. R., 418

74. ——————— *Formal possession—Cause of action—Possession under decree barred by limitation.*—Where a decree declared that plaintiff was to get possession of a certain quantity of land on a batwara being made, and the decree-holder, after allowing his right to be barred by lapse of time, applied to the Collector, had a batwara effected, and obtained merely formal possession,—*Held* that such possession gave him no fresh cause of action. KISHORE SINGH v. GOBIND SINGH . 24 W. R., 33

75. ——————— *Formal possession—Limitation—Cause of action—Actual possession.*—Formal possession given to a decree-holder by an officer of the Court in execution of his decree is sufficient to give him a fresh cause of action, and notwithstanding that he may never have obtained actual possession, he or his assigns may sue to recover possession at any time within twelve years from the time when such formal possession was given. UMBICKA CHURN GOOPTA v. MADHUB GHOSAL [I. L. R., 4 Calc., 870 : 4 C. L. R., 55

76. ——————— *Suit for possession after delivery of formal possession to defendant.*—*Semble*—That the delivery of formal possession in execution of a decree for possession gives a cause of action, against a defendant who remains in occupation of the premises, which may be enforced in a regular suit. SHAMA CHARAN CHATTERJI v. MADHUB CHUNDRA MOOKERJI . I. L. R., 11 Calc., 93

77. ——————— *Subsequent continuance in possession of judgment-debtor—Right to fresh execution of decree.*—When a formal possession of immoveable property has been delivered according to law to a person holding a decree for the delivery of the same, the subsequent continuance in actual possession of the judgment-debtor does not give the decree-holder a right to a fresh order for delivery of possession in execution of the decree, but gives him a right to institute a fresh suit for possession of such property. GOPAL DAS v. THAN SINGH [I. L. R., 4 All., 184

POSSESSION—*continued.*

3. NATURE OF POSSESSION—*concluded.*

RAM NEWAZ SINGH v. KISHUN RAI [6 N. W., 137

78. ——————— *Formal and actual possession—Limitation—Sale in execution of decree.*—*A* purchased the right, title, and interest of *B*, a judgment-debtor, in certain lands, at an auction-sale in execution of a decree in October 1863, was put in formal possession in January 1865, and died without ever having obtained actual possession. After his decease, a suit was filed in September 1875 on behalf of his minor son *C* against the defendants, who obstructed his taking actual possession. *Held* that, if *B* was in possession at the time of the sale—that is to say, within twelve years before the institution of the suit—*C* was not barred by limitation. KOONJO MOHUN DASS v. NOBO COOMAR SHAHA [I. L. R., 4 Calc., 216

4. ADVERSE POSSESSION.

79. ——————— Effect of adverse possession—*Limitation—Title.*—Adverse possession for more than twelve years not only bars remedy, but extinguishes right, and confers title on the party holding such adverse possession. BARODAKANT ROY v. PRANKRISHNA PAROI [3 B. L. R., A. C., 343 : 12 W. R., 192

RAM SAHOY SINGH v. KOOLDEEP SINGH [15 W. R., 80

80. ——————— *Title by length of possession—Limitation—Unexecuted decree.*—In 1859 *A* obtained a decree for possession of land against *B*, but no proceedings in execution were taken, and *B* continued in possession. In 1869 *C*, having purchased the right and interest of *A* in the decree, forcibly dispossessed *B*, who had been twelve years in possession. *B* now brought this suit against *C* to recover possession. *Held* the execution of the decree of 1859 being barred, and *B* having been twelve years in possession, he was entitled to recover. Adverse possession which bars the remedy also transfers the right. AMIRUNNISSA BEGUM v. UMAR KHAN . 8 B. L. R., 540

AMIRUNNISSA BEGUM v. AMIR KHAN [17 W. R., 119

81. ——————— Presumption as to possession—*Proof as to nature of possession.*—Possession must be presumed to be of right and adverse, until that presumption is rebutted by evidence. BIRESSUR BANERJEE v. ONOODA CHURN BANERJEE [3 W. R., 12

82. ——————— *Onus of proof.*—When parties are in possession of an estate, it is generally to be presumed that they are in possession as owners; and it lies on the party alleging that possession is of a different nature, such as that of an under-tenant, to prove the allegation. SHAHABOODEEN CHOWDHRY v. RAM GUTTY CHUCKERBUTTY [9 W. R., 556

83. ——————— *Possession originally permissive.*—Where occupation was originally

POSSESSION—*continued*

4 ADVERSE POSSESSION—*continued*

permissive, its conversion into an occupation of a wholly adverse nature is not to be presumed in *the absence of evidence to establish this change.* WAHEEOODDEEN *v* JHUNGOREE 2 N W, 16

AMMUR SINGH *v* MURDUN SINGH 2 N W, 31

OOPENDRONATH ROY *v* KALEE CHURN ROY [8 W R., 394

84 ———— Limitation—*Suit for possession*—To make out a complete legal bar, the occupation should be proved to be adverse during the *whole of the twelve years before suit, and it should be* ascertained with what persons the actual possession has been during that time WAHEE OOD-DEEN *v* JHUNGOREE 2 N W, 16

85 ———— *Possession obtained by fraud—Suit for ejectment*—The defendant in an action of ejectment cannot claim the benefit of the statute of limitations upon a possession obtained by fraud actual or constructive unless the plaintiff have been guilty of such laches as to disentitle him to the interference of the Court. HEERA LOLL SHAHA *v* JADUB CHUNDER CHENCHKEY [Cor, 119

86 — *Dishonesty in getting possession*—Dishonesty in obtaining possession will not prevent the possessor from availing himself of the law of limitation, which however, cannot relieve him from the charge of dishonesty POREBH NARAIN ROY *v* WATSON 5 W R., 283

87 ——— Title by long possession—*Purchaser under fraudulent sale*—Where a person [illegible]

hostile purchaser whose claims are based on a fraudulent sale TOMMINISSA *v* NUJEEMA BANOO [8 W R., 340

88 ———— Conversion of permissive into adverse possession—*Cause of action*—Where a party in permissive possession of land sets up his own absolute title by suing the tenant for rent he converts his permissive possession into an adverse one, which as wrongful possession, is a cause of action KHURUCKDHAREE SINGH *v* REWAT LALL SINGH 12 W R, 167

89 — — Temporary possession—*Possession under decree afterwards set aside—Limitation*—A brief possession for a few weeks under a decree subsequently set aside or modified, so as not to have effect against the persons who were previously in possession and to whom possession was restored is not such possession as entitles the plaintiff to calculate limitation from that time DROUM BEBY DOSSEE *v* ANUNDNATH ROY [W R, 1864, 43

90 — — — *Possession under erroneous order—Limitation* Possession under an erroneous order of a Magistrate does not constitute such *bond fide* possession as will prevent the law of limitation from running MOOKTAKASHY *v* LUCKEE [3 Ind. Jur., O S, 4

91 ——— *Possession under Magistrate's order*—Possession under the order of a Magistrate, which is set aside by a decree of a Civil Court, is of no effect against a plea of limitation. HIRINGEE SAHOO *v* SHAM MANJHEE [8 W R., 373

92 ———— Attachment of property—*Limitation* The attachment of a property is adverse possession causing limitation to run as against the party in possession of the property BROJO RAJKISHOREE *v* BISHONAUTH DUTT [W. R., 1864, 305

93 ———— Possession of purchaser—*Mortgagor and mortgagee*—The possession of a purchaser at a sale in execution of a decree without notice of a mortgage of the property is adverse to the mortgagee ANAND MAYI DASI *v* DHARENDRA CHANDRA MOOKERJEE [8 B L R., 122: 14 Moore's I A, 101: 16 W R., P C, 19

Affirming same case in High Court DHURUNDRO CHUNDER MOOKERJEE *v* ANNUND MOYEE DOSSEE [1 W R., 103

94. ———— — *Foreclosure—Purchaser from mortgagor—Adverse possession*—Where a party *bond fide* purchased from another as his own property, land in fact mortgaged, and obtained possession and mutation of names his title was held to be adverse to that of the mortgagee BRAJANATH KUNDU CHOWDHRY *v* KHILAT CHANDRA GHOSE [8 B L R., 104 14 Moore's I A, 144, 16 W R., P C, 33

95 ——— Entry of names in Collector's records *Absentee holders*—*Mere continued* entry in the Collector's records of the names of absentees cannot of itself avail to alter the character of an otherwise adverse holding by persons really in possession DOORJUN *v* CHAINA 2 N. W, 43

96 ——— Decree affirming proprietary title—*Limitation—Declaration of title—"Relief"*—In 1868 *B* made, it was alleged a gift of a zamindari estate to *K* In 1870 *B* died and *K's name was recorded in the revenue registers in* the place of *B's* name in respect of the estate In [illegible]

recorded, *M* in 187[illegible] sued *S* for a declaration of his proprietary right to the estate and on the 27th July 1878 obtained such declaration. In January 1880 *M* sold a moiety of the estate, and in December 1880 *S* sold the entire estate In February 1881 *M's* transferees sued *S* and her transferee for possession of the moiety of the estate transferred to them by *M*.

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

Held (STUART, *C.J.*, dissenting) that the possession of *S* and her transferee could be considered adverse only from the date of the decree of the 29th June 1878, declaring *M's* proprietary title to the estate. *Radha Gobind Roy* v. *Inglis, 7 C. L. R., 364,* referred to. SARSUTTI *v.* KUNJ BEHARI LAL . . . . . I. L. R., 5 All., 345

97. ———— Possession of beneficial owner—*Benami purchase at sale for arrears of revenue.*—Where property purchased benami at a sale for arrears of revenue remains for more than twelve years from the date of the sale in the adverse and undisturbed possession of the beneficial purchaser, such possession is not only sufficient to extinguish the title of the nominal purchaser, but it creates a title in the former capable of devolving upon his legal heirs and representatives. BOOA RUSSOOLEE *v.* NAWAB NAZIM OF BENGAL . . . . 11 W. R., 382

98. ———— Possession settled with persons paying arrears of revenue—*Limitation—Suit for possession.*—*Held* that the mere fact of property in dispute being settled with defendants, by reason of their paying up the arrears of revenue, does not constitute adverse possession from which limitation can be reckoned. BHEEMA *v.* PAHLAD [2 Agra, 38

99. ———— Settlement of land with mortgagee—*Mortgagor and mortgagee.*—*Held* that, as the settlement of rent-free land belonging to plaintiff's ancestor was made with the defendant in the character of mortgagee, his (defendant's) possession of the land was not adverse to the plaintiffs, the mortgagors. RAM DIAL *v.* SHAH BAZ KHAN [1 Agra, 15

100. ———— Chur land—*Limitation*—Limitation or adverse possession as to chur land may commence directly the land is in existence, and not from the time at which it becomes culturable. Any proof of ownership would be sufficient to show possession. LUCKHEE DEBIA CHOWDHRAIN *v.* COLLECTOR OF MYMENSING . . . . 7 W. R., 231

101. ———— Encroachment—*Rent-free landholder.*—Where a rent-free holder has encroached on the adjoining land and has enjoyed it rent-free and adversely to zamindari right for more than twelve years,—*Held* that he cannot be dispossessed of it, nor assessed with rent in respect of it. BHAGOUTEE CHARUN *v.* SHIVA PERSHAD . 1 Agra, Rev., 38

102. ———— Occupation of vacant land—*Temporary occupation—User.*—A small piece of land being of no present use to its owner and being convenient in many ways to his neighbour, the latter made use of it, in various ways, without objection for more than twelve years. A privy and sheds for cows, goats, fowls, etc., and a hut for a ghariwallah—all, however, structures of a flimsy and purely temporary character—were said to have been constructed and maintained for many years on the said piece of land. Such user, it was contended, amounted to adverse possession. *Held* that such user as this was insufficient to give a title to the land by adverse possession. User of this sort, under similar circumstances, is common in this country and excites no particular attention. It is neither intended to denote, or understood as denoting—on the one side or the other—a claim to the ownership of the land, and where this, and no more, is the case, it would be wrong to hold that a claim by adverse possession has been made out. FRAMJI CURSETJI *v.* GOCULDAS MADHOWJI . I. L. R., 16 Bom., 338

103. ———— Accreted lands—*Possession under temporary settlement by Collector.*—Where one co-sharer managed the property, and, in the absence or during the minority of the other co-sharer, obtained from the Collector a temporary settlement in his own name of chur lands accreting to the parent estate,—*Held* that the latter was entitled to participate in the temporary settlement, and that the possession of the former under that settlement was not adverse to the latter. BISSESSUREE DOSSEE *v.* KALEE COOMAR ROY . . . 18 W. R., 198

CALLY CHUNDER CHOWDHRY *v.* MONIKURNIKA CHOWDHRAIN . . . W. R., 1864, 149

104. ———— Co-sharer—*Evidence of title—Possession by one co-sharer.*—Possession of ancestral property is good evidence of title against a co-sharer if shown to be exclusive, and to be inconsistent with the co-sharers having any right in the portion claimed. HURRO NARAIN SINGH *v.* BYKUNT NARAIN SINGH . . . . . 14 W. R., 51

105. ———— *Occupation of, and acts of, ownership on vacant land—Limitation.*—The defendant had used as a backyard a small piece of land situated between his house and that of the plaintiff, who was his brother, for a period of more than twelve years. In 1894 the defendant began to build on it, whereupon the plaintiff protested and now sued for possession. *Held* that the suit was not barred by limitation. CHOKKALINGA NAICKEN *v.* MUTHUSAMI NAICKEN . I. L. R., 21 Mad., 53

106. ———— *Possession by one co-sharer.*—Possession of a plot of land does not constitute adverse possession in relation to a co-sharer unless the latter claims or asserts some right in the land which is denied by the sharer in possession. SHURFUNNISSA BIBEE CHOWDHRAIN *v.* KYLASH CHUNDER GUNGOPADHYA . . 25 W. R., 53

107. ———— *Co-sharer obtaining by arrangement exclusive possession of a portion of property still remaining joint.*—Where two parties have from time to time, according to their respective means, broken up or otherwise obtained possession of lands invariably recorded as joint property, and have exclusively enjoyed the profits of them, such exclusive possession and enjoyment on either side cannot, under the circumstances, be deemed to be of an adverse nature, and destructive of the rights of the other party. YUSAF ALI KHAN *v.* CHUBBEE SINGH [5 N. W., 122

108. ———— *Manager of a Hindu temple—Shevaks or servants of an idol—Rights of manager and servants inter se.*—The

POSSESSION—*continued*

4. ADVERSE POSSESSION—*continued*

plaintiff was the hereditary manager of the temple of Shri Ranchhod Raiji at Dakor. The defendants were the shevaks or ministers of the deity. The plaintiff sued to oust the defendants from a certain piece of [illegible]

land was always to be kept open and unoccupied for the use of the temple. The shevaks contended that they [illegible]

not by occupation and user acquired any title as against the plaintiff who was the manager of the temple estate. They had come into occupation originally as servants and representatives of the deity, and during their occupation they could not by a wish [illegible]

suit, and that question had already been decided in a former suit in favour of the plaintiff MULJI BHULABHAI *v.* MANOHAR GANESH

[I. L. R., 12 Bom., 322

[illegible]

AJBAWAL SINGH *v.* CHOWDHRY BHOWAN SINGH

[2 Hay, 311

110. ——— Members of joint family—*Female living with male relatives—Presumption as to management and possession.*—Where a female lives with her male relatives, the ordinary presumption is that they manage her property for her, and do not hold it adversely. ASAD ALI MIRDHA *v.* TOFFAN BIBI . . 13 C. L. R., 328

111. ——— *Excluded member.*—The general rule that the possession of one member of a joint Hindu family is the possession of all other members, does not apply where the party claiming has been clearly excluded from the family. In such a case the possession is adverse, and under the general law of limitation time will run from such adverse possession. JOWALA BUKSH *v.* DHARUM SINGH . . . 10 Moore's I. A., 511

112. ——— *Absence of one member.*—Where two brothers, members of the same family, succeeded to equal shares in the paternal estates, the mere fact of one brother being absent, and the home-staying brother being in possession, does not deprive the former of his rights of inheritance, unless it is clearly shown that the possession by the latter was adverse to the absent brother. WOOZEEEUN *v.* NOORUL JAN . . . . 9 W. R., 99

113. ——— *Separation in living and separation by partition.*—In a suit to recover a share in certain land, it was contended that there had been a separation between the plaintiff and the defendant, and that the suit was barred by limitation,—*Held* that the suit was not barred as the separation, even if proved was only a separation in living and not a separation by actual partition, and therefore the defendant's possession was not adverse to the plaintiff. NARAYAN BABAJI DABHOLKAR *v.* PANDURANG RAMCHANDRA DABHOLKAR

[12 Bom., 148

SOOKH LALL BHOOJWALLA *v.* GOOLZAR BOOJWALLA . . 14 W. R., 228

See KRISTAYYA *v.* NARASIMHAM

[I. L. R., 23 Mad., 608

114. ——— *Title set up by member of tarwad.*—When a member of a tarwad, in possession of lands acquired by former members of his taverai (branch), openly sets up an independent title to those lands, his possession becomes hostile to the tarwad, and limitation begins to run against the tarwad from that time. KANARA PANIKER *v.* RYRAPPA PANIKER . . I. L. R., 3 Mad., 212

115. ——— *Possession by one member of family—Neglect by plaintiff to take possession of his share notwithstanding request that he would do so—Limitation.*—The plaintiff and the defendant were brothers and members of an undivided family. The plaintiff was in Government service, and had been for a long time absent from his native place on duty, the family property remaining under the management of the defendant. In 1863 the defendant wrote to the plaintiff requesting him to return and manage his share of the property or to employ some one to manage it for him. Nothing, however, was done by the plaintiff in the matter, and the defendant continued in possession. In 1882 the plaintiff sued the defendant for partition. The defendant pleaded that the suit was barred, contending that he had been in adverse possession from the date of the letter. The Court of first instance awarded the plaintiff's claim. The defendant appealed, and the lower Appellate [illegible] to [illegible] red. [illegible] wed [illegible] the defendant had not been in possession of the property "as his own property to the exclusion of the plaintiff," and the mere circumstance that subsequently to the date of the letter the plaintiff had not participated in the profits would not, in the absence of other evidence, justify the inference that the plaintiff was then excluded. DINKAR SADASHIV *v.* BHIKAJI SADASHIV . . . I. L. R., 11 Bom., 365

116. ——— *Decree and execution against father—Subsequent possession by son—Civil Procedure Code (1877), s. 263—Limitation.*—One A formerly owned the house and land in

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

Held (STUART, *C.J.*, dissenting) that the possession of *S* and her transferee could be considered adverse only from the date of the decree of the 29th June 1878, declaring *M's* proprietary title to the estate. *Radha Gobind Roy* v. *Inglis, 7 C. L. R., 364*, referred to. SARSUTTI *v.* KUNJ BEHARI LAL . . . . I. L. R., 5 All., 345

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104. ———— Co-sharer—*Evidence of title—Possession by one co-sharer.*—Possession of ancestral property is good evidence of title against a co-sharer if shown to be exclusive, and to be inconsistent with the co-sharers having any right in the portion claimed. HURRO NARAIN SINGH *v.* BYKUNT NARAIN SINGH . . . . 14 W. R., 51

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108. ———— *Manager of a Hindu temple—Shevaks or servants of an idol—Rights of manager and servants inter se.*—The

POSSESSION—*continued*

4. ADVERSE POSSESSION—*continued*

plaintiff was the hereditary manager of the temple of Shri Ranchord Raiji at Dakor The defendants were the shevaks or ministers of the deity The plaintiff sued to oust the defendants from a certain piece of

land was always to be kept open and unoccupied for the use of the temple The shevaks contended that they

temple estate They had come into occupation originally as servants and representatives of the deity and during their occupation they could not by a wish change the nature of their possession Both they and the plaintiff held the land for the same deity, and

BHAI v MANOHAR GANESH

[I. L R., 12 Bom, 322

109 ———— Manager of joint family—*Possession of manager*—The possession of the managing member of a joint Hindu family is not adverse possession against the other members CHOWDHRY AJRAWAL SINGH v CHOWDHRY BHUGWAN SINGH

[2 Hay, 311

110 ———— Members of joint family—*Female living with male relatives—Presumption as*

Where a female

presump-

r her, and

MIRDHA v

TOYYAN BIBI 13 C L. R., 328

111. ———— *Excluded member*—The general rule that the possession of one member of a joint Hindu family is the possession of all other members does not apply where the party claiming has been clearly excluded from the family In such a case the possession is adverse and under the general law of limitation time will run from such adverse possession JOWALA BUKSH v DHARUM SINGH . 10 Moore's I A, 511

112 ———— *Absence of one member* Where two brothers members of the same family, succeeded to equal shares in the paternal estates, the mere fact of one brother being absent, and the home-staying brother being in possession does not deprive the former of his rights of inheritance unless it is clearly shown that the possession by the latter was adverse to the absent brother WOOZEERUN v NOOREL JAN . . . 9 W. R., 98

POSSESSION—*continued*

4 ADVERSE POSSESSION—*continued*

113 ———— *Separation in living and separation by partition*—In a suit to

separation, even if proved was only a separation in living and not a separation by actual partition, and therefore the defendant's possession was not adverse to the plaintiff NARAYAN BABAJI DABHOLKAR v PANDURANG RAMCHANDRA DABHOLKAR

[12 Bom., 148

SOOKH LALL BHOOJWALLA v GOOLZAR BOOJWALLA . 14 W R., 228

See KRISTAYYA v NARASIMHAM

[I. L R., 23 Mad., 608

114 ———— *Title set up by member of tarwad*—When a member of a tarwad in possession of lands acquired by former members of his taverai (branch) openly sets up an independent title to those lands his possession becomes hostile to the tarwad and limitation begins to run against the tarwad from that time KANARA PANIKER v RYRAPPA PANIKER I L. R., 3 Mad., 212

115 ———— *Possession by one member of family—Neglect by plaintiff to take possession of his share notwithstanding request that he would do so—Limitation*—The plaintiff and the defendant were brothers and members of an undivided family The plaintiff was in Government service, and had been for a long time absent from his native place on duty, the family property remaining under the management of the defendant In 1863 the defendant wrote to the plaintiff, requesting him to return and manage his share of the property, or to employ some one to manage it for him Nothing however, was done by the plaintiff in the matter, and the defendant continued in possession In 1882 the plaintiff sued the defendant for partition The defendant pleaded that the suit was barred, contending that he had been in adverse possession from the date of the letter The Court of first instance awarded the plaintiff's claim The defendant appealed, and the lower Appellate Court reversed the lower Court's decree holding that the suit was barred. On appeal by the plaintiff to the High Court—*Held* that the suit was not barred The above-mentioned letter of the defendant showed that up to the date at which it was written, the defendant had not been in possession of the property "as his own property to the exclusion of the plaintiff, and the mere circumstance that subsequently to the date of the letter the plaintiff had not participated in the profits would not in the absence of other evidence justify the inference that the plaintiff was then excluded DINKAR SADASHIV v BHIKAJI SADASHIV . . . I. L. R., 11 Bom., 365

116 ———— *Decree and execution against father—Subsequent possession by sons—Civil Procedure Code (1877), s 263—Limitation*—One *A* formerly owned the house and land in

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

dispute. He sold it to *G*, who sold it to the plaintiff. *A*, however, continued in occupation of the property. In 1879 the plaintiff sued *A* and *G* for possession and obtained a decree. On the 6th April 1880, in execution of the decree, he was put in formal possession by the Court under s. 263 of the Civil Procedure Code (Act X of 1877) in the presence of *A*, who made no objection. At the time of these proceedings *A*'s sons (the present defendants) were living with him in the house, and they continued to do so subsequently. *A* died in 1885, and his sons continued in possession of the property and cultivated it. On the 4th April 1892 the plaintiff brought this suit to eject them. They pleaded that the suit was barred by limitation, contending that the execution-proceedings in 1880 did not bind them, as they were not parties to that suit. *Held* that, as the present suit would not have been barred against *A* had he survived, it was not barred against the defendants, whose rights were derived from him. The defendants living with their father had no independent juridical possession of the premises. The father *A* was the only person in possession. The possession which the plaintiff obtained through the Court from *A* in 1880 operated as well against the defendants (*A*'s sons) as against *A* himself. PANDHARINATH *v.* MAHABURKAR [I. L. R., 21 Bom., 98

117.— ——— *Limitation*—*Possession under gift making valid title.*—Of two brothers of a Mitakshara family, the younger who had been born deaf and dumb was disqualified from inheriting, but the action of the elder to the younger was such as to recognise for some years that the younger had a joint interest in the family property, although it was found that there was no intention shown by the acts of the elder brother to waive the rights accruing to him in consequence of his brother's disqualification. The brothers died and also a daughter of the elder brother, who was their only descendant. This daughter had an only son, who died before her, after taking, however, the whole family estate under a gift made to him with his mother's assent by his maternal grandfather in 1867. In 1882 the plaintiff, a collateral relation, sued the widow of the donee to obtain the estate of the younger of the brothers. The widow made title under the gift to her deceased husband, followed by his possession, and hers afterwards, since the date of the gift. Upon the facts found, the suit was held to be barred by limitation. LALA MUDDUN GOPAL LAL *v.* KHIKHINDA KOER [I. L. R., 18 Calc., 341 L. R., 18 I. A., 9

118. — - Transfer of interest by widow—*Life-tenancy—Reversioner.*—A widow (a life tenant of an ancestral estate), having executed an ikrar transferring a share to *N*, her granddaughter, afterwards sued to set it aside on the ground that *N* had not conformed to its terms While the suit was in the appeal stage, the widow died, and her reversioner applied to be made and was admitted as her kaem mukam to carry on the appeal on her behalf. He afterwards sued to recover possession of the share as reversioner, alleging that the succession opened out to him on the death of the widow. *Held* that the life-tenancy having been made over to *N* with the widow's consent to enure during the grantor's lifetime, *N*'s possession was not adverse to the reversioner. DEORANEE KOOWAR *v.* INDURJEET KOOWAR . . 12 W. R., 234

119. ——— Landlord and tenant—*Possession of tenant—Evidence of nature of holding.*—Possession by a tenant does not in itself lead to any inference as to the character of the tenancy: the fact of his having occupied the land and paid rent twelve or even twenty years being equally consistent with his being a tenant-at-will, a farmer, or a mokurraridar. SHEO DYAL POOREE *v.* MOHABEER PERSHAD . . . 10 W. R., 477

120. ——— *Possession of tenant.*—The possession of a tenant is in the eye of the law the possession of his landlord. GRISH CHUNDER ROY *v.* BHUGWAN CHUNDER ROY [13 W. R., 191

121. ——— *Settlement*—The possession of a sub-lessee of the tenant cannot be adverse to the superior landlord. BUNGSRAJ BHOOKTA *v.* MEGH LALL POORIE GOSSAIN [20 W. R., 398

122. ——— *Person holding adversely to tenant.*—Possession adverse to a lessee is also adverse to the lessor. PROSUNNOMOYI DASI *v.* KALI DAS ROY . . 9 C. L. R., 347

See BRINDABUN CHUNDER SIRCAR *v.* BHOOPAL CHUNDER BISWAS . . . 17 W. R., 377

and LEKRAJ ROY *v.* COURT OF WARDS [14 W. R., 395

123. ——— *Adverse possession*—*Possession of tenant paying rent to stranger.*—In December 1853 certain lands were let by the plaintiff to *B* under a kabuliat by the terms of which the lease expired in December 1863. In March 1875, less than twelve years from the expiration of such lease, the plaintiffs brought a suit for possession against *B* and the talukhdars of the estate of which the lands in dispute formed part. The latter alleged that the lakhiraj title of the plaintiff was invalid; that although no proceedings, as required by the Rent law, had been taken to invalidate the plaintiff's title, they, the talukhdars, had resumed possession of the land by receiving the rents from *B* from 1859; and that the suit was barred by reason of their possession since that date. *Held* that the suit was not barred, inasmuch as nothing had occurred to determine the tenancy which existed between the plaintiff and *B*, and that the possession of the latter was in law the plaintiff's possession. PARBUTTI DASI *v.* RAM CHAND BHUTTACHARJEE . . . 3 C. L. R., 576

124. ——— *Assertion of adverse title—Adverse possession—Landlord and tenant.*—The assertion of an adverse title by a person claiming to be an owner under a permanent lease

POSSESSION—*continued*

4 ADVERSE POSSESSION—*continued*

does not make his possession adverse so as to save limitation unless made to the knowledge of the landlord GANGABHAI *v* KALAPA DARI MUKRYA [I L R., 9 Bom, 419

125 ——— ——————— *Possession of lessee, and proprietor under miras leases* —In a suit [illegible]

KASOM 23 W R., 331

126 ——————— *Occupation of house by heirs of tenant at will—Intention of parties* —About twenty five years before suit *R* being possessed of a house allowed *K* to occupy it without paying rent, on condition that *K* would keep it in repair and restore it to *R* on demand Nine years afterwards, and without any demand having been made by *R*, *K* died, and his heirs continued to [illegible]

such tenancy was on the death of *K*, as of course, converted into an adverse occupation by the heirs of *K*, in the absence of proof of the intention of the parties to that effect and in the absence of anything to show that *R* did not assent to the heirs of *K* continuing to hold on the same terms as *K* had done RADHABHAI *v* SHAMA 4 Bom., A C, 155

127 ——————— *Continued possession by heirs of tenant—Non payment of rent, Effect of, after expiration of lease—Permissive possession Limitation* —In 1840 the land in dispute was leased to *R* for life *R* died in or about 1871, and after *R's* death his heirs (the defendants) continued in possession without obtaining a fresh lease or paying any rent to the landlord In 1888 *the landlord sued to eject the defendants* The defence was that the suit was barred by limitation *Held* that the suit was not barred After *R's* death, the defendants though not in possession as tenants, were not trespassers Their possession was permissive, and not adverse until they expressly set up a title of ownership in the property KRISHNAJI RAMCHANDRA *v* ANTAJI PANDURANG I. L R., 18 Bom., 256

128 ——————— *Madras Rent Recovery Act (Mad Act VIII of 1865), Effect of—Omission by inamdar to obtain registration of title under Madras Regulation XXVI of 1802*— An inamdar had not obtained registration of his title under the registered landlord, and could not therefore sue to enforce acceptance of pottahs and had not collected rent from the tenants for more than twelve years. *Held* that the tenants had not by reason of these facts acquired rights against the inamdar by adverse possession SRINIVASARAGAVA AYYANGAR *v* MUTTUSAMI PADAYACHI I. L. R., 20 Mad., 6

129 ——————— *Adverse possession of a partial interest (e g, a tenant's) in land —Title by adverse possession asserted by a plaintiff against the true owner as well as alleged as a defence—Limitation Act (XV of 1877), s 28 and art 144* —Adverse possession for more than twelve years by one claiming to hold land as its full owner not only extinguishes the title of the true owner to the land so held and debars him from suing for its recovery but creates a title by negation in the occupant which he can actively assert, if he loses possession, even against the true owner A partial interest in land may be lost by adverse possession as well as the whole interest and the right to such partial interest may be asserted by suit. So, where a landlord seeks to recover from his tenant possession of land in his tenant's occupancy, and the latter alleging a perpetual tenancy successfully resists on that ground the landlord's attempt to dispossess him, the tenant may, after the statutory period has expired plead limitation in bar of a subsequent suit in ejectment by the landlord. A landlord allowing the tenant to assert the validity of an invalid lease for the statutory period of more than twelve years may be debarred from subsequently questioning the right of the tenant to hold under its terms BUDESAB *v* HANMANTA [I. L R., 21 Bom., 509

130 ——————— *Bhagdari estate —Alienation by a bhagdar of his share Bom Act V of 1862, s 3—Collector setting aside sale of share—Subsequent suit to recover share Limitation* —In the year 1871 the plaintiff a co-sharer in a bhag, alienated his share to a stranger In the year 188- the Collector declared the alienation to be illegal and in the year 1883 ordered that the plaintiff should be reinstated in the possession of his share At plaintiff's request, his share was given into the possession of the defendant, who was the plaintiff's brother and khatedar of the entire bhag In the year 18 2 the plaintiff brought this suit against the defendant to recover possession of his share The defendant contended that the suit was time-barred the plaintiff not having been in possession since the [illegible]

131 ——————— *Adverse possession by Government of permanently settled estate —Limitation Permanent settlement Regulations, Effect of—Beng Reg I of 1793* —There is nothing in the regulations to which the permanently settled estates of Bengal owe their origin to indicate that the Government intended to guarantee to the proprietors the absolute preservation of their estates By the regulations the Government declared that as regards

POSSESSION—*continued.*

4. ADVERSE POSSESSION—*continued.*

the estates that came within the scope of the permanent settlement, it withdrew its sovereign right to vary the assessments; beyond that they did not go; they do not constitute a contractual relationship between the Government and the owners of permanently-settled estates, or any relationship as would debar Government from claiming and exercising against those owners the rights of an ordinary proprietor. Although therefore Government continues to receive the full revenue from the proprietor of a permanently-settled estate for the entire estate, the former is not precluded from claiming title by adverse possession in respect of any portion thereof. When a person is let into possession of a particular property by another claiming it to be his own, the former cannot contend, after the expiration of his tenancy, that the latter (*i.e.*, the person alleging himself to be the owner) cannot acquire an adverse title against him as well as others by efflux of time. *Kally Churn Sahoo* v. *The Secretary of State, I. L. R., 6 Calc., 725,* referred to. KRISTO MOHUN GUPTO *v.* SECRETARY OF STATE FOR INDIA . . . 3 C. W. N., 99

132.—————— *Abandonment by tenants.* A landlord having obtained a decree declaring that certain homestead land was liable to assessment, the occupants, owing to certain criminal proceedings against them, abandoned the land, and the landlord leased it out to others, who held possession paying rent for upwards of twelve years, after which they were ousted by the original occupants, who claimed the land rent-free. *Held* in a suit by the lessees that they were entitled to recover possession. MONEEROODDEEN MOJOOMDAR *v.* PARBUTTY CHURN GHOSE . . . . 15 W. R., 121

133. ———— Possession in two capacities—*Possession as farmer and purchaser—Decree declaring sale valid.*—*R* obtained, on 7th January 1862, a decree declaring a deed of sale of an estate in his favour, dated 7th January 1854, to be a genuine, authentic, and valid instrument. In the meantime he had acquired possession of the estate under a farm from Government. *Held* that from the date of the decree *R*'s possession became adverse possession as far as the vendors and their representatives were concerned, although he continued to hold possession of the estate as a farmer. DHUNDI *v.* RAM LALL

. 7 N. W., 149

134. ———— Possession as patil—*Separate branches of family—Acquiescence.*—*J* held the office of patil more than fifty years ago as representative of two branches descended from a common ancestor and then united in interest, there being two other branches descended from the same ancestor, but severed in interest from those represented by *J*. *J*, having died in 1824, was succeeded by his son *T* without any opposition from the two other branches. *T* was temporarily displaced from the office by *G*, who represented the two other branches, but recovered it in 1850. *Held* that the presumption arising against *T* having been a nominee of all the branches of the family, not having been rebutted by any evidence of an assertion and admission of the rights of the other branches, *T*'s occupation of the patilship was adverse to the plaintiff's right, and being adverse at its beginning, it was equally adverse when, after a temporary displacement by *G* (whom the plaintiff now represents), *T* recovered it in 1850. An interval of more than twelve years therefore having passed between 1850 and the institution of the present suit in 1873, the claim was barred, and the possession of the office obtained by *T*'s representatives could not be disturbed. GIRIAPA *v.* JAKANA . . . 12 Bom., 172

135. ———— Effect of service tenure—*Non performance of service.*—Where lands are held as remuneration for services, the fact that no services have been performed does not of itself make the holding adverse. To make the holding adverse, there must be a refusal to perform service or a claim to hold the lands free of service. KOMARGOWDA *v.* BHIMAJI KESHAV . I. L. R., 23 Bom., 602

136. ———— Possession after redemption by one of several mortgagors—*Mortgage—Suit for redemption or recovery of property on payment of a charge—Limitation.*—The plaintiff sought to recover his father's share in two portions of family property, one of which had been mortgaged by the plaintiff's father and the father of the defendant No. 1 jointly; the other had been mortgaged by the plaintiff's father jointly with the father of defendant No. 1 and the husband of defendant No 2. The first was redeemed by the father of defendant No. 1 alone in 1868; the second was redeemed by the defendant No. 1 more than twelve years before the suit. The parties were Mahomedans, and the plaintiff had a brother and three sisters only, one of whom (defendant No. 2) was a party to the suit. Defendant No. 1 contended that the suit was defective for want of parties, and that it was time barred. *Held* that the plaintiff's brothers and sisters ought to have been joined as co-plaintiffs, the defendant No. 1's possession after redemption not being adverse to them. If it was adverse at all, it was adverse to the whole of the plaintiff's branch of the family, so as to bar the right of the group altogether. But that was no reason why the co-owners should not be admitted as co-plaintiffs, and the suit go on upon its merits. BHAUDIN *v* ISMAIL

[I. L. R., 11 Bom., 425

137. ———— Purchase by mortgagee of share in mortgaged property—*Limitation—Mortgagee.*—A mortgagee of an entire undivided estate does not, by a subsequent purchase of a certain share therein from one not in actual possession at the time of conveyance, thereby change his character from a mortgagee to that of an owner, but his possession continues as a mortgagee. *B* held an entire undivided estate under a mortgage (usufructuary) from *C* since 1273 (1866), and as such mortgagee in 1282 (1875) *B* purchased a share therein from *D*, who had not been in actual possession since the date of the mortgage. On the 20th January 1885 *B* brought a suit to recover possession of his purchased share. *Held* that the subsequent purchase did not change the character of *B* from that of

POSSESSION—*continued*

4 ADVERSE POSSESSION—*continued*

a mortgagee to that of an owner, and that his suit was barred by twelve years' limitation NUNDO LAL ADDY v. JODU NATH HALDAR

[I. L. R., 14 Calc, 674

138 ——— **Denial by mortgagee in possession of mortgagor's right to redeem.** —Denial by a mortgagee in possession of the mortgagor's right to redeem is not sufficient to convert such possession into adverse possession MUSSAD v COLLECTOR OF MALABAR . I. L R, 10 Mad, 189

139 ——— **Possession of one co-sharer when adverse**—*Limitation—Co sharer—Mortgage—Mortgage by three co-sharers—Redemption by one of several mortgagors—Right of the other mortgagors to sue for redemption—Period of limitation for such suit*—In 1847 the property in dispute was mortgaged by three co-sharers, *D A*, and *R* In 1839 *R* alone redeemed the property, and mortgaged it again to a third person In 1882 the heirs of *D* and *A* brought a suit to redeem the whole [illegible]

rather implied and preserved their ultimate proprietary right In the case of a co-sharer holding after redemption, limitation is computed only from the date when the possession becomes adverse by the assertion of an exclusive title and submission to the right thus set up, in analogy to the provision which bars an excluded sharer generally after the [illegible] becomes [illegible] ssion can [illegible] subsistence [illegible] ment, so long must the possession be referred to that right, rather than to a right which contradicts the ownership RAMCHANDRA YASHVANT SIRPOTDAR v SADASHIV ABAJI SIRPOTDAR I. L. R., 11 Bom, 422

140 ——— **Equity of redemption**—*Mortgage—Limitation*—In 1845 the plaintiff's grandfather *A* mortgaged the house in dispute to *D* with possession *A* died in 1849, leaving him surviving his daughter *K* (the plaintiff's mother) and a daughter-in-law *N*, the widow of his predeceased adopted son In 1856 the mortgagee *D* brought a suit on his mortgage against *N* and obtained a decree against her, directing (*inter alia*) a sale of the house in the event of the non payment of the mortgage-debt. *N* in consequence sold the house in the same year (1856) to *P*, and paid off the mortgagee, who thereupon at her instance gave up the house to *P* He held possession from 1856 to 1881. In 1881 the defendant *P* obtained a decree against *R* for Rs2,000 In execution of this decree, the house was sold, and *P* bought it himself and obtained possession on 17th January 1884 While that suit was pending the plaintiff *T*, the grandson of *A*, brought a suit (No 217 of 1881) against the son of *D* (the original mortgagee) and *R* to redeem the mortgage of 1845 and recover possession The plaintiff obtained a decree against *D's* son for redemption, and proceeded to execute the decree He was obstructed by *R's* son, who, however, in a suit (No. 205 of 1882) was found to have no right to the house The present suit was brought in 1884 by the plaintiff to recover the house from the defendant *Held* that the suit was barred The defendant in 1884 purchased the house from *R*, who had bought it in 1856 from *N* *P's* possession since that time had been adverse to the plaintiff There can be adverse possession of the equity of redemption and *N's* possession had been adverse up to the sale in 1856 PUTTAPPA v TIMMAJI . . . I. L. R., 14 Bom, 176

141. ——— **One of several co-mortgagees obtaining possession of the whole property**—*Usufructuary mortgage satisfied out of usufruct—Limitation* In the case of a usufructuary mortgage by several co-mortgagors when such mortgage is satisfied out of the usufruct each co-mortgagor is not entitled to recover possession of more than his share of the mortgaged property Consequently where in such a case one of several co-mortgagors gets possession of the whole of the mortgaged property, he does not occupy the position of a mortgagee to his co-mortgagors, but his possession is adverse to them *Fakir Bakhsh v Sadat Ali, I L R 7 All., 876*, followed. GOBARDHAN v SUJAN

[I. L. R., 16 All., 254

142. ——— **Possession of usufructuary mortgagees**—*Burden of proof*—The possession of a usufructuary mortgagee being the possession of all the persons who have the right of redemption, that is, of all the persons entitled to the estate it is only when after redemption possession is taken by some of the persons so entitled that their possession can become adverse as against the others. In a suit for possession of immoveable property it is for the plaintiff to show by some *primâ facie* evidence that he has a subsisting title not extinguished by the operation of limitation before the defendant can be called upon to substantiate a plea of adverse possession *Parmanand Misr v Sahib Ali, I L R 11 All., 438*, and *Jafir Husain v. Mashuq Ali, I L R, 11 All., 193*, referred to. INAYAT HUSEN v ALI HUSEN . . . I. L. R., 20 All., 182

5 SUITS BASED ON ALLEGATION OF POSSESSION

143. ——— **Suit by party out of possession**—*Dismissal of suit—Evidence*—A suit based upon an allegation of possession must be at once dismissed if the plaintiff be shown to be out of possession SUKRAM v KALA KAHAR

[3 B. L. R., A. C., 105

144 ——— *Continuation of possession—Possession of part of land sued for*—

POSSESSION—*continued.*

5. SUITS BASED ON ALLEGATION OF POSSESSION—*continued.*

A suit for confirmation of possession must be dismissed if the allegation of possession is found to be wholy unfounded, but not if the plaintiff is found to be in possession of a part of the land in dispute. ROOPA KOONWAR *v.* JUGGOOLALL OOPADHYA [11 W. R., 257

BUSHEERUDDEEN *v.* DAL CHUND 3 Agra, 236

RAM CHURN PATTUCK *v.* KHOOR PANDEY [10 W. R., 176

145. ——— **Suit for confirmation of possession**—*Evidence.*—A plaintiff suing for confirmation of possession must prove that he was actually in possession. LUTEEFOONISSA BIBEE *v.* RAJAOOR RUHMAN . . . 8 W. R., 84

GOBINDNATH SEIN *v.* GOBIND CHUNDER SEIN [10 W. R., 393

RASH BEHAREE ROY *v.* EZUD BAKSH [11 W. R., 276

SHEO SURUN LALL *v.* CHUMUN LALL [24 W. R., 220

RASH DHAREE SINGH *v.* NUTHOONEE SINGH [24 W. R., 301

SANSAR ROY *v.* INDRASUN ROY . 25 W. R., 6

146. ——— *Failure to prove possession.*—*Held* (MOOKERJEE, *J., dissentiente*) that the rule that in suits for confirmation of possession by adjudication of title the plaintiff is bound to prove that he was in possession at the time he preferred the suit, is not inflexible a rule that it cannot be departed from; as, for example, where plaintiff sues for confirmation of possession and proves that he was in possession for many years, and until within a few months of the institution of the suit, he should not be required to bring a fresh suit, merely changing the prayer for confirmation of possession into one for recovery of possession. ABDOOLLAH *v.* SHAHA MUJEESOODEEN . . . . . 15 W. R., 286

On this point confirmed on appeal 16 W. R., 27

KASHEE NATH MOOKERJI *v.* MOHESH CHUNDER GOOPTO . . . . . 25 W. R., 168

147. ——— *Proof of legal possession under decree.*—The legal principle which holds that no suit for confirmation of possession will lie if possession at the time of the institution of the suit is not shown, refers to cases where no possession of any kind is shown within a reasonable time before suit, and not (as in this case) where legal possession under a decree has been found. BEEGOO ROY *v.* BAL MOKUND MISSER . . . . 17 W. R., 421

148. ——— *Failure to show possession.*—In a suit in which the plaintiff claimed confirmation of possession, it appeared on the face of the plaint that, although the suit was in form a suit for confirmation of possession, it was in substance a suit for recovery of possession. It was found that the plaintiff, while he had proved his title, was not in possession. *Held* that, under the circumstances, the suit ought not to have been dismissed. AMIR HOSSEIN *v.* IMAMBANDI BEGUM 11 C. L. R., 443

149. ——— *Plaintiff found to be out of possession.*—In a suit, in form, for confirmation of possession, it was alleged that the Collector had refused to register the plaintiff's name in respect of the property claimed, but had registered the defendant's name. The plaintiff having been found to be out of possession, the lower Court dismissed the suit. The plaint bore a stamp sufficient to cover a suit for recovery of possession. *Held* that, inasmuch as the effect of the refusal of the Collector to register the plaintiff's name under s. 78 of the Land Registration Act (Bengal Act VII of 1876) was to prevent the plaintiff recovering the rent of the estate, and that such refusal was alleged in the plaint, the suit might be taken to be in substance a suit for recovery of possession, and ought not to have been dismissed. *Amir Hossein* v. *Imambandi Begum, 11 C. L. R., 443,* followed. CHAMPU DAI *v.* UMA DAI [11 C. L. R., 451

6. SUITS FOR POSSESSION.

(*a*) PROOF OF PARTICULAR TITLE.

150. ——— **Failure to prove particular title**—*Evidence.*—Unless a plaintiff can prove the particular title set up by him, he is not entitled to a decree for possession. RAMDHAN CHUCKERBUTTY *v.* KOMALTARA [3 B. L. R., A. C., 99 note: 11 W. R., 301

ABDOOLLAH *v.* SHAHA MUJEESOODEEN [16 W. R., 27

JANOOBEE CHOWDHRAIN *v.* GENDOO TURRUFDER [12 W. R., 203

RUNG LALL MISSER *v.* ROGHOOBUR SINGH [9 W. R., 169

HURO SOONDUREE DEBIA *v.* UNNOPOORNA DEBIA [11 W. R., 550

151. ——— Plaintiffs brought a suit for recovery of possession on the allegation that they had a mokurari title, but no title of any kind was established. *Held* that the plaintiffs were not entitled to a decree merely on the ground that the defendants were trespassers and the plaintiff had long prior possession. That on the failure of the plaintiffs to prove the title set up, it was not necessary to put the defendants to any proof of the title which they set up. KEDAR NATH SANYAL *v.* RAJ NATH NEOGI . . . 3 C. W. N., 497

152. ——— *Suit for possession under mirasi lease.*—Where a plaintiff sued to recover possession of certain lands under a mirasi pottah which had been lost, and proved ten years' possession,—*Held* that such possession alone would not entitle him to recover possession of the land, but that

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

he must prove the specific title set up by him BHOLAI MANDAL v. JARIF GAZI [3 B. L. R., Ap., 93

RAM COOMAR SHOME v. GUNGA PERSHAD SEIN [14 W. R., 109 note

153. ———— *Suit for declaration of title—Adverse possession.*—Where a per … a specific title, … as been in pos … twelve years … decree on the … *even though* … *tiller*—Where a declaratory decree by virtue of some particular title is sought for. GOLUCK CHUNDER MASANTA v. NUNDOCOOMAR ROY [I. L. R., 4 Calc., 699 : 3 C. L. R., 450

154. ———— *Claim under* … admission by her husband as binding on the defendants. SOBRATUN v. TOOYA 7 W. R., 273

155. ———— *Suit on sanad —Evidence.*—In a suit for recovery of possession of … sion, it is unnecessary to state or prove a particular title. RASH BEHARI LAL SINGH v. NABATI PODDAR [3 B. L. R., A. C., 99 : 11 W. R., 465

156. ———— *Suit for confirmation of possession and to recover possession* — … been ousted. UMBICA CHURN BANERJEE v. DIGUMBUREE DABEE . . . 12 W. R., 420

157. ———— *Alternative claim—Adverse possession.*—Suits for possession distinguished from suits for declaration of a particular title. Where a plaintiff seeks to recover possession of property of which he has been dispossessed, and bases his claim on the ground of purchase, and also upon the ground of a twelve years' possessory title, he is entitled to succeed if he proves his possession, even if he fails to prove his purchase. GOSSAIN DASS CHUNDER v. ISSUR CHUNDER NATH [I. L. R., 3 Calc., 224

158. ———— *Lakhiraj title —Suit for possession on forcible dispossession.*—In a suit to recover possession on the allegation that the plaintiff, having been in possession, was suddenly and recently ejected, the sole question for decision is the right to possession, apart from any question of the validity or otherwise of the lakhiraj title under which the plaintiff claims. BOODHA MIRDHA v. KHYRUT ALI . 5 W. R., 209

159. ———— *Suit for declaration of right—Right to possession—Right of person with good title ousted by person who had none.*—Plaintiff sued to establish his right to a dharmakartaship and to the hereditary office of pooja stanika in a pagoda. He alleged that he held the office of pooja stanika hereditarily, and that the dharmakartaship was assigned to him by the original dharmakartas by deed (No. I), but that he was afterwards forcibly dispossessed by defendants. Defendants denied plaintiff's hereditary right to the office … entitled to revoke it. The lower Court found this issue in the negative. *Held* (by the High Court) that this was not properly a suit for a declaration. … that the plaintiff was a mere appointee as agent, and that, as the authority given by it was not revoked by IV, the case was that of one ousted from a possession which he held upon a good title by those who had shown none, that on the principle of such cases as *Asher v. Whitlock, L. R., 1 Q. B., 1*, the plaintiff had a right to the restoration of that possession. NARAYANASAMI MUDALI v. KUMARASAMI GURUKKAL [7 Mad., 207

160. ———— *Proof of joint possession.*—In a suit to recover possession it was proved that plaintiffs had purchased shares in a joint property and had held possession. The lower Appellate Court, thinking they had done so separately without being at the time aware of their final …

(b) OTHER SUITS FOR POSSESSION.

161. ———— Onus probandi—*Necessity to prove title against party in possession.*—In a suit

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

in which the plaintiff claimed alluvial land in the possession of the Government as being his by right of accretion to his own estate, though the churs had re-formed on the original sites of lands belonging to other persons,—*Held* that the case could not be decided on the principle that, inasmuch as those other parties were not before the Court, the plaintiff had the better title as between himself and Government. The land was in the possession of Government, and the plaintiff could only succeed by establishing a better title. COLLECTOR OF DACCA *v.* KALEE CHURN PODDAR . . 21 W. R., 446

162. ——— *Necessity to prove title—Wife suing by permission of husband*—In a suit to recover property in the enjoyment and possession of defendant, a female plaintiff can only succeed on the strength of her own right, not merely because it is the property of her husband, who does not object to her recovering it. There is no necessary presumption that property in the possession of a respectable female's husband, brother and son, respectively, is possession on her behalf, and not on theirs. KARAMTOOLLAH *v.* ARIZA BIBEE [23 W. R., 264

163. ——— *Suit under Act X of 1859, Proof of title*—If a person evicted without legal process from land in his occupation sued for possession under Act X of 1859, he was bound to prove his title. MADUR KHAN *v.* WOOMA MOYEE DABEE . Marsh., 389: 2 Hay, 434

SHUSTEE DHUR MOZUMDAR *v.* NUTEEJA BIBI [7 W. R., 36

164. ——— *Suit under Act X of 1859.*—In an ordinary civil suit not brought under cl. 6, s. 23, Act X of 1859, or under s. 15, Act XIV of 1859, a plaintiff could not recover possession as against the undisputed owner merely by proving his previous possession and dispossession. But he might claim damages for the value of crops taken away which had been raised by him on the land whereof he was at the time in lawful possession. RAM MOHUN DOSS *v.* JHUPPROO DASS [14 W. R., 41

165. ——— Presumption of title—*Right of suit.*—In a suit for possession of land claimed as part of a mouzah which plaintiff held under a mokurari lease and a bill of sale, and which he alleged had been taken possession of by defendant under colour of an order of the Criminal Court under s. 318, Code of Criminal Procedure, relating to a different land, defendant objected that plaintiff was not the real owner of the mouzah, and therefore not entitled to bring the suit. *Held* that the *primâ facie* title which the plaintiff had under the lease and bill of sale was sufficient to enable him to bring the suit, and the defendant was not at liberty in a suit of this description to raise the question whether plaintiff was only the nominal owner. RAM BHURROSSEE SINGH *v.* BISSESSUR NARAIN MAHATA [18 W. R., 454

JOGMAYA CHOWDHRAIN *v.* HUREE MOHUN ROY [24 W. R., 99

POSSESSION—*continued.*

6. SUITS FOR POSSESSION—*continued.*

166. ——— Possession after resumption—*Right of zamindar to sue talukhdar for possession*—A zamindar cannot sue a dependant talukhdar (the possessor of resumed lakhiraj lands) for confirmation of possession, and for an injunction to prevent him from committing waste. The only possession that a zamindar can obtain after a decree for resumption is a constructive one derived from the receipt of rent from the tenant. MUGNEE RAM CHOWDHRY *v.* GONESH DUTT SINGH [W. R., 1864, 275

167. ——— Suit for possession by under-tenure-holder against zamindar—*Unregistered tenant.*—No suit for possession will lie against a zamindar, or any one holding a title under the zamindar, until the plaintiff has been recognized by the zamindar as tenant, or has been registered as such in the zamindar's serishta. MOOKTAKESHEE DOSSEE *v.* PEAREE CHOWDHRAIN . 7 W. R., 158

168. ——— Suit by prior mortgagee against subsequent mortgagee in possession—*Sale in execution of decree under second of two mortgage-bonds—Right to possession.*—An estate having been sold by auction on two occasions in satisfaction of two distinct bonds, and the person who had proceeded on the later-dated of the two bonds, but who represented the earlier auction-purchaser, having actually taken possession of the estate,—*Held* that though, in a properly brought suit between the two parties to declare the property liable for the amount of the first mortgage, the party in possession would have to pay to secure his possession, yet he could not be ousted by the opposite party. AJOODHYA PERSHAD *v.* MORACHA KOOER [25 W. R., 254

169. ——— Suit by mortgagee for possession—*Covenant for possession—Suit for possession after expiration of term of mortgage.*—A mortgagor covenanted to give the mortgagee possession of the mortgaged property, but did not do so, and the mortgagee consequently sued him for possession, but not until the term of the mortgage had expired. The mortgagor set up as a defence to such suit that it was not maintainable after the expiration of the mortgage term. This defence was rejected on the ground that the mortgagor had, by his breach of the mortgage contract, put himself out of Court. HAR SAHAI *v.* CHUNI KUAR I. L. R., 4 All., 14

170. ——— *Dispossession of second mortgagee by prior mortgagee without right of possession by means of illegal order of Court in execution of a money-decree against mortgagor.*—*S* mortgaged land to *R* in 1861. *R* pledged the mortgage-deed to *H* to secure repayment of a loan of R500. *P*, being entitled on partition with *H* to half of the debt due by *R*, got a decree against *R* in the Small Cause Court for his moiety in 1870. *R* sued *S* on the mortgage-deed (obtained from *P* and *H* for that purpose), got a decree to enforce the mortgage, and in July 1872 bought the land in execution of the decree. In December 1872 *R* mortgaged the land to *V* and put him into possession. *V* had no

POSSESSION—*continued*

6. SUITS FOR POSSESSION—*continued*

notice of the prior pledge to *I* In 1876 *P*, in exe- [illegible]

TURNER C J — *Quære*—whether the decision in *Ramu Naikan v. Subbaraya Mudali* 7 Mad, 229 is sound. VENCATACHELLA KANDIAN *v.* PANJANADIEN

[I L R., 4 Mad., 213

171. ———— Suit between purchasers under mortgage-decrees—*Priority of mortgage—Rival mortgage decree holders—Priority of possession*.—In a suit for possession between two purchasers who had bought the same property at two several auction sales under decrees obtained on two several mortgage bonds—*Held* that no question could arise as to which mortgage was prior in point of time [illegible] which o[illegible] possessio[illegible]

172. ———————— *Several mortgages of the same property—Decrees on the mortgage bonds—Priority of purchase—Priority of possession*.—*A*, on the 11 March 1868 took a mortgage-bond of certain property, and obtained a money-decree on the bond on the 23rd January 1869. Under this decree, the mortgager's interest was put up for sale and purchased by *A* on the 29th April 1870. *B*, on the 3rd November 1868 took a mortgage-bond on the same property, and obtained a decree thereon on the 31st May 1869. Under this decree the mortgagor's interest was sold and purchased by *B* on the 22nd April 1870. *B* took possession of the property on the 18th May 1872. In a suit by *A* for recovery of possession—*Held* that *B* was entitled to retain possession as against *A* although his own interest might be merely that of a trustee for the mortgagor and might be subject to *A*'s mortgage lien if he took proper proceedings to enforce it. DINGOPAL LALL *v.* BOLAKEE I L R., 5 Calc., 269

173. — Title, Proof of—*Suit to set aside order of Magistrate under Criminal Procedure Code 1861, s 318*.—To set aside the effect of an order made by a Magistrate under s. 318 of the Criminal Procedure Code 1861 the plaintiff cannot sue for restoration of possession only on the sole ground of previous possession without proof of title. RAJEESUREE DABIA *v.* BRINJABUTTY DEBIA

[7 W R., 212

ACHUMANDE AGATH KUNHI PATHUMAH *v.* MAKACHINDE AGATH MAKACHI 4 Mad., 478

174. ———— *Act IV of 1840*.—*Judar*.—*A* originally owned two zamindaris between which lay a bil or marsh of which he also owned the fisheries. One of the zamindaris was sold at [illegible] purchased by *B* but the bil fisheries still continued with the remain[illegible] as [illegible] held by *A*. After the sale certain lands reclaimed from the bil were for some years held by *B* as part of his purchased zamindari. *A* instituted a summary suit under Act IV of 1840, and was by an order of the Magistrate put in possession of these lands. *B* brought a regular suit against *A* to recover the lands and set aside his order. *Held* (reversing the decisions of the Courts below) that it was necessary for *B* to show a better title to the land than *A* could produce. It was not enough for him to prove possession anterior to the Magistrate's order under Act IV of 1840. The presumption was that the land of the bil belonged to *A* who had admittedly owned both estates before and had retained the fisheries of the bil after the auction sale. *B* ought to have shown when and how if at all the right to the fisheries and the right to the soil were severed. BARADA KANT ROY *v.* CHUNDRA KUMAR ROY

[8 B L R., P C, 1 : 11 W R., P C, 1 12 Moore's I A, 145

POSSESSION, ORDER OF CRIMINAL COURT AS TO—

See DAMAGES—IMPROVEMENTS OF DAMAGES. [I L R., 6 Mad., 426

See CASES UNDER LIMITATION ACT 1877, ART 47 (1871, ART 47)

1. CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION

1. — — Dispute as to possession—*Criminal Procedure Code 1861 s 318*.—A Magistrate has no ground for proceeding under Ch. XXII of the Criminal Procedure Code 1861 where there

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

1. CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued.*

is no dispute as to the fact of actual possession of either the land or crop. ANONYMOUS

[4 Mad., Ap., 12

2. ——— Dispute as to right to collect rents—*Order of Criminal Court as to—Report of police officer.*—Where a dispute between parties was not concerning land or its boundaries, or concerning houses, water, fisheries, or produce of land, but simply as to what collections one of the parties had made and what rents he was entitled to collect under a decree of Court, the case was held not to come under the provisions of Act X of 1872, s. 530, but under the ruling in *Ramrunginee Dossee* v. *Gooroodass Roy, 18 W. R., Cr., 36.* PUDDOMONEE DASSEE *v.* JUGGODUMBA DASSEE

[25 W. R., Cr., 2

3. ——— *Per* PRINSEP, *J.*—That constructive possession through the collection of rents is the actual possession which may be determined in proceedings under s. 145 of the Criminal Procedure Code, under sub-s. (2) of that section. LALDHARI NARAIN SINGH *v.* SUKDEO NARAIN SINGH

[4 C. W. N., 613
I. L. R., 27 Calc., 892

4. ——— *Criminal Procedure Code (Act X of 1882), s. 145—Tangible immoveable property - Act X of 1872, s. 530.*—A dispute as to the right to collect rents is a dispute concerning tangible immoveable property within the meaning of s. 145 of the Code of Criminal Procedure, 1882. PRAMATHA BHUSANA DEB ROY *v.* DOORGA CHURN BHATTACHARJI

[I. L. R., 11 Calc., 413

5. ——— *Criminal Procedure Code (Act X of 1882), s. 145—Tangible immoveable property.*—A dispute as to the right to collect rents is a dispute concerning tangible immoveable property within the meaning of s. 145 of the Criminal Procedure Code. *Harak Narain Singh* v. *Luchmi Bux Roy, 5 C. L. R., 287*, and *Sutherland* v. *Crowdy, 18 W. R., Cr., 11 : 9 B. L. R., 229,* referred to. *Pramatha Bhusana Deb Roy* v. *Doorga Churn Bhattacharji, I. L. R., 11 Calc., 413,* followed. Where a dispute arose as to the right to collect the rents of certain land, the ownership of which was claimed by both *A* and *B,* and the tenants who had been paying rent to *A* refused to pay rent to *A* and attorned to *B,*—*Held* that the conduct of the tenants in attorning to *B* was not an assertion of possession adverse to *A* such as to put an end to the relation of landlord and tenant between them and *A* and to *A*'s right to collect the rents. Such attornment therefore did not deprive *A* of his right to have recourse to s. 145 in case of a likelihood of a breach of the peace, so as to have his possession of the right to collect the rents maintained pending proceedings in a civil suit. SARBANANDA BASU MOZUMDAR *v.* PRAN SANKAR ROY CHOWDHURI . . I. L. R., 15 Calc., 527

6. ——— *Criminal Procedure Code, s. 145.*—A dispute between two persons as to the right to collect rent from the tenants of an estate is cognizable under s. 145 of the Code of Criminal Procedure. RAMASAMI *v.* DANAKOTI AMMAL

[I. L. R., 12 Mad., 88

7. ——— *Criminal Procedure Code (1898), s. 145—Jurisdiction of Magistrate—Appointment of Receiver of a joint estate—Joint owners governed by Mitakshara Law.*—There is no want of jurisdiction in a Magistrate to proceed under s. 145 of the Criminal Procedure Code, because the dispute is one regarding the right to the collection of rents between joint owners governed by the Mitakshara school of Hindu law. Nor can the appointment of a Receiver of the joint estate, subsequent to the passing of the order by the Magistrate, affect the question of the jurisdiction of the Magistrate at the time when he passed the order. SRI MOHAN THAKUR *v.* NARSING MOHAN THAKUR

[I. L. R., 27 Calc., 259, 261 note
4 C. W. N., 420, 421 note

8. ——— *Criminal Procedure Code, 1882, s. 145—Tangible immoveable property.*—A dispute as to the right to collect rents is a dispute concerning tangible immoveable property within the meaning of s. 145 of the Criminal Procedure Code, and the operation of that section cannot be limited by any rule which would depend upon the area of the property in dispute. Where, in such a dispute which related to two pergunnahs comprising more than three hundred distinct villages, it was admitted by the petitioner that the opposite party had been in possession by receipt of rent from the tenants up to a period some three months anterior to the institution of the proceeding, but she alleged that she had succeeded in inducing the tenants to attorn to her by payment of rent to the officers appointed by her since such period; and where the Deputy Commissioner, after recording a certain amount of evidence, refused to examine any more witnesses on the ground that the enquiry would extend to an inordinate length and be extremely expensive, and passed an order under the section,—*Held* that, even though it might be established that the Deputy Commissioner's action in excluding evidence was illegal, it did not follow, having regard to the circumstances of the case, that the High Court would be justified in exercising its revisional powers. *Held* further that a payment of rent for a short time to the petitioner, even if proved, would not amount to dispossession of the opposite party. *Sarbananda Basu Mozumdar* v. *Pran Sankar Roy Chowdhuri, I. L. R., 15 Calc., 527,* followed. ABHAYESSARI DEBI *v.* SHIDHESSARI DEBI . . . I. L. R., 16 Calc., 513

9. ——— *Criminal Procedure Code (1882), s. 145—Share in joint undivided property—Tangible immoveable property.*—A dispute as to the right to realize rent in respect, not of

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

1. CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued*

the whole sixteen annas but only of an undivided share of any tract of land is not a dispute concerning tangible immoveable property within the meaning of s. 145 of the Criminal Procedure Code. *Rungunee Dossee* v. *Gooroodass Roy*, 18 *W. R. Cr.*, 36, and *Beni Narain* v. *Achary Nath*, *I. L. R.*, 5 *All.*, 607, approved of. *Pramatha Bhusana Deb Roy* v. *Doorga Churn Bhattacharji*, *I. L. R.*, 11 *Calc.*, 413; *Sarbananda Basu Mozumdar* v. *Pran Sankar Roy Chowdhuri*, *I. L. R.*, 15 *Calc.*, 527; and *Abhayessuri Debi* v. *Shidheswari Debi*, *I. L. R.*, 16 *Calc.* 513, distinguished. SURB NARAIN SINGH *v.* BIRJ MOHUN THAKUR **I. L. R., 23 Calc., 80**

10. ———— Dispute regarding right of fishery—*Criminal Procedure Code, 1882, s. 145*— [illegible]

DHONE DUTT *v.* TROILOKIA NATH BISWAS **[I. L. R., 12 Calc., 537**

11. ———— ———— *Criminal Procedure Code, 1882, s. 145—Julkur right—Tangible immoveable property.*—A dispute concerning a julkur right is not a dispute concerning "tangible immoveable property" within the meaning of s. 145 of the Code of Criminal Procedure, and cannot be inquired into by a Magistrate under the provisions of that section. ANUND MOYI DABIA *v.* SHURNOMOYI **[I. L. R., 13 Calc., 170**

12. ———— Dispute concerning ferry including land and water over which it plies—*Right of ferry—Criminal Procedure Code (Act V of 1898), s. 145.*—The right to a ferry, *i.e.*, the right to carry passengers to and fro cannot be treated apart from the possession of the lands used on either side of the stream for the purpose of landing them. It is a proper case to be dealt with under s. 145 of the Criminal Procedure Code (Act V of 1898) where the subject-matter of dispute is a ferry, including the land and water upon which the right of ferry is exercised. HURBULLUBH NARAIN SINGH *v.* LUCHMESWAR PROSAD SINGH **[I. L. R., 23 Calc., 188**

See LALDHARI SINGH *v.* SUKDEO NARAIN SINGH **3 C. W. N., 40**
[I. L. R., 27 Calc., 892: 4 C. W. N., 613

13. ———— ———— *Ferry—Tangible immoveable property—Offence—Jurisdiction of Magistrate.*—A ferry does not come within the description of "tangible immoveable property" as used in s. 145 of the Criminal Procedure Code of 1882. Disputes regarding ferries come within the scope of s. 147. S. 182 relates only to cases of offences that is acts which are punishable by law, and a case under s. 145 is not a case relating to an offence. HARBULLABH NARAIN SINGH *v.* BAJRANG DASS **[3 C. W. N., 148**

14. ———— Dispute as to alluvial land—*Land left by drying up of river.*—A Magistrate had jurisdiction, under s. 318, *Code of Criminal Procedure*, 1861, to prevent breaches of the peace in places where the rivers have dried up. The jurisdiction that was once there, under s. 20, was not taken away by reason of the land having appeared, and the water disappeared. EMAMBANDEE BEGUM *v.* TEK BAHADOOR **17 W. R., Cr., 53**

15. ———— Standing crops—*Criminal Procedure Code, s. 145—"Tangible immoveable property."*—Standing crops are "tangible immoveable property" within the meaning of s. 145 of the Code of Criminal Procedure. *Cheda Lal* v. *Mul Chand*, *I. L. R.*, 14 *All.*, 3, and *Madayya* v. *Venkata*, *I. L. R.*, 11 *Mad.*, 193, followed. GANGA PRASAD *v.* NARAIN **I. L. R., 16 All., 391**

16. ———— Dispute about right to perform service in a public temple—*Criminal Procedure Code (Act V of 1898), ss. 144, 145.*—A dispute relating to the right of performing religious service in a public temple [illegible]

A dispute arose between certain classes of priests attached to a Hindu temple about the right of performing a certain religious service. On the complaint of one of the parties the Magistrate of the [illegible] proceeding within the meaning of s. 435 of the Code; but when the Magistrate exceeds his jurisdiction under s. 144 or 145, the High Court has power to interfere under its revisional jurisdiction (s. 439). IN RE PANDURANG GOVIND **[I. L. R., 24 Bom., 527**

17. ———— Dispute as to right in burial ground—*Possession of manager—Criminal Procedure Code, 1872, s. 530.*—A case in which several persons dispute about the proprietary right in a burial ground should be tried in a Civil Court, and does not properly come under s. 530 or s. 532 of the Code of Criminal Procedure; and an order of the Magistrate that he found the manager in possession

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

1. CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*continued.*

on behalf of one of the proprietors was set aside. KASSIM HASSIM SOORTY *v.* ABRAHIM SOLEMAN [25 W. R., Cr., 24

18. ——— **Dispute as to a number of plots of land governed by same circumstances**—*Action of Magistrate only as regards some plots—Criminal Procedure Code, 1872, s. 530.*—A dispute having arisen as to the possession of 102 plots of land to which a claim to possession was made by the raiyats of village A on the one hand and by the raiyats of village B on the other, the Magistrate instituted a proceeding under s. 530 of the Criminal Procedure Code in respect of all the 102 plots, but, having taken evidence, dealt in his order with twelve only, directing that the raiyats of village B should be kept in possession. *Held* that, it appearing that all the 102 plots were covered by the same state of circumstances, the Magistrate had exercised a sound discretion in acting as he did. AZIM MOLLA *v.* SATOO PORAMANICK . . 10 C. L. R., 523

19. ——— **Dispute as to property of which each of two persons claimed the whole without allegation of joint possession**—*Criminal Procedure Code, 1872, s. 530.*—Where each of two parties claimed the same share of certain property as a whole estate, neither alleging that the other was joint with him in any way, and the Magistrate, without reference to the right of possession, went into the question of who was in possession, and maintained the possession of the party found in possession, the High Court held that the case fell under Act X of 1872, s. 530, and saw no necessity to interfere with the decision. BRINATH SAHOO *v.* RUGHOONATH PERSHAD . 25 W. R., Cr. 16

20. ——— **Dispute regarding joint property**—*Criminal Procedure Code, 1861, s. 318.*—The decision of the Deputy Magistrate was quashed, because the property in dispute being ijmali he had no jurisdiction to try the dispute under s. 318, Code of Criminal Procedure, but ought to have proceeded in the manner laid down in Circular Order No. 10, dated 16th April 1863. GOLUCK CHUNDER ROY *v.* RAJ MOHUN BOSE . 17 W. R., Cr., 33

See RAMRUNGINEE DOSSEE *v.* GOOROO DASS ROY [17 W. R., Cr., 9

21. ——— *Criminal Procedure Code (Act V of 1898), s. 145—Joint possession—Jurisdiction of Magistrate.*—S. 145 of the Criminal Procedure Code does not apply where two parties are in joint possession of the property in dispute and one of them tries to evict the other so as to endanger the public peace. S. 145 of the Code contemplates a dispute between two parties each of which asserts the right to hold actual possession of property as against the other and not a dispute between a party claiming to hold joint possession and another contesting such right. TARIYAN BIBEE *v.* ASAMUDDI BEPARI . . . . 4 C. W. N., 426

22. ——— *Criminal Procedure Code, 1882, ss. 145, 147—Dispute as to immoveable property—Collection of rent.*—A dispute existing between one of the co-sharers of an undivided estate and the lessee of another co-sharer as to the right of the latter to collect rent, such right being denied on the ground that the lessor was not in possession of her share, an inquiry was made under Ch. XII of the Criminal Procedure Code, and the lessor was declared to be in possession of her share. *Held* that the provisions of that chapter were not applicable to the dispute in question. BENI NARAIN *v.* ACHRAJ NATH . I. L. R., 5 All., 607

23. ——— *Land held by co-sharers—Dispute on erection of edifice by one without consent of other—Criminal Procedure Code (Act X of 1872), s. 530.*—*A*, a joint owner of a parcel of land, erected on it an edifice without the consent and against the will of *B*, another joint owner. A dispute having arisen in consequence, the Magistrate held an inquiry, and made an order under s. 530 of the Criminal Procedure Code, awarding to *A* exclusive possession of the part of the land on which the edifice had been erected. *Held per* JACKSON, J., that such order was erroneous, as the matter was not one to which s. 530 could apply. EMPRESS *v.* RAJCOOMAR SINGH . I. L. R., 3 Calc., 573 : 1 C. L. R., 352 [2 C. L. R., 62

24. ——— **Dispute as to building site**—*Persons not parties to proceedings—Criminal Procedure Code, 1882, ss. 145, 147.*—In a suit to recover a building site, an injunction was issued by the Court restraining the defendants from building on the land pending the decision of the suit. On appeal, the injunction was dissolved on the ground that the defendant was in possession. Subsequent to this order, the District Magistrate, on the complaint of the plaintiff against the defendant, passed an order under s. 145 of the Code of Criminal Procedure, declaring that *K* and *V* were in possession, and forbidding all disturbance of their possession until the decision of a Civil Court. *Held* that, *K* and *V* not being parties to the proceedings, the order was illegal. *Held* also that, if a breach of the peace appeared likely to occur, the proper course was for the Magistrate to take security from the party from whom a breach of the peace was apprehended, but that it was not illegal for the Magistrate to proceed under s. 145 or s. 147 of the Code of Criminal Procedure. SUBBA *v.* TRINCAL . . . I. L. R., 7 Mad., 460

25. ——— **Complaint as to dispossession of land not involving likelihood of breach of peace**—*Criminal Procedure Code, 1898, s. 145.*—Where a proceeding under s. 145 of the Code of Criminal Procedure (Act V of 1898) was instituted upon a complaint of the commission of various offences, none of which necessarily involved a breach of the peace, but included dispossession of land,—*Held* that the Magistrate was not justified in taking proceedings under s. 145, Criminal Procedure Code, but

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

1 CASES WHICH MAGISTRATE CAN DECIDE AS TO POSSESSION—*concluded*

the proper course for him was to try the complaint of

MOTI MOLLAH . 4 C W. N, 57

2 LIKELIHOOD OF BREACH OF THE PEACE

26 — Disputes concerning land—*Criminal Procedure Code (Act X of 1882) s 145 and s 107—Procedure*—Where a dispute likely to

IN THE MATTER OF THE PETITION OF FERAM SINGH . . 3 C W. N, 296

BEJOY SINGHA NEOGI v EMPRESS [3 C. W. N, 463

27 ———— Inquiry—*Criminal Procedure Code, 1861, s 318*—No inquiry should be made nor order passed giving possession to one side or the other, under s 318 of the Code of Criminal Procedure, save on the supposition that the dispute is likely to cause a breach of the peace QUEEN v SONAOOLLAH . . 2 W. R, Cr, 44

28 ———— *Order not made after judicial inquiry—Criminal Procedure Code,*

LALL JHAH . 25 W R., Cr, 21

29 ———— *Criminal Procedure Code 1861 Ch XXII*—The inquiry contemplated by Ch XXII of the Code of Criminal Procedure was a personal inquiry by the Magistrate who makes the order ANONYMOUS [4 Mad, Ap, 20

ANUNDEE KOOER v SOOKARY KOOER [9 W R., Cr, 64

30 ——— Power of Magistrate—*Criminal Procedure Code 1872 s 530*—The power given to a Magistrate to make a binding declaration as to the possession of any property is an exceptional one and s 530 of the Criminal Procedure Code limits the exercise of that power to cases in which the Magistrate is satisfied that a dispute likely to induce a breach of the peace, exists It is thus linked with the consequent necessity for immediate action which alone warrants action by the Magistrate IN THE MATTER OF THE PETITION OF KRUSEND NARAIN BHOOP [I L. R, 4 Calc, 650: 3 C L. R., 551

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

2 LIKELIHOOD OF BREACH OF THE PEACE—*continued*

ANONYMOUS CASE . 4 Mad., Ap, 40

31 ———— Ground for action of Magistrate—*Criminal Procedure Code (Act X of 1872), s 530*—In order to justify a Magistrate in interfering under s 530 of the Criminal Procedure Code, it is necessary that he should be satisfied that there exists a dispute concerning land which is likely to induce a breach of the peace, i e there must be a reasonable apprehension that a disturbance of the peace is likely to occur, rendering it necessary for him to take immediate steps to prevent it and not merely that it is probable a breach of the peace may occur if proceedings under s 530 be not taken DAMODUR BIDDYADHUR MOHAPATRO v SYAMANUND DEY [I L R., 7 Calc, 385: 8 C L. R., 514

32 *Dispute likely to cause breach of the peace—Duty of Magistrate—Criminal Procedure Code (Act X of 1882) s 145*—It is the duty of a Magistrate, before taking proceedings under s. 145 of the Criminal Procedure Code, to satisfy himself whether there is any dispute likely to cause a breach of the peace and that the suggested apprehension of a breach of the peace is not merely colourable and made to induce him to deal with matters properly cognizable by the Civil Court IN THE MATTER OF OBHOY CHANDRA MOOKERJEE OBHOY CHANDRA MOOKERJEE v MOHAMED SADIR [I. L. R, 10 Calc, 78: 13 C L. R., 410

33 — *Future breach of*

Contra QUEEN v MOHESH CHUNDER ROY [24 W R, Cr, 67

34 — *Criminal Procedure Code 1872 s 530—Order made on insufficient material Order without jurisdiction*—Where the proceeding recorded by a Magistrate under s. 530 of the Criminal Procedure Code is based on materials which do not disclose sufficient ground for considering that a breach of the peace is imminent an order calling upon the parties concerned in the dispute to attend in Court and give in a written statement of their respective claims in respect of the fact of actual possession of the subject of dispute may be set aside as made without jurisdiction CHUNDER MADHUB GHOSE v. JOOGUT CHUNDER SEN [4 C. L. R., 463

35 ———— *Criminal Procedure Code, 1861 s 318—Grounds for leaving*

which by the exercise of a judicial discretion he

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE—*continued.*

derives therefrom and which in his judgment constitute grounds for believing that a dispute concerning certain land exists which is likely to induce a breach of the peace; and the roobokari which s. 318 prescribes should plainly set out, without reference to any other documents at all, the actual facts which constituted the ground for such belief on the part of the Magistrate. *In the matter of the petition of Sutherland, 9 B. L. R., 229 : 18 W. R., Cr., 11*, explained. IN THE MATTER OF THE PETITION OF KISHOREE MOHUN ROY . . . . 19 W. R., Cr., 10

36. ———— *Requisite evidence.*—There is nothing which defines on what grounds the Magistrate shall be satisfied, or limits him to being satisfied by evidence given before him. IN THE MATTER OF THE PETITION OF SUTHERLAND [9 B. L. R., 229

S. C. SUTHERLAND v. CROWDY [18 W. R., Cr., 11

Under the Code of 1861, the Magistrate had "to be satisfied that a breach of the peace was likely," and it was formerly held he must be satisfied by evidence. ANONYMOUS CASE . 4 Mad., Ap., 49

TARAFDI MUNDUL v. CHUNDER BHOOSUN BANERJEE . . . . . 16 W. R., Cr., 74

IN THE MATTER OF THE PETITION OF SUTHERLAND . . . . . . 9 B. L. R., 229

A police report was held, both under that Code and under the Code of 1872, not to be sufficient evidence. IN THE MATTER OF THE PETITION OF BHADRESWARI CHOWDHRAIN . . . . . 7 B. L. R., 329

S. C. BHUDRESSORY CHOWDHRAIN v. GOBERDHUN MAJHEE . . . . . 16 W. R., Cr., 17

ELAHEE NEWOZ KHAN v. SUBURUNNISSA [5 W. R., Cr., 14

IN THE MATTER OF THE PETITION OF SHAMASANKAR MAZUMDAR . . 9 B. L. R., Ap, 45

S. C. SHAMASUNKUR MOZOOMDAR v. ANUNDOMOYEE DOSSEE . 18 W. R., Cr., 64

ABHAYA CHOWDRY v. BRAE [6 B. L. R., Ap., 148
15 W. R., Cr., 42

QUEEN v. BHYRO DAYAL SING [3 B. L. R., A. Cr., 4
11 W. R., Cr., 46

See also PUDDOMONEE DASSEE v. JUGGODUMBA DASSEE . . . . . . 25 W. R., Cr., 2

And under the Code of 1872 the report of an Ameen was held not to be sufficient to base an order upon. QUEEN v. SOUMBER AHIR [20 W. R., Cr., 57

Under the Code of 1872, an explanation was added that the Magistrate might be satisfied as to the likelihood of a breach of the peace on a report or other information, but as to the fact of possession on evidence.

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE—*continued.*

The following, however, was a later holding under the Code of 1872 with regard to a police report.

37. ———— *Criminal Procedure Code, 1872, s. 530—Record of grounds—Police report, Incorporation of—Evidence of possession—Evidence of title.*—In proceedings under s. 530 of the Criminal Procedure Code, the Magistrate recorded the following words: "Whereas from the police report a breach of the peace is probable," and found that certain persons were in possession. *Held* that, although the record of grounds was unsatisfactory, as the initial proceeding did not contain within itself all which the law requires to be recorded,—*viz.*, in the first place, that the Magistrate is satisfied that a dispute likely to induce a breach of the peace exists; and in the second place, the ground upon which he is so satisfied,—yet that, as the police report from which the grounds for apprehending a breach of the peace appeared was incorporated by reference, the final order was not defective. IN THE MATTER OF THE PETITION OF KALI KRISTO THAKUR v. GOLAM ALI CHOWDHRY [I. L. R., 7 Calc., 46 : 8 C. L. R., 245

And under the Code of 1882, the Magistrate is now to be "satisfied on a police report or other information."

38. ———— *Police report setting out probability of breach of peace.—Semble*—That a reference by a Magistrate to a police report which clearly sets out the probability of a breach of the peace is a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace, within the meaning of s. 145 of the Code of Criminal Procedure, 1882. GOLUCK CHUNDER PAL v. KALI CHARAN DE . . . I. L. R., 13 Calc., 175

39. ———— *Examination of parties—Criminal Procedure Code, 1861, s. 318—Land dispute.*—When both the disputing parties are examined, and state that men were collected by their opponents for the purpose of committing a breach of the peace, a Magistrate is justified, without inquiring who was the aggressor or the aggrieved party, to proceed under s. 318 of the Code of Criminal Procedure, and to take whatever steps are in his opinion necessary to prevent a breach of the peace. GUNGA NARAIN MITTER v. GOUR SOONDER CHOWDHRY [15 W. R., Cr., 85

In cases under the Codes of 1861 and 1872 it was generally ruled that a proceeding stating the grounds for his belief in the likelihood of a breach of the peace must be recorded by the Magistrate. ANONYMOUS CASE . . . . . . 4 Mad., Ap., 49

TARAFDI MUNDUL v. CHUNDER BHOOSUN BANERJEE . . . . . 16 W. R., Cr., 74

IN THE MATTER OF THE PETITION OF KUNUND NARAIN BHOOP . . I. L. R., 4 Calc., 650
[3 C. L. R., 551

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

2 LIKELIHOOD OF BREACH OF THE PEACE—*continued.*

GRIJAMONEE *v.* ISHUR CHUNDER [W. R., 1864, Cr., 2

IN RE SABHEE SINGH . . 6 W. R., Cr., 50

GOVERNMENT *v.* GHOLAM MAHOMED [1 Agra, Cr., 33

IN THE MATTER OF KASHEE KISHORE ROY *v.* TARINI KANT LAHORI . 3 B. L. R., A. Cr., 76 [15 W. R., Cr., 42 note

QUEEN *v.* RUNJEET MOLLA . 2 W. R., Cr., 31

MUKHODA DOSSEE *v.* QUEEN 18 W. R., Cr., 4

IN THE MATTER OF OKHIL CHUNDER BISWAS [1 C. L. R., 48

REG *v.* *OMIRTO NAUTH JHA* [1 Ind. Jur., N. S., 399 6 W. R., Cr., 61

and that the omission to do so was fatal to the Magistrate's proceedings EMAMBANDEE BEGUM *v.* TEK BAHADOOR . . 17 W. R., Cr., 53

HARVEY *v.* BRICE . . 4 W. R., Cr., 26

MUNGLO *v.* DURGA NARAIN NAG [25 W. R., Cr., 74

In certain cases it was ruled that the recording of a proceeding was unnecessary DURIAO SINGH *v.* UMA PROSHAD 24 W. R., Cr., 16

GOUR MOHUN MAJEE *v.* DOOLLUBH MAJEE [22 W. R., Cr., 81

and in one it was doubted whether it was necessary or not DAMODUR BIDDYADHUR MOHAPATRO *v.* SYAMANUND DEY . I. L. R., 7 Calc., 385 [8 C. L. R., 514

No form of proceeding was necessary. JOYRAM *SINGH v. JEONARAIN DOOBEY* . 10 W. R., Cr., 16

40. ———————— The provisions of s. 318 of the Code of Criminal Procedure were held to be *substantially complied with when the* Magistrate stated that he was satisfied that the disputes between the parties were likely to induce a breach of the peace, and recorded his opinion that the only way of bringing those disputes to a satisfactory settlement was by proceeding under the section quoted. IN THE MATTER OF THE PETITION OF BISSESHUR NARAIN MAHTAH . 8 W. R., Cr., 83

41. — ———————— *Criminal Procedure Code (Act V of 1898) s 145—Procedure—Dispute about right to perform service in a public temple* —A Magistrate professing to act under s. 145 of the Criminal Procedure Code (Act V of 1898) is bound to follow the proper procedure He must set forth the grounds on which he is satisfied that there is

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

2 LIKELIHOOD OF BREACH OF THE PEACE—*continued.*

a dispute likely to cause a breach of the peace. IN RE PANDURANG GOVIND [I. L. R., 24 Bom., 527

42. ———————— *Criminal Procedure Code (Act X of 1882), s 145—Breach of the peace—Police report—Duties of Magistrate acting under s 145—Record of grounds* —Before instituting proceeding under s 145 of the Code of Criminal Procedure, a Magistrate is bound to satisfy himself on grounds which are reasonable that a breach of the peace is imminent in regard to properties of the description specified in that section and that a dispute likely to cause a breach of the peace exists concerning them, and the grounds stated by him must be such as to satisfy a Court of *revision* before which such case may be brought by any of the parties concerned. Where a Magistrate, in consequence of the institution of various cases relating to breaches of the peace between the partisans of two rival zamindars had directed the police to enquire and report whether there were sufficient grounds for proceeding under s. 145 Criminal Procedure Code, and having received a report which both suggested the necessity for such proceedings and set forth substantial reasons in support of the suggestion made such report the foundation for the proceedings which he instituted it was contended among other things, that the Magistrate had not complied with the provisions of the Code in omitting to state the grounds

to cite it as the ground of his proceeding on which he was satisfied that a dispute within the terms of s. 145 existed, and that it would be open to the parties

43. ———————— — *Criminal Procedure Code (Act X of 1882), ss 145 537—Breach of the peace—Record of grounds for Magistrate taking proceedings under s 145—Police report—Sessions Judge not empowered to order proceedings under s 145—Invalidity of proceedings instituted* —To justify the initiation of proceedings under s. 145, Criminal Procedure Code it is not sufficient that, in course of a trial, it should appear from the statement of a witness examined that a breach of the peace is likely to ensue in consequence of a dispute regarding land. Before taking action the Magistrate is bound to be satisfied from a police report or other information on this point, and he is also bound to make an order in writing, stating the grounds of his being so satisfied,

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

2. LIKELIHOOD OF BREACH OF THE PEACE—*continued.*

and this must be served on the parties to the dispute; for it is the intention of the law, not only that Magistrates should have sufficient grounds for proceeding under s. 145, but that they should inform the parties concerned of the grounds on which they are proceeding. A Sessions Judge is not competent to order a Magistrate to take action under s. 145. He should rather draw his attention to the nature of the dispute in the trial before him, so that the Magistrate may exercise his own discretion as to the necessity of proceedings. Proceedings so initiated, when there is nothing in the police report or elsewhere to justify them, would be void, and s. 537 of the Criminal Procedure Code would have no application. *Gour Mohan Majee* v. *Dool'ubh Majee, 22 W. R., Cr., 81,* dissented from. *Dhanput Singh* v. *Chatterput Singh, I. L. R., 20 Calc., 513,* followed. QUEEN-EMPRESS *v.* GOBIND CHANDRA DAS . . . . I. L. R., 20 Calc., 520

44. ———— *Criminal Procedure Code (1882), s. 145—Authority of District Magistrate—Sub-Divisional Magistrate.*—In a case where a District Magistrate made an order stating that in his opinion it was the duty of the Sub-Divisional Magistrate to institute proceedings under s. 145 of Criminal Procedure Code,—*Held* that the District Magistrate had no authority in law to direct the Sub-Divisional Magistrate to institute such proceedings. A Magistrate proceeding under this section must himself be satisfied by a police report or other information that there is a likelihood of a breach of the peace, and he has a discretion as to whether to institute proceedings or not. *Queen-Empress* v. *Govind Chandra Das, I. L. R., 20 Calc., 520,* followed. KAILASH CHANDRA PAL *v.* KUNJA BEHARI PODDAR . . . I. L. R., 24 Calc., 391
[1 C. W. N., 393

45. ———— *Criminal Procedure Code (Act V of 1898), s. 145—Likelihood of breach of the peace arising from act of aggressive party.*—Where the Magistrate found that the persons who attempted to do bastu puja, which is said to have provoked the petitioners, were not entitled to perform this puja,—*Held* that, if the petitioners acted properly and within their rights, there was no reason to suppose that any breach of the peace was likely to be committed by them. *Held* also that, if the Magistrate were to find that there was likely to be some dispute regarding the possession of the waste land on which the puja was attempted to be performed, the proper course for him to take would be to institute proceedings under s. 145. BEJOY SINGHA NEOGI *v.* EMPRESS
[3 C. W. N., 463

46. ———— *Order not stating that Magistrate was satisfied that there was likelihood of breach of the peace—Criminal Procedure Code (1898), s. 145.*—Where the order instituting proceedings under s. 145, Criminal Procedure Code, did not state that the Magistrate had satisfied himself that a dispute likely to cause a breach of the peace existed concerning any land, and there was nothing to indicate a likelihood of a breach of the peace in the petition of complaint on which the proceedings were based,—*Held* that the procedings were without jurisdiction, and as such must be set aside. KESU *alias* KESHWAS SINGH *v.* MOTI MOLLAH . 4 C. W. N., 57

47. ———— *Order instituting proceedings under s. 145 of the Code of Criminal Procedure (Act V of 1898)—Contents of such order—Irregularity in order, making proceedings without jurisdiction.*—Unless a Magistrate complies strictly with the terms of s. 145 of the Code of Criminal Procedure by stating in his written order all the particulars necessary to enable him to act under that section, his proceedings are without jurisdiction. It is not sufficient that the Magistrate should have before him a police report, and that he should have given orders thereon that a written order be drawn up within the terms of s. 145. It is his duty to draw up, or have drawn up, an order which in all respects satisfies the requirements of the law. It is absolutely necessary that the written order should be correct and complete in its terms. MOHESH SOWAR *v.* NARAIN BAG . . . . I. L. R., 27 Calc., 981

3. PARTIES TO PROCEEDINGS.

48. ———— **Parties claiming to be in possession of land, the subject of dispute, Right of, to appear in proceedings**—*Criminal Procedure Code, s. 145.*—Before taking action under s. 145 of the Code of Criminal Procedure, the Magistrate is bound to be satisfied from a police report or other information as to the likelihood of a breach of the peace, and he is also bound to make an order in writing, stating the grounds of his being so satisfied, and this must be served on the parties to the dispute; for it is the intention of the law, not only that Magistrates should have sufficient grounds for proceeding under s. 145, but that they should inform the parties concerned of the grounds on which they are proceeding. Parties who, though not actually involved in the dispute, claim to be in possession of lands which are the subject of proceedings under s. 145, should not be shut out from giving evidence in support of their claims. To do so would undoubtedly occasion very serious prejudice and interference with any possession which they might be able to establish. QUEEN-EMPRESS *v.* GOBIND CHANDRA DAS
[I. L. R., 20 Calc., 520

49. ———— **Parties concerned in proceedings**—*Criminal Procedure Code, s. 145.*—The words "parties concerned" in s. 145 of the Criminal Procedure Code do not necessarily mean only the persons who are disputing, but include also persons who are interested in, or claiming a right to, the property in dispute. RAM CHANDRA DAS *v.* MONOHUR ROY . . . . I. L. R., 21 Calc., 29

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

3. PARTIES TO PROCEEDINGS—*continued.*

50 ———————— *Criminal Procedure Code (Act V of 1898), s 145—"Parties concerned,'* [illegible] dispute, [illegible] (Act V [illegible] concern[illegible] cerned in the subject-matter of the dispute, who would be affected by the Magistrate's order maintaining the possession of any third party in their absence GANESH JALIA *v* AYABALI CHAUDHURI

[4 C W. N., 753

51. ———————— *Criminal Procedure Code (Act X of 1882), s 145—"Parties concerned in dispute"—Death of one of original parties—Substitution of party without fresh proceeding under s 145—Possession at time of institution of proceeding or at time of final order—Criminal Procedure Code, s 537*—In a proceeding under s 145 of the Code of Criminal Procedure recorded on the 27th April 1893, *A* and *B* were respectively made first and second parties and were ordered to put in statements of their claims to the [illegible] proceeding) was the owner and in possession of it On 1st June *B S* applied to be substituted as a party in place of his father *B* *D K* and *B S* were made parties without any fresh proceeding under s 145 of the Code The case was heard on 27th June and 7th July, and on 17th July the Magistrate found as regards the possession in favour of *D K.* *Held* by PETHERAM C J, and TREVELYAN, J. (BAMPINI, J, dessenting), that since the possession to be enquired into was the possession at the time of the initiation of the proceedings the words "parties [illegible] ing under s 145 of the Code may, and in many cases must, partake of the character of a general citation to all the parties concerned in the dispute to appear, and it is not necessary for the Magistrate to confine his final order as to possession to the parties whom he may have named in the preliminary proceeding The Magistrate had power to substitute the name of *B S* for that of his father without commencing the proceedings *de novo* The alteration in s 145 of Act X of 1882 the present Criminal Procedure Code of the language of s 530 of the old Code, *Act X of 1872,* implies that the Magistrate is to decide on the possession, not at the time of the initiation of the proceedings but at the time of recording the evidence If there was any error in the proceedings it was one cured by s 537 of the Code BHUP SHIKH *v.* DEBI KUMARI DASI . I. L. R., 21 Calc., 401

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

3 PARTIES TO PROCEEDINGS—*continued.*

52. ——— Adding parties—*Criminal Procedure Code (Act V of 1898), s 145—Jurisdiction—Breach of the peace—Joint trial of several cases, whether legal*—A Magistrate must deal with a case under s 145, Criminal Procedure Code, as it is originally instituted If he finds that he cannot do so in respect to one side because they are not parties to the dispute or because it has been shown that no breach of the peace is likely to occur from any action of theirs, he should put an end to the case A Magistrate is not competent to add parties after the institution of proceedings. Where a Magistrate tried together three cases under s. 145 Criminal Procedure Code by consent of parties —*Held* that the parties in all the cases not being the same, the procedure adopted by the Magistrate was bad in law That the evidence already taken might be accepted in one of the cases but the other cases must be separately tried RAJ KUMAR SINGH *v* MAHADEO SINGH

[1 C. W. N., 748

53 ———— Manager of company—*Criminal Procedure Code (1882), s 145—Right to* [illegible] company to the exclusion of those in possession of the surface rights of a portion of the mouzah and the Magistrate made the manager of the company only a party to the proceedings and not the company itself, and an order was made under the section in favour of the manager,—*Held* that the order was bad and must be set aside, as the parties interested were not properly before the Court. The manager had no interest except as such or possession except as representing the company, and such possession is not the kind of possession contemplated by the section BEHARY LALL TRIGUNAIT *v* DARBY

[I L R, 21 Calc., 915

NEWAZ ALI *v* RAM BALLABH CHAKRAVARTI

[I. L. R., 21 Calc, 916 note

See BATHOO LAL *v* DOMI LAL

[I. L. R., 21 Calc, 727

DUKHI MULLAH *v* HALWAY

[I L R, 23 Calc, 55

54 ——— Manager in possession—*Criminal Procedure Code (Act X of 1882), s 145—Limitation Order of Criminal Court as to*—A person who held possession of land merely as manager for the actual proprietor should not be made a party to proceedings under s 145 of the Criminal Procedure Code *Behari Lall Trigunait v. Darby I L R. 21 Calc, 915,* followed BROWN *v.* PRITHIRAJ MANDAL . . I. L. R., 25 Calc, 123

55 ——— Parties bound by order—*Criminal Procedure Code (1882) s 145*—Orders passed under the Criminal Procedure Code, s. 145, are binding only on the actual parties to the case in which they are made QUEEN EMPRESS *v* KUTTAYAR . . . . I. L. R., 18 Mad., 51

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

75. ——— **Question for decision**—*Possession—Title.*—In a case of disputed possession of land, the Magistrate should look to possession, not to right, *i.e.*, maintaining in possession the party in possession, and forbidding disturbance of possession. GRIJAMONEE *v.* ISHUR CHUNDER

[W. R., 1864, Cr., 2

IN RE SABHEE SINGH . 6 W. R., Cr., 50

GOVERNMENT *v.* GHOLAM MAHOMED

[1 Agra, Cr., 33

REG. *v.* OMIRTONAUTH JHA

[1 Ind. Jur., N. S., 399
6 W. R., Cr., 61

76. ——— *Criminal Procedure Code, 1861, s. 318—Duty of Magistrate.*—A Magistrate, under s. 318 of the Criminal Procedure Code, is to inquire into the question who is in actual possession of the property in dispute, without considering how that possession had been obtained. DUSTUR HUSANG JAMASJI *v.* PELL

[6 Bom., Cr., 30

BAPUJI JAGJIVAN *v.* MAGISTRATE OF KHEDA

[4 Bom., A. C., 153

77. ——— **Duty of Magistrate to maintain possession even when contrary to former order of another Magistrate.**—Where a Magistrate found that an order of his predecessor made two years previously with regard to possession of certain land had not been complied with, he enforced the order and changed the possession in accordance with that order. *Held* that the Magistrate ought to have maintained the possession which he found, even if it was inconsistent with his predecessor's order, and that he ought not to have taken any steps in the matter, unless some one actually in possession, and guaranteed possession by that order, came to complain to him that his possession was threatened, or that he had just been forcibly turned out, and asked in pursuance of that order to be maintained in possession. QUEEN *v.* PROTAB CHANDRA BAROOAH

[21 W. R., Cr., 2

78. ——— **Nature of order**—*Illegal dispossession.*—A Magistrate has no authority to restore to possession a person who has been illegally dispossessed. He must declare the party in actual possession entitled to retain possession until ousted by due course of law, and forbid all disturbance of such possession in the meantime. RAMJEEBUN DOOBEY *v.* LUCHMONEE DABEA . . W. R., 1864, Cr., 5

DOORJUN SINGH *v.* SHIBBA . 3 N. W., 171

QUEEN *v.* IMAMBANDEE . 7 W. R., Cr., 26

79. ——— *Jurisdiction of Magistrate—Order made by a Civil Court—Power of revision by the High Court.*—It is the duty of the Magistrate when the right to possession has been declared within a time not remote from his taking proceedings under s. 145 of the Criminal Procedure Code to maintain any order which has been passed by any competent Court; and therefore to take proceedings which necessarily must have the effect of modifying or even cancelling such orders is to assume a jurisdiction which the law does not contemplate. The power of revision to be exercised by the High Court is limited to matters of jurisdiction, that is to say, to cases in which it is found that the Magistrate by taking proceedings under s. 145 has acted without jurisdiction. DOULAT KOER *v.* RAMESWARI KOERI *alias* DULIN SAHEBA

[I. L. R., 26 Calc., 625
3 C. W. N., 461

80. ——— **Procedure**—*Criminal Procedure Code, 1872, s. 530—Death of one of the parties before termination of proceedings.*—On the death of one of the persons concerned in a matter under s. 530, Code of Criminal Procedure, just before those proceedings terminated in favour of that person and another, though it would be more regular for the Magistrate to postpone the proceedings and make his representative a party in his place, the proceedings are not necessarily bad, since the death has prejudiced no one. IN THE MATTER OF ANNONDOMOYEE DEBEE *v.* LUCHMUN PERSHAD GOGO . 2 C. L. R., 264

81. ——— **Dispossession**—*Criminal Procedure Code, 1872, s. 530—Illegal dispossession—Ouster without authority of Civil Court.*—Ouster by one person of another lawfully in possession of property confers no rights on the former which can be recognized in proceedings taken under s. 530 of the Code of Criminal Procedure. The Court should refer back to a time previous to the quarrel when such possession was peacefully enjoyed by one or other of the disputants. IN THE MATTER OF THE PETITION OF MOHESH CHUNDER KHAN

[I. L. R., 4 Calc., 417

82. ——— **Onus Probandi**—*Criminal Procedure Code, 1872, s. 530, Effect of order under.*—The effect of an order under s. 530 of the Criminal Procedure Code (Act X of 1872) is to declare the person in whose favour it is made to be in possession at the time of the proceedings had under the section, and to cast the burden of proof upon his adversary in an ejectment suit; but such an order can decide nothing as to how that possession was obtained or as to antecedent possession. *Boolee Singh v. Hurobuns Narain Singh, 7 W. R., 212* commented upon. NOBO COOMAR DASS *v.* GOBIND CHUNDER ROY . . . . 9 C. L. R., 305

83. ——— **Keeping person in possession to reap crop**—*Criminal Procedure Code, 1872, s. 530.*—A Magistrate cannot, under s. 530, Code of Criminal Procedure, order that a person be kept in possession until he has reaped the crop standing on the ground, and then that he shall give way to another. When there have been long-pending disputes in the Courts, he should determine who was in peaceable possession when they commenced. IN THE MATTER OF BUNWARI LAL MISSER *v.* RADHA PERSHAD SINGH . . . 1 C. L. R., 136

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

84. ——— Nature of required possession—*Criminal Procedure Code, 1872, s. 530*— [illegible] peace is apprehended, is possession at the time the proceedings are instituted by the Magistrate, and not possession at the time the Magistrate comes to his decision. IN THE MATTER OF THE PETITION OF PIR-THIRAM CHOWDHRY . 20 W. R., Cr., 51

85. ——— ——— *Actual possession—Criminal Procedure Code (Act X of 1882), s. 145*—Under s. 145 of the Criminal Procedure Code, the Magistrate has to find which of the parties is in possession of the subject matter of the dispute at the time when he is inquiring into the matter, which in the contemplation of the law is identical with the time of the institution of the proceedings, and not at any time previous thereto, and he has no concern as to how the party then in actual possession obtained possession, but has only to pass an order retaining him in his possession. AMEER *v.* PUSHONO . I. L. R., 11 Calc., 365

CHUNDER COOMAR PODDAR *v.* CHUNDER KANTA GHOSE . . . I. L. R., 12 Calc., 521

86. ——— *Criminal Procedure Code (Act X of 1882), s. 145—Possession, Inquiry into—Time at which Magistrate has to determine who was in possession—Undisturbed* [illegible] *before* [illegible]—In an [illegible] re Code [illegible] and, the [illegible] cutting [illegible] Magis- [illegible] ad been [illegible] ad been unable to enter the forest and remove the timber alleged to have been cut by them; that this happened before the time of the initial proceedings, and continued to the date of the hearing; and that the men of the second party had been able to bring out of the forest the timber which had been cut. Upon these findings he came to the conclusion that the possession of the second party had been established, and made an order under the section in their favour. *Held* that, having regard to the nature of the property in dispute, these facts could not constitute legal possession of the second party at the time the proceedings were instituted. *Held* further that in like cases, having regard to the nature of the property in dispute, and the mode in which possession may be exercised over it, in order to find which party was in possession when the proceedings were instituted, it is necessary to inquire which party was in undisturbed possession of the land in dispute by felling timber and removing the same without objection on the occasion immediately preceding the one on which the dispute arose; and whichever party be found to have been in possession on that occasion should be presumed to have possession at the time when the proceedings were commenced. JAGAT KISHORE ACHARJYA CHOWDHURI *v.* KHAJAH ASHANULLAH KHAN BAHADUR . I. L. R., 16 Calc., 281

87. ——— *Criminal Procedure Code, 1882, s. 145—Magistrate to determine who was in possession at what time*—Under s. 145 of the Code of Criminal Procedure (Act X of 1882), a Magistrate is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute at the time when the Magistrate decides the question of possession, and not at any time previous thereto. IN THE MATTER OF HUCHAPA . . . I. L. R., 15 Bom., 152

88. ——— ——— *Criminal Procedure Code, s. 145—Order for interim possession—Point of time at which possession is to be looked at in determining which party is entitled to an order under s. 145*—The possession which a Magistrate [illegible] that such order was irregular and unsustainable. IN THE MATTER OF THE PETITION OF JAI LAL

[I. L. R., 13 All., 332

See BECHU SHEIKH *v.* DEB KUMARI DASI

Per PETHERAM, *C.J.*, and TREVELYAN, *J.* (RAMPINI, *J.*, dissenting) . I. L. R., 21 Calc., 404

89. ——— *Criminal Procedure Code (1882), ss. 145 and 146—Possession, Inquiry as to—Time at which Magistrate is to determine who was in possession—Order passed under s. 146 on proceedings taken under s. 145, Criminal Procedure Code—Attachment of property*—In setting aside an order passed by a Magistrate under s. 145 of the Code of Criminal Procedure, the High Court has power itself to pass such order as should have been made by the Magistrate in the case. It is impossible to lay down any hard-and-fast rule which may be applicable to all cases as to the exact point of time to which an inquiry under s. 145 must be directed, and the time at which possession must be found in one party or the other must be governed by the facts of each particular case. To hold that the Magistrate is precluded from inquiring into anything before the date when he actually commenced his own proceedings might in some cases lead to a person who has been acting in an unwarrantable manner misusing the process of the law to enable him to carry out a high-handed and improper scheme, which could never have been the intention of the Legislature. In a proceeding under s. 145 regarding a dispute between two parties concerning certain collieries, it appeared that the first party were certainly in possession of the buildings which contained the office where the business of the collieries was transacted, and where all the cash

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

books and papers of the business were kept, and that the second party had during a period of about fourteen days prior to the commencement of the proceedings succeeded in obtaining possession of the pits, wharves, tramways, etc., of the colliery by what the Court considered to be a high-handed and improper scheme, and acting in an unwarrantable manner. The Magistrate, considering himself bound to find who was in actual possession at the date of the commencement of the proceedings by himself, passed an order in favour of the second party. *Held* that such order was bad, and that, as the second party was undoubtedly not in possession of the whole of the property in dispute, and the effect of it was to place them in possession of the portion that was in the possession of the first party, the proper order to make under such circumstances was one under s. 146, attaching the property. KATRAS JHERRIA COAL CO. *v.* SIBKRISHTA DAW & CO. **I. L. R., 22 Calc., 297**

90. ———————— *Criminal Procedure Code (1882), ss. 145 and 146—Possession, Inquiry as to—Time at which Magistrate is to determine who is in possession—Presumption.*—A Magistrate, in making an order under the Criminal Procedure Code, ss. 145 and 146, must inquire into the question which party was in actual possession at the time of the institution of the proceedings, and not at the time when the order is made. In making this inquiry, the Magistrate may presume that, when a vendor sells part of a property, he retains all that he does not sell. AGRA BANK *v.* LEISHMAN **[I. L. R., 18 Mad., 41**

91. ———————— *Final order against persons not made parties—Criminal Procedure Code (1898), ss. 145, 146.*—A final order under s. 146, Criminal Procedure Code, cannot be made against persons who were not made parties to the proceedings under s. 145, Criminal Procedure Code, or who were in the case regarded by the Magistrate as such, though notices had been issued upon them to file written statements and they had only entered appearance, but had done nothing else. JANOKI NATH ROY *v.* QUEEN-EMPRESS **[3 C. W. N., 329**

92. ———————— *Criminal Procedure Code, 1872, s. 530—Parties in possession through raiyats.*—The Criminal Court has jurisdiction, under Act X of 1872, s. 530, to determine questions of contested possession between parties who are not in immediate possession of the subject-matter of dispute, but claim rent from tenants who actually occupy it. NOBIN CHUNDER KOONDOO *v.* JOGENDRONATH BHUTTACHARJEE . **25 W. R., Cr., 18**

93. ———————— *Criminal Procedure Code (Act X of 1872), s. 530—Intermediate holders—Constructive possession.*—In a case of disputed possession between two rival zamindars, constructive possession through intermediate holders (ticcadars), to whom the raiyats pay rents, is not such possession as is contemplated by s. 530 of the Code of Criminal Procedure. EMPRESS *v.* THAKOOR DYAL SING . . . . **I. L. R., 3 Calc., 320**

94. ———————— *Criminal Procedure Code, 1872, s. 530—Possession by raiyats.*—In a case of dispute regarding land of a considerable area in which both parties contended that they held possession of the area through the means of raiyats, it was held that the Magistrate, instead of making an order under s. 530 of the Criminal Procedure Code that the land should remain in the possession of one of the parties until the decision of a competent Civil Court, should have proceeded to consider the question which party was in possession of the constituent portions of the land, piece by piece, in the hands of his raiyats. MUDHOOSUDUN SHAHA *v.* BEJOY GOBIND CHOWDHRY . . . **21 W. R., Cr., 55**

95. ———————— *Criminal Procedure Code, 1872, s. 530—Dispute between owners of land—Constructive possession.*—S. 530 of the Code of Criminal Procedure contemplates disputes between owners as well as occupiers. *Per* JACKSON, J.—Where a zamindar has let his lands in farm, he, his farmers, and the occupying raiyats, are all in their degree concerned in any dispute as to possession which may arise, and they ought to be maintained in possession of the interests which they severally enjoy. *Sutherland* v. *Crowdy, 18 W. R., 11,* cited. *Empress* v. *Thakoor Dyal Sing, I. L. R., 3 Calc., 320,* commented upon as having gone too far. HARAK NARAIN SINGH *v.* LUCHMI BUX ROY **[5 C. L. R., 287**

96. ———————— *Occupation of trespasser—Possession.*—The actual possession intended by Ch. XXII of the Code of Criminal Procedure, 1861, does not include the occupancy of a mere trespasser. ANONYMOUS . **6 Mad., Ap., 13**

97. ———————— *Breach of the peace—Actual possession—Recognizance to keep peace.*—The possession of a master by his servant,—of a landlord by his immediate tenant, the person who pays rent to him,—of the person who has the property in the land by the usufructuary,—come within the meaning of the words "actual possession" in s. 318 of the Code of Criminal Procedure, 1861. Their meaning is not limited to bodily possession. But a person is not in "actual possession" where the rents are paid by the actual occupier, not to him, but to an intermediate holder. IN THE MATTER OF THE PETITION OF SUTHERLAND . **9 B. L. R., 229**

S. C. SUTHERLAND *v.* CROWDY **18 W. R., Cr., 11**

98. ———————— *Claim to possession by one acting as servant of owners—Parties.*—Where there is a dispute likely to lead to a breach of the peace concerning lands and proceedings are recorded and had under s. 530 of the Criminal Procedure Code, 1872, no order should be made against one who is acting as the servant of another person who claims to have possession of the land, unless

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. DECISION OF MAGISTRATE AS TO POSSESSION—*continued.*

that other person is made a party to the proceedings IN THE MATTER OF JITBAHAN *v.* BANSRUP DHOBI [6 C. L. R., 103

99. ———— *Symbolical pos*- ... taken into consideration MUNGLO *v.* DURGA NARAIN NAG . . . 25 W. R., Cr., 74

100. ———— *Criminal Procedure Code (Act X of 1882), s. 145—Possession*— ... A Magistrate trying ... consideration the question of ... , if in his ... of posses- ... considered ... ld not in ... possession, ... him as to ... absence of ... Magistrate ... to be with ... has been ... a decree, ... sufficient ... Calc., 169

101. ———— *Criminal Procedure Code, 1872, s. 530—Symbolical possession under decree of Court*—A certain mouzah having been sold in execution of a decree obtained upon a *mortgage*, the purchaser claimed a right under the sale to a hat appurtenant to the mouzah and was put by the Nazir of the Civil Court into symbolical possession of the hat as well as of the mouzah. The ... being imminent in consequence of the rival claims proceedings were taken under s. 530 of the Criminal Procedure Code; and the Magistrate, finding that the judgment debtor was in actual possession of the hat, made an order maintaining him in such possession until ousted by a Civil Court. *Held* (setting aside that order) that the Magistrate had no power, under s. 530 of the Criminal Procedure Code, to direct the judgment debtor to be retained in possession until ousted by a Civil Court, but was bound to see that the possession, as given by the Nazir, was maintained, leaving it to the debtor to substantiate his claim as a suit in a Civil Court. The Court accordingly directed that the purchaser be restored to possession and that the Magistrate do see that he is kept in possession until ousted by due course of law. IN THE MATTER OF CHUTTERPUTT SINGH [5 C. L. R., 200

102. ———— *Criminal Procedure Code, 1872, s. 530—Actual possession—Possession of wife or agent*—In an inquiry under s. 530 of the Code of Criminal Procedure the only thing to be determined is the fact of actual possession. In a dispute between the wife of a lunatic and the manager of his estate with regard to the possession of certain property, the Magistrate attached the property, under s. 531 of the Code of Criminal Procedure, on the ground that he was unable to satisfy himself as to who was in possession. It had been proved before him that the wife was in actual possession but there was a doubt as to whether she was not in possession merely as the agent of her husband. *Held* that s. 530 has only to do with actual possession and that the Magistrate should have decided that the wife was in possession. IN THE MATTER OF JUGGODESHARY CHOWDHRAIN . 3 C. L. R., 94

103. ———— *Criminal Procedure Code, 1872, s. 530—Real right to possession*— ... Magistrate's ... of Criminal ... of a real and ... ims under a ... doing certain things over a large extent of territory, the performance of acts under such alleged right in one portion of the ground over which the right extends although it may be good and sufficient for the purpose of *keeping alive that right so as to be an answer to the* plea of limitation raised in a civil suit is not of itself a sufficient possession on which the Magistrate's order under s. 530 may be based for the purpose of forbidding in a distant locality acts not necessarily in conflict with such possession though at variance with the right. BEJOY NATH CHATTERJEE *v.* BENGAL COAL COMPANY . 23 W. R., Cr., 45

104. ———— *Criminal Procedure Code, 1872, s. 530—Manager in joint possession—Question for Civil Court*—A mooktear holding and managing a burial ground for several joint proprietors cannot make himself out to be in possession for one more than for another. KASSIM HASSIM SCOTTY *v.* ABRAHIM SOLEMAN [25 W. R., Cr., 24

105. ———— *Criminal Procedure Code (Act XXV of 1861), s. 318—Act X of 1872, s. 530—Certificate of administration—Act XXVII of 1860.* A and B had a dispute about possession of a certain math. A was declared by the Magistrate, under s. 318 of the Criminal Procedure Code, to be in possession. Subsequently, B got a certificate under Act XXVII of 1860 and applied to the Magistrate for possession which was given to him. *Held* that the Magistrate's order giving possession to B was irregular, and must be set aside. DHUNRAJ GIRI GOSWAMI *v.* SATYATI GIRI GOSWAMI [2 B. L. R., A. Cr., 27

S. C. QUEEN *v.* SATTYTY GIRI GOSSAIN [11 W. R., Cr., 24

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

6. DECISION OF MAGISTRATE AS TO POSSESSION—*concluded.*

See ANCHAGEE KOOWAR *v.* RAMRUCHYA DASS [25 W. R., Cr., 16

106. ——— Decision based on evidence of title—*Right to possession.*—No sufficient evidence of possession was produced before the Magistrate, but evidence as to the title of the person in whose favour the Magistrate found was given, and the Magistrate based his decision upon the latter evidence, and determined the case with reference to the merits of the claims of the parties to the right of possession. *Held* that, although the Magistrate would have been justified in looking to the evidence of title in corroboration of the evidence of possession, he was wrong in basing his decision on the evidence of title, and his order was set aside. IN THE MATTER OF THE PETITION OF KALI KRISTO THAKUR *v.* GOLAM ALI CHOWDHRY [I. L. R., 7 Calc., 46 : 8 C. L. R., 245

107. ——— *Criminal Procedure Code (Act X of 1882), s. 145—Joint hearing of the case of several claimants—Number of plots, Dispute as to—Practice.*—A Magistrate, proceeding under s. 145 of the Criminal Procedure Code, in a case in which one party (thirty-nine in number) claimed to be the tenants of 708 bighas of land belonging to one *T H*, and the members of the other party (seventeen in number) claimed to hold the same land in separate parcels as their maurasi jote, tried the question of possession as between the two parties in one case notwithstading the protest of the maurasi claimants to this mode of procedure, and decided that possession was with the party of thirty-nine, directing that they as a body should remain in possession until ousted by the order of a Civil Court. *Held* that the course pursued by the Magistrate at the hearing was prejudicial to the case of the maurasi claimants; and that the form of his order was open to the objection that it would render it necessary for the party out of possession to make all the persons declared to be in possession defendants in any civil suits brought to recover possession of the land. *Azim Mollah* v. *Satoo Poramanic, 10 C. L. R.*, 523, distinguished. KUTUBUL SINGH *v.* UMA SINGH . I. L. R., 15 Calc., 31

108. ——— *Criminal Procedure Code (Act X of 1882), s. 145—Order passed under s. 146 on proceedings taken under s. 145, Criminal Procedure Code—Power of Court on revision.*—Where a Magistrate has passed an order under s. 145 of the Criminal Procedure Code, whereas the proper order in the case should have been one under s. 146, the High Court on revision will make the order which the lower Court ought to have made. *Raja Babu* v. *Muddun Mohun Lall, I. L. R., 14 Calc.*, 169, explained. REID *v.* RICHARDSON . I. L. R., 14 Calc., 361

7. NATURE AND EFFECT OF DECISION.

109. ——— Effect of order as regards rights of parties as determined by a Civil Court—*Criminal Procedure Code (Act V of 1898), s. 145.*—The order of a Magistrate dealing with a case under s. 145 of the Criminal Procedure Code (Act V of 1898) should not interfere with the rights of the parties as determined by previous decisions of the Civil Court. IN RE PANDURANG GOVIND [I. L. R., 24 Bom., 527

110. ——— Finding as to possession—*Criminal Procedure Code, 1872, s. 530.*—A Magistrate's finding under s. 530 of the Criminal Procedure Code, 1872, is conclusive as to the question of actual possession. A Mamlatdar's finding on such a point is not conclusive. LILLU *v.* ANNAJI PARASHRAM . . . . I. L. R., 5 Bom., 387

111. Fouzdari Court, Jurisdiction of—*Possession—Question of title.*—The jurisdiction of the Fouzdari Court was confined to cases of possession, and it was beyond its province to inquire into, and ascertain titles to, landed property. MOHESHUR SINGH *v.* GOVERNMENT OF INDIA [3 W. R., P. C., 45 : 7 Moore's I. A., 283

112. ——— Effect of order as to possession—*Right and title of party under order.*—The effect of the order of the Criminal Court giving possession of real estate is merely to prevent the occupation, being disturbed by violence, and confers no right or title on the party put in possession. KADIR BUKSH KHAN *v.* FUSSEEH-OON-NISSA [5 Moore's I. A., 413

113. ——— *Prevention of breach of peace—Adjudication of title—Criminal Procedure Code, 1861, Ch. XXII, ss. 318-321.*—The object of Ch. XXII of the Criminal Procedure Code, 1861 (ss. 318-321), is to prevent breaches of the peace likely to be occasioned, and not the adjudication of title. IN THE MATTER OF THE PETITION OF RAM DUTT MISR . . . 1 Agra, Cr., 29

GOVERNMENT *v.* GHOLAM MAHOMED [1 Agra, Cr., 33

114. ——— *Question of title.*—In a simple question of possession, all that a Criminal Court can dispose of is the necessary right, not the proprietary title. KASHEE NATH KOOER *v.* DEB KRISTO RAMANOOJ DOSS . 16 W. R., 240

GRIJAMONEE *v.* ISHUR CHUNDER [W. R., 1864, Cr., 2

IN RE SABHEE SINGH . . 6 W. R., Cr., 50

GOVERNMENT *v.* GOLAM MAHOMED [1 Agra, Cr., 33

PORESH NARAIN ROY *v.* WATSON [17 W. R., Cr., 3

GOVERNMENT *v.* SREEPUTTEE ROY [17 W. R., Cr., 59

REG. *v.* OMRITO NAUTH JHA [1 Ind. Jur., N. S., 399 : 6 W. R., Cr., 61

BAPUJI JAGJIVAY *v.* MAGISTRATE OF KHEDA [4 Bom., A. C., 153

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

7 NATURE AND EFFECT OF DECISION —*continued*

DOORJUN SINGH *v.* SHIBBA . 3 N. W., 171

QUEEN *v.* IMAM BANDEE . 7 W. R., Cr., 23

115 ———— *Third parties—Disobedience of order.*—Where an order under s 318 of the Criminal Procedure Code, 1861, was made between *A* on the one side and *B* and the three tenants of *B* on the other, declaring that *A* was in possession of the property in dispute,—*Held* that this order was only binding on the actual parties to the case before the Magistrate and that subsequent tenants of *B* could not be criminally punished for disobeying the order in question IN THE MATTER OF GOPAL BURNAWAR 3 B L R., A Cr., 13

116 ———— Nature of Magistrate's order—*Criminal Procedure Code, 1861, s 318—Execution of decree by Civil Court*—A Magistrate is not competent to interfere, under s 318 of the Code of Criminal Procedure, with the execution of a decree of the Civil Court When a Civil Court decree has been passed regarding the whole or any portion of disputed land, it is the Magistrate's duty to maintain that decree and he cannot again institute under s 318 proceedings regarding the land covered by it RAI MOHUN ROY *v.* WISE [16 W. R., Cr., 24

117. ———— *Decree of Civil Court for possession*—A Magistrate ought not to [illegible] Procedure [illegible] of the Civil [illegible] because he is [illegible] he should [illegible] person who has been actually put in possession by a decree of the Civil Court. SHAMA SOONDERY DEBIA *v.* JARDINE SKINNER & Co . . 6 W. R., Cr., 10

118 ———— *Resistance to execution of decree*—A Criminal Court ought not to interfere in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought the procedure to be adopted in such cases being that provided in Ch. XIX of the Civil Procedure Code, 1861 PRAYAG SINGH *v.* FUZOOL HOSSEIN . . 6 C. L. R., 200

119 ———— *Criminal Procedure Code, 1872 s 530*—The object of Act X of 1872, s. 530, is to prevent a breach of the peace by retaining in possession the party already there until such time as the Civil Court can pronounce on the two conflicting claims. When a Civil Court decree is once passed, the right as between the litigants is decided, and there is no more place for a summary order which proceeds, not upon title but on mere possession PANEEGUNGE COAL ASSOCIATION *v.* HEM LALL . . . 24 W. R., Cr., 17

120 ———— *Criminal Procedure Code 1872 s 530—Duty of Magistrate as to enforcing decree of Civil Court*—Where a decree has been passed by a Civil Court determining the rights of the parties to a suit to disputed land it is a Magistrate's duty to uphold that decree and he cannot as between such parties proceed under s 530 of the Code of Criminal Procedure to decide afresh upon the question of possession *Rai Mohun Roy v. Wise, 16 W. R., Cr 24* and *Paneegunge Coal Association v. Hem Lall, 24 W. R. Cr., 17* followed IN THE MATTER OF BHOLA NATH GHOSE *v.* MOTHOOR MUNDLE 7 C. L. R., 516

121. ———— Power of Magistrate—*Delivery of possession in execution of decree of Civil Court*—The act of a process peon delivering over possession of the disputed land to the purchaser as part of a tenure sold in execution does not take away the power of a Magistrate to inquire into the question of possession between the parties under s. 530 Criminal Procedure Code 1872. NOBIN CHUNDER KOONDOO *v.* JOGENDRONATH BHUTTACHARJEE [25 W. R., Cr., 16

122 ———— *Civil Court Decree of—Criminal Procedure Code 1872* [illegible] [1 C L. R., 213

123 ———— Suit in Civil Court for possession—*Proof of title Criminal Procedure Code 1861, s 319*—S 318 of the Code of Criminal Procedure does not mean that any party who can show in the Civil Court a possession prior to the Magistrate's award shall be entitled to have the award set aside and to be put in possession but only that the party out of possession must prove title SHIB PERSAD ROY *v.* LUGHOONATH SINGH [W R., 1864, 205

124. ———— *Tenant dispossessed* [illegible] *Criminal* [illegible] *a suit for* [illegible] by order [illegible] of Criminal [illegible] reversal of that order in order to recover possession LUCKHEE DEBEA CHOWDHRAIN *v.* GOOROO DOSS SEIN [W. R., 1864, Act X, 54

125 ———— *Award of possession under s 318, Criminal Procedure Code, 1861—Effect of, on subsequent suit for possession*—An award under s. 318 of the Criminal Procedure Code, 1861, is no bar to a possessory action under Act XIV of 1859 s 15 IN THE MATTER OF CHUTTER CHUNDER ROY CHUTTER CHUNDER ROY *v.* BROJO KANT ROY . . 20 W. R., 12

126 ———— *Order under Act IV of 1840 as to possession Omission to set aside*—*Held* that, the plaintiff having failed to set aside an award as to possession made by the Criminal Court under Act IV of 1840 within the limitation

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

7. NATURE AND EFFECT OF DECISION—*concluded.*

period, his claim in opposition to that award was not maintainable. GOPAL NATH *v.* ABDOOL GHANEE [1 Agra, 120

127. ——— *Suit for declaration of title.*—A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land obtained, pending his suit, an order from the Magistrate under s. 318 of the Criminal Procedure Code, 1861, that he should be maintained in possession until ousted by due course of law. The suit was dismissed, the plaintiff failing to prove his title; and the defendants then applied to the High Court under s. 404 of the Criminal Procedure Code to set aside the Magistrate's order and put them in possession. *Held* that their proper course was by a suit in the Civil Court for possession, and the application under the Criminal Procedure Code was rejected. JUGGESH PRAKASH GANGOLI *v.* NILKAMAL MOOKERJEE . 3 B. L. R., A. C., 57

S. C. IN RE JOGISH PROKASH GANGOLEE [11 W. R., Cr., 43

128. ——— *Obstructing road—Suit for exclusive possession.*—The Magistrate had, on the complaint of the defendant, passed an order under s. 320 of the Criminal Procedure Code, 1861, forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession. The plaintiff accordingly brought his suit in the Munsif's Court to recover possession of the land The Munsif gave him a decree for exclusive possession of the land. On appeal, the Judge held that the Munsif had no jurisdiction to try the question whether the public had a right of way over the land. The Judge's decision was reversed on special appeal, and the case remanded to the Judge to try the issue whether the plaintiff was entitled to the exclusive use of the land. MAHES CHANDRA MOOKERJEE *v.* RAMUTAM PALIT 5 B. L. R., Ap., 68

S. C. MOHESH CHUNDER MOOKERJEE *v.* RAMOOTTUM PALIT . . . . 14 W. R., 163

8. ATTACHMENT OF PROPERTY.

129. ——— **Preliminaries to order for attachment**—*Criminal Procedure Code, 1872, s. 531.*—It is only when, after recording a proceeding made under s. 530, Code of Criminal Procedure, and taking evidence, a Magistrate decides that neither party is in possession, or is unable to satisfy himself as to which party is in possession, that he can, under s. 531, attach land in dispute. He is not competent summarily to order attachment without such preliminary proceedings. IN THE MATTER OF RAM SOONDAREE DABEE . . . 1 C. L. R., 86

130. ——— *Criminal Procedure Code, 1872, s. 53—Proceedings before attachment.*—The doubt upon which a Magistrate can act under s. 531, Code of Criminal Procedure, must arise from his inability to decide on evidence offered by the contending parties as to their possession, and not on a doubt entertained without such inquiry. IN THE MATTER OF LELLANUND SINGH [1 C. L. R., 273

131. ——— **Power to attach land**—*Criminal Procedure Code, 1861, s. 318—Zamindari in possession by raiyats.*—The power of attaching land regarding which there is a dispute, conferred on a Magistrate by s. 318 of the Code of Criminal Procedure, extends to disputes as to possession of land of which rival zamindars are in possession by their raiyats. IN THE MATTER OF MASSIYK [15 W. R., Cr., 1

132. ——— **Ground for order of attachment**—*Criminal Procedure Code, 1872, s. 531.*—Sufficiency of evidence to justify proceedings under s. 531 of the Criminal Procedure Code (Act X of 1872) considered. DEO SARUN SINGH *v.* TULSI KANT . . . . . 12 C. L. R., 221

133. ——— *Criminal Procedure Code, 1872, s. 531—Ijmali property.*—Where an Assistant Magistrate, acting under Act X of 1872, s. 531, found one of the proprietors of an ijmali talukh in actual possession of a 12-anna share which was all that he claimed, and it was in evidence that the rents had till the commencement of the dispute been collected in distinct and separate shares, he was held to have committed an error in law in attaching the whole estate as involved in the dispute. The words "institution of proceedings" in s. 531 mean the commencement of the action which results in the application to the Magistrate's Court; and the possession to be determined is possession at the time the dispute arose, *i.e.*, at the time the police reported that a breach of the peace was likely to take place. RAKHAL DASS SINGH *v.* SHEO PERSHAD SINGH [24 W. R., Cr., 73

134. **Second attachment, Power to issue**—*Criminal Procedure Code, 1872, s. 531—Attachment of land in dispute and release—Re-attachment.*—Where a Magistrate, being in doubt as to which of two persons was rightful owner of some disputed property, attached it in order to prevent a breach of the peace, and released it on their coming to an agreement, but subsequently re-attached it on the appearance of a third claimant, from whose attempt to obtain possession a breach of the peace was apprehended,—*Held* that the Magistrate was only competent to order a fresh attachment after taking the preliminary steps under s. 530, if, on completion of the inquiry, he found himself in the position described in s. 531; and that, if there was any new dispute, he ought to have proceeded *de novo*; but that the best course to pursue would be to exert his powers under Ch. XXXVII. QUEEN *v.* KALY KISHORE ROY . . 25 W. R., Cr., 68

135. ——— **Dispute between rival raiyats**—*Attachment of estate—Criminal Procedure Code, 1861, s. 319*—Where there was a dispute

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

8 ATTACHMENT OF PROPERTY—*continued*

as to the actual possession of land, not between two co-proprietors but between rival raiyats,—*Held* that, instead of attaching the whole estate under s 319 of the Code of Criminal Procedure 1861, the Magistrate ought to have settled the dispute as between the raiyats RAMDYAL *v* CHINTA MOONEE

[W R., 1864, Cr., 28

136 ———— Dispute as to boundaries—*Contiguous estates* —When the dispute is as to a common boundary between two contiguous estates the Magistrate instead of attaching the boundary land, should find for one party or the other, with reference to the point of possession HARVEY *v* BRICE

[4 W. R., Cr., 26

AMRITHNATH JHA *v* AHMED REZA

[6 W. R., Cr., 61

137 ———————— *Dispute in respect of colliery—Order under s 144—Prohibition to both parties from exercising right of possession —Proceedings under s 145 of the Code of Criminal Procedure—Date of possession—Code of Criminal Procedure (Act V of 1898), ss 144, 145, 146* —On the 10th of November 1899 the Magistrate passed an *ex parte* order under s 144 of the Code of Criminal Procedure by which both parties to a dispute were prohibited from exercising any right of possession in respect of a colliery Subsequently proceedings under s 145 of the Code were instituted in respect of the same colliery and between the same parties On the 29th of January 1900 the Magistrate, having found that the second party had been in possession on the 10th of November 1899 passed an order declaring them to be in possession *Held* [illegible] evidence could be offered to show the possession of either party from that date up to the 29th of December he was consequently obliged to ascertain the possession immediately before this order and to regard his intervention as an attachment suspending the previous possession, whatever it might be but that, at the same time, the former possession continued, and although the lawful exercise of its rights had been forbidden for a time, the possession had never ceased to exist. That the order of the Magistrate was correct JOYANTI KUMAR MOOKERJEE *v* MIDDLETON

I. L. R., 27 Calc., 785
[4 C. W. N., 662

138 —— Power to deal with land under attachment—*Power to lease—Criminal Procedure Code 1861, s 319* —A Magistrate may lease land attached under s 319 of the Criminal Procedure Code 1861 IN THE MATTER OF GREESH CHUNDER DOSS

17 W. R., Cr., 38

139 Withdrawal of order for attachment *Criminal Procedure Code 1872 s 531* —A Deputy Magistrate after notice issued under the Code of Criminal Procedure, s. 530, to two parties finding himself unable to determine who was in possession attached the property in dispute. Upon this a third party represented that he as landlord had taken possession of the land on the death of the person to whom it had been leased But the Deputy Magistrate refused to remove the attachment, holding that the landlord's possession was without colour of law *Held* that the duty of the Deputy Magistrate, under the circumstances was to withdraw his order IN THE MATTER OF THE PETITION OF JOY KISSEN MOOKERJEE IN THE MATTER OF THE PETITION OF PEARY MOHUN MOOKERJEE

[24 W. R., Cr., 40

140 ——— Rights determinable by Revenue Court—*Criminal Procedure Code s 146* —S 146 of the Code of Criminal Procedure does not give jurisdiction to pass an order of attachment in a dispute between parties whose rights regarding such dispute would have to be determined by a Revenue Court GANGA PRASAD *v* NARAIN

[I. L. R., 15 All., 394

9 TRANSFER OR WITHDRAWAL OF PROCEEDINGS

141. — Power of a District or Subdivisional Magistrate to transfer or withdraw cases—*Criminal Procedure Code (1882), s 145 and ss 192 and 528* —A proceeding under Ch XII of the Criminal Procedure Code is an "inquiry" within the meaning of s 4 of the Code The general power conferred by ss 192 and 528 of the [illegible] s 192 are wide enough to include cases under Ch. XII SATISH CHANDRA PANDAY *v* RAJENDRA NARAIN BAGCHI

I. L. R., 22 Calc., 898

10 STRIKING OFF PROCEEDINGS

142. Striking off proceedings under s 145, Code of Criminal Procedure, Effect of—*New proceeding* —Proceedings under s. 145 of the Code of Criminal Procedure cannot be renewed after the dispute has been settled and an order has been made that the case be struck off. [illegible]

11 DISPUTES AS TO RIGHT OF WAY, WATER, ETC.

143. ———— Jurisdiction of Magistrate —*Criminal Procedure Code 1861, s 320 and s 62*—S 320 of the Criminal Procedure Code gives special jurisdiction to Magistrates with full powers; and in the cases provided for by it, the general power

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

7. NATURE AND EFFECT OF DECISION —*concluded.*

period, his claim in opposition to that award was not maintainable. GOPAL NATH *v.* ABDOOL GHANEE [1 Agra, 120

127. ———— *Suit for declaration of title.*—A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land obtained, pending his suit, an order from the Magistrate under s. 318 of the Criminal Procedure Code, 1861, that he should be maintained in possession until ousted by due course of law. The suit was dismissed, the plaintiff failing to prove his title; and the defendants then applied to the High Court under s. 404 of the Criminal Procedure Code to set aside the Magistrate's order and put them in possession. *Held* that their proper course was by a suit in the Civil Court for possession, and the application under the Criminal Procedure Code was rejected. JUGGESH PRAKASH GANGULI *v.* NILKAMAL MOOKERJEE . 3 B. L. R., A. C., 57

S. C. IN RE JOGESH PROKASH GANGOOLEE [11 W. R., Cr., 43

128. ———— *Obstructing road—Suit for exclusive possession.*—The Magistrate had, on the complaint of the defendant, passed an order under s. 320 of the Criminal Procedure Code, 1861, forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession The plaintiff accordingly brought his suit in the Munsif's Court to recover possession of the land The Munsif gave him a decree for exclusive possession of the land. On appeal, the Judge held that the Munsif had no jurisdiction to try the question whether the public had a right of way over the land. The Judge's decision was reversed on special appeal, and the case remanded to the Judge to try the issue whether the plaintiff was entitled to the exclusive use of the land. MAHES CHANDRA MOOKERJEE *v.* RAMUTAM PALIT 5 B. L. R., Ap., 68

S. C. MOHESH CHUNDER MOOKERJEE *v.* RAMOOTTUM PALIT . . . . 14 W. R., 163

8. ATTACHMENT OF PROPERTY.

129. ———— **Preliminaries to order for attachment**—*Criminal Procedure Code, 1872, s. 531.*—It is only when, after recording a proceeding made under s. 530, Code of Criminal Procedure, and taking evidence, a Magistrate decides that neither party is in possession, or is unable to satisfy himself as to which party is in possession, that he can, under s. 531, attach land in dispute. He is not competent summarily to order attachment without such preliminary proceedings. IN THE MATTER OF RAM SOONDAREE DABEE . . . 1 C. L. R., 86

130. ———— *Criminal Procedure Code, 1872, s. 53—Proceedings before attachment.*—The doubt upon which a Magistrate can act under s. 531, Code of Criminal Procedure, must arise from his inability to decide on evidence offered by the contending parties as to their possession, and not on a doubt entertained without such inquiry. IN THE MATTER OF LEILANUND SINGH [1 C. L. R., 273

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

8. ATTACHMENT OF PROPERTY—*continued.*

131. ———— **Power to attach land**—*Criminal Procedure Code, 1861, s. 318—Zamindari in possession by raiyats.*—The power of attaching land regarding which there is a dispute, conferred on a Magistrate by s. 318 of the Code of Criminal Procedure, extends to disputes as to possession of land of which rival zamindars are in possession by their raiyats. IN THE MATTER OF MASSEYK [15 W. R., Cr., 1

132. ———— **Ground for order of attachment**—*Criminal Procedure Code, 1872. s. 531.*—Sufficiency of evidence to justify proceedings under s. 531 of the Criminal Procedure Code (Act X of 1872) considered. DEO SARUN SINGH *v.* TULSI KANT . . . . . 12 C. L. R., 221

133. ———— *Criminal Procedure Code, 1872, s. 531—Ijmali property.*—Where an Assistant Magistrate, acting under Act X of 1872, s. 531, found one of the proprietors of an ijmali talukh in actual possession of a 12-anna share which was all that he claimed, and it was in evidence that the rents had till the commencement of the dispute been collected in distinct and separate shares, he was held to have committed an error in law in attaching the whole estate as involved in the dispute. The words "institution of proceedings" in s. 531 mean the commencement of the action which results in the application to the Magistrate's Court; and the possession to be determined is possession at the time the dispute arose, *i.e.*, at the time the police reported that a breach of the peace was likely to take place. RAKHAL DASS SINGH *v.* SHEO PERSHAD SINGH [24 W. R., Cr., 73

134. **Second attachment, Power to issue**—*Criminal Procedure Code, 1872, s. 531—Attachment of land in dispute and release—Re-attachment.*—Where a Magistrate, being in doubt as to which of two persons was rightful owner of some disputed property, attached it in order to prevent a breach of the peace, and released it on their coming to an agreement, but subsequently re-attached it on the appearance of a third claimant, from whose attempt to obtain possession a breach of the peace was apprehended,—*Held* that the Magistrate was only competent to order a fresh attachment after taking the preliminary steps under s. 530, if, on completion of the inquiry, he found himself in the position described in s. 531; and that, if there was any new dispute, he ought to have proceeded *de novo*; but that the best course to pursue would be to exert his powers under Ch. XXXVII. QUEEN *v.* KALY KISHORE ROY . . 25 W. R., Cr., 68

135. ———— **Dispute between rival raiyats**—*Attachment of estate—Criminal Procedure Code, 1861, s. 319*—Where there was a dispute

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued*

8 ATTACHMENT OF PROPERTY—*continued*

as to the actual possession of land, not between two co proprietors but between rival raiyats —*Held* that, instead of attaching the whole estate under s 319 of

136. ———— Dispute as to boundaries—*Contiguous estates* —When the dispute is as to a common boundary between two contiguous estates, the Magistrate, instead of attaching the boundary land, should find for one party or the other, with reference to the point of possession HARVEY *v* BRICE
[4 W. R., Cr, 26

AMRITHNATH JHA *v* AHMED REZA
[6 W. R., Cr, 61

137. ———————— *Dispute in respect of colliery—Order under s 144—Prohibition to both parties from exercising right of possession —Proceedings under s. 145 of the Code of Criminal Procedure—Date of possession—Code of Criminal Procedure (Act V of 1898), ss 144, 145,*

proceedings under s 145 of the Code were instituted in respect of the same colliery and between the same parties On the 29th of January 1900, the Magistrate, having found that the second party had been in possession on the 10th of November 1899, passed an order declaring them to be in possession *Held*

either party from that date up to the 29th of December, he was consequently obliged to ascertain the possession immediately before this order and to regard his intervention as an attachment suspending the previous possession, whatever it might be, but that, at the same time, the former possession conti

[4 C W. N, 563

138 —— Power to deal with land under attachment—*Power to lease*—*Criminal Procedure Code, 1861, s 319* —A Magistrate may lease land attached under s 319 of the Criminal Procedure Code 1861 IN THE MATTER OF GREESH CHUNDER DOSS . 17 W. R., Cr., 38

139 Withdrawal of order for attachment - *Criminal Procedure Code, 1872, s 531* — A Deputy Magistrate, after notice issued under the Code of Criminal Procedure, s. 530 to two parties, finding himself unable to determine who was in possession, attached the property in dispute. Upon this, a third party represented that he, as landlord, had taken possession of the land on the death of the person to whom it had been leased. But the Deputy Magistrate refused to remove the attachment, holding that the landlord's possession was without colour of law *Held* that the duty of the Deputy Magistrate, under the circumstances was to withdraw his order IN THE MATTER OF THE PETITION OF JOY KISSEN MOOKERJEE. IN THE MATTER OF THE PETITION OF PEARY MOHUN MOOKERJEE
[24 W. R., Cr, 40

8 ATTACHMENT OF PROPERTY—*concluded.*

140 ———— Rights determinable by Revenue Court—*Criminal Procedure Code, s 146* —S 146 of the Code of Criminal Procedure does not give jurisdiction to pass an order of attachment in a dispute between parties whose rights regarding such dispute would have to be determined by a Revenue Court GANGA PRASAD *v* NARAIN
[I. L. R, 15 All., 394

9 TRANSFER OR WITHDRAWAL OF PROCEEDINGS.

141. —— Power of a District or Subdivisional Magistrate to transfer or withdraw cases—*Criminal Procedure Code (1882), s 145, and ss 192 and 528*—A proceeding under Ch. XII of the Criminal Procedure Code is an inquiry" within the meaning of s 4 of the Code The general power conferred by ss. 192 and 528 of the Code upon a District or Sub-divisional Magistrate to transfer or withdraw any case for inquiry or trial by any Magistrate subordinate to him is not taken away or cut down by anything in s 145 The words of s 192 are wide enough to include cases under Ch XII SATISH CHANDRA PANDAY *v* RAJENDRA NARAIN BAGCHI . I. L. R, 22 Calc, 898

10 STRIKING OFF PROCEEDINGS.

142. Striking off proceedings under s. 145, Code of Criminal Procedure, Effect of—*New proceeding* —Proceedings under s. 145 of the Code of Criminal Procedure cannot be renewed after the dispute has been settled and the order has been made that the case be struck off, and

...minal Procedure ...ly to cause a breach

11. DISPUTES AS TO RIGHT TO WATER, ETC.

...cerning the right to ... in a mosque, the ...e powers conferred by

143. ———— Juri... —*Criminal Procedure* ...minal Procedure. MUHAM- *s 62*—S 320 of the C... ...SIT CHEK MUSALIAR special jurisdiction to... [I. L. R., 11 Mad., 323 and in the cas... ...CHAND GOVIND
[I. L. R., 24 Bom 527

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

11. DISPUTES AS TO RIGHT OF WAY, WATER, ETC.—*continued.*

158. ———— **Dispute about the right of performing worship and other religious rites in temples**—*Jurisdiction of Magistrates to interfere in cases where Civil Courts cannot grant relief—Procedure to be adopted where breach of the peace is apprehended—Right of suit.*—A Magistrate, first class, made an order under s. 147 of the Criminal Procedure Code (Act X of 1882), forbidding certain persons from taking part in the worship and other religious ceremonies connected with certain temples. As to the right to perform these ceremonies, the High Court had previously held that Civil Courts could not determine trivial questions of mere dignity or privilege. *Held* that, the matters in dispute not being adjudicable by a Civil Court, s. 147 did not give the Magistrate jurisdiction to forbid the persons named in the order from taking part in the ceremonies in question. *Held* also that the order was bad in form, as it contained no restriction of the time during which it was to operate. *Held* further that, in cases where a Magistrate apprehends a breach of the peace, his proper course is to act under the provisions of Ch. VIII of the Criminal Procedure Code (Act X of 1882). IN RE ATMARAM NARAYAN PARAB

[I. L. R., 14 Bom., 25

159. ———— **Dispute concerning the use of land or water**—*Code of Criminal Procedure (Act V of 1898), ss. 145, 147—Right to build upon land, whether a use of land—Proceeding under s. 147, whether legal—Summary disposal of case upon written statements, without taking any evidence, whether proper.*—In a matter under s. 147 as under s. 145 of the Code of Criminal Procedure, a Magistrate is bound to hear the evidence tendered by the parties, and he cannot summarily deal with it after inspection of the locality. The right of use of land contemplated by s. 147 is one of an entirely different description resembling a right of easement, not one arising from the terms of a contract between landlord and tenant. A dispute between the landlord and tenant regarding the right of the latter to erect or re-erect a gola which has fallen down is not a matter properly coming within s. 147 of the Code. The settlement of such a dispute, involving issues of right, can be properly determined by a Civil Court. EMPRESS *v.* GANPAT KALWAR 4 C. W. N., 779

160. ———— **Right of fishing**—*Criminal Procedure Code (1882), s. 147—Easements—Profits à prendre—Parties to the inquiry.*—The words "right to do anything in or upon tangible immoveable property" in s. 147 of the Criminal Procedure Code include the right of fishing. The term "easements" includes profits *à prendre*; it has not been used by the Legislature of this country in the restricted sense in which it is used in English law so as to exclude profits *à prendre*. For the purposes of an inquiry contemplated under s. 147 of the Criminal Procedure Code, it is sufficient if the persons who claim for themselves the right, though that right is derived from others, are made parties. The proprietors are not necessary parties. *Ram Chandra Das* v. *Monohur Roy, I. L. R., 21 Calc., 29,* and *Bathoo Lal* v. *Domi Lal, I. L. R., 21 Calc., 727,* distinguished. DUKHI MULLAH *v.* HALWAY

[I. L. R., 23 Calc., 55

161. ———— *Criminal Procedure Code (1882), s. 147—Dispute concerning right of fishery—Grounds for Magistrate taking proceedings under s. 147—Procedure.*—The words "right to do anything in or upon tangible immoveable property" in s. 147 of the Criminal Procedure Code include julkur right. A Magistrate is competent to take action under that section in the case of a dispute concerning the exercise of a julkur right. *Dukhi Mulluh* v. *Halway, I. L. R., 23 Calc., 55,* followed. If the materials upon which the proceedings are based do not disclose the fact that there is an imminent danger of a breach of the peace, then the Magistrate has no jurisdiction to take action under s. 147 of the Criminal Procedure Code. Any evidence that he may take in the course of the trial cannot give him a jurisdiction which he does not otherwise possess. *Queen-Empress* v. *Govind Chandra Das, I. L. R., 20 Calc., 520.* The proper course to be adopted by the Magistrate, when a dispute concerning easements, etc., arises, is to bind down, under s. 107 of the Code, such of the persons as are likely to disturb the peace. *Bathoo Lal* v. *Domi Lal, I. L. R., 21 Calc., 727,* followed. KALI KISSEN TAGORE *v.* ANUND CHUNDER ROY

[I. L. R., 23 Calc., 557

162. ———— **Dispute as to right to use water**—*Criminal Procedure Code, 1872, s. 532—Right to use of water.*—A Deputy Magistrate was held to have been authorized by Act X of 1872, s. 532, in inquiring into the matter of a dispute between two parties concerning the use of the water of a certain pyne, and, when he found that the water was open under certain restrictions to the use of one of the parties, he was justified in restraining the other from a course of action which had the effect of keeping that water exclusively in his own possession, provided the right of use had been exercised within three months if capable of being exercised throughout the year; or during the last season, if it existed at particular seasons. CHOWDHREE ZUHOORUL HUQ *v.* KURUM CHAND SINGH . . . 24 W. R., Cr., 15

163. ———— **Right to restrain exercise of easement**—*Burden of proof—Criminal Procedure Code (1882), s. 147.*—The right to restrain another from exercising ordinary proprietary rights over his own land is of the nature of an easement different from the ordinary rights of owners of land; the burden of proof would therefore lie upon the party alleging such rights. HARI MOHUN THAKUR *v.* KISSEN SUNDARI . . I. L. R., 11 Calc., 52

12. LOCAL INQUIRY.

164. ———— **Nature and object of inquiry**—*Criminal Procedure Code, 1872, ss. 530*

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

12 LOCAL INQUIRY—*concluded.*

533.—In a proceeding under s 530 of the Code of Criminal Procedure, the Magistrate must decide the fact of possession on evidence taken by himself, and not according to the result of a local inquiry made under s. 533, unless the parties have [illegible]

the property about which the dispute has arisen, and should not be directed to any matter which can be proved before the Magistrate by oral evidence IN THE MATTER OF BAIKUNT KUMAR

[3 C. L. R., 134

165. ———— Person to make local inquiry—*Criminal Procedure Code, 1872, s. 533* —The duty of making an inquiry under s 533 of the Criminal Procedure Code should be deputed to a Magistrate, not a canungoe. IN THE MATTER OF UMA CHURN SANTRA *v* BENI MADHUB ROY

[7 C. L. R., 352

166. ———— Effect of inquiry as evidence—*Right to rebut evidence—Criminal Procedure Code, 1872, s 533* —When a local inquiry under s. 533 of the Criminal Procedure Code is instituted it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with the results of it, and to have an opportunity of rebutting the deputed Magistrate's report if he thinks necessary so to do. DHUNOO *v* BROWN

[21 W. R., Cr , 25

167. — Discretion of Magistrate as to local inquiry—*Criminal Procedure Code, 1872, s 533—Security to keep peace* —The holding of an inquiry under Ch. XL of the Code of Criminal Procedure is a matter entirely within the discretion of the Magistrate of the district or of a division of a district, and the High Court has no authority to require him to proceed under that chapter. The taking of security for keeping the peace is also a matter within the discretion of the Magistrate, provided that he has materials upon which to proceed. IN THE MATTER OF THE PETITION OF KALI PROSUNNO ROY . 23 W. R., Cr., 58

13 DISPOSSESSION BY CRIMINAL FORCE.

168. Order as to person dispossessed from immoveable property by criminal force *Criminal Procedure Code, 1872, s 534* —An order under s. 534 Criminal Procedure Code, must be founded on a finding that the person in whose favour it was made was dispossessed of specific immoveable property by the use of criminal force, which formed a material ingredient in the matter of a criminal conviction, and it must in terms restore such person to the property from which he had been dispossessed. LUCHMI DASS *v*. PALLAT LALL . . . 23 W. R., Cr., 54

169. Restoration of possession of immoveable property—*Criminal Procedure Code (Act X of 1882), s 522* —The words "an offence attended by criminal force" in s. 522 of the Criminal Procedure Code (Act X of 1882) mean [illegible]

a conviction, and where there is no finding that any person has been dispossessed of any immoveable property by criminal force *Luchmi Dass* v *Pallat Lall, 23 W R , Cr , 54*, and *Soshi Bhusan Dutt* v *Pyari Kishore Biswas, 1 C W N , 256*, followed. RAM CHANDRA BORAL *v* JITTANDRIA

[I. L. R., 25 Calc., 434
2 C. W. N., 305

170 ———————— *Criminal Procedure Code (Act X of 1882), ss 522, 523, 524—Order to restore possession of immoveable property.* —An order made under s 522 of the Criminal Procedure Code (Act X of 1882), restoring possession of immoveable property to a person who has been dispossessed of it by criminal force, is an independent order and may be made subsequently to the date of the conviction of the offender It need not be made at the same time as the conviction The case [illegible]

if they are, the order is not thereby necessarily invalid. Cl 2 of the section gives them a remedy by civil suit. On 27th September 1897 complainant charged one *R* with criminal trespass under s 447 of the Penal Code (Act XLV of 1860) He alleged that in the previous July *R* had entered into possession of the land and sowed rice upon it, and that, when in the month of September 1897 he (the complainant) went to the field, *R* had turned him out by force and refused to vacate the land. On the 17th November 1897 the case was heard by the Third Class Magistrate who convicted *R* of the offence charged. On the following day (18th November 1897) the complainant applied to the Magistrate under s. 522 of the Code of Criminal Procedure (Act X of 1882) to be restored to possession of the land and of the standing crops. The Magistrate ordered possession of the land to be restored to the complainant, but attached the crops under Ch XLIII of the Criminal Procedure Code Thereupon one *P* intervened, and claimed the crops as having been sown by himself His claim was disallowed, and the crops were ordered to be sold and the proceeds credited to Government under ss. 523 and 524 of the Code *Held* that the order made by the Magistrate under s 522 restoring possession of the land to the complainant was bad because it did not appear that the offence of which the accused was convicted was attended with criminal force, and that the dispossession was due to the use of such force. The illegal entry

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

13. DISPOSSESSION BY CRIMINAL FORCE —*concluded.*

complained of had taken place in July 1897. The accused then took possession, and in September, being then still in possession, forcibly resisted the complainant when he attempted to enter upon the land. The complainant, however, did not charge the accused with this assault, but with the trespass which had taken place in July. It is only when the actual use of criminal force leads to dispossession that an order under s. 522 can be made. *Held* also that the order passed under ss. 523 and 524 with reference to the crops were illegal. The crops were not property in respect of which the offence was committed, nor were they used in the commission of the offence. They were not such property as is referred to in s. 517, 523, or 524 of the Criminal Procedure Code. *Held* also that the Third Class Magistrate as such had no authority to make an order under s. 524. NARAYAN GOVIND *v.* VISAJI

[I. L. R., 23 Bom., 494

171. ———— *Criminal Procedure Code (Act V of 1898), s. 522—Restoration of possession of property—Use of criminal force—Penal Code (Act XLV of 1860), s. 350.*—In order to support an order under s. 522 of the Criminal Procedure Code (Act V of 1898), there must be a finding that the dispossession was by the use of criminal force as defined in s. 350 of the Penal Code. *Ram Chandra Boral* v. *Jityandria, I. L. R., 25 Calc., 434,* approved of. ISHAN CHANDRA KALLA *v.* DINA NATH BADHAK . . I. L. R., 27 Calc., 174

[4 C. W. N., 307

172. ———— *Code of Criminal Procedure (Act V of 1898), s. 522—Order for restoration of possession of immoveable property to complainant—Order passed not simultaneously with the order of conviction, but subsequent thereto.*—An order under s. 522 of the Code of Criminal Procedure, restoring possession of immoveable property to a complainant, can only be made simultaneously with the order of conviction, and not subsequent thereto. *Ram Chandra Boral* v. *Jityandria, I. L. R., 25 Calc., 434: 2 C. W. N., 305,* referred to. MOHAN THETA *v.* RAICHAND BASNI

[4 C. W. N., 308

14. COSTS.

173. ———— Order for costs—*Criminal Procedure Code, s. 148—Assessment of such costs by successor in office—Magistrate, Power of.*—When a Magistrate passed an order for costs under s. 148, Criminal Procedure Code, but did not state what the amount was to be,—*Held* that his successor in office had no jurisdiction to pass an order assessing such costs. BHOJAL SONAR *v.* NIRBAN SINGH

[I. L. R., 21 Calc., 609

174. ———— *Criminal Procedure Code (1882), s. 148—Assessment of costs by Magistrate other than the Magistrate passing the decision and making the order for costs—Application within reasonable time.*—Where a decision has been given in a case under s. 145 of the Criminal Procedure Code, and an order for costs has been made at the same time and by the same Magistrate, there is no objection to the amount of such costs being afterwards assessed by a different Magistrate if an application for that purpose is made to him within a reasonable time. *Bhojal Sonar* v. *Nirban Singh, I. L. R., 21 Calc., 609,* distinguished. GIRIDHAR CHATTERJEE *v.* EBADULLAH NASKAR

[I. L. R., 22 Calc., 384

175. ———— *Criminal Procedure Code (1882), s. 148—"Magistrate passing a decision," Meaning of—Magistrate, Power of—Civil Procedure Code (1882), s. 218—Criminal Procedure Code (1882), s. 439—Revision.*—The award of costs under s. 148 of the Code of Criminal Procedure is a quasi-civil proceeding, and should be made by the Magistrate at the time of passing his decision under s. 145, in the same manner as under s. 218 of the Code of Civil Procedure the order for costs of any application should be made when the application is disposed of. Where, however, the decision under s. 145 was passed on the 19th December 1893, and the application for costs was made on the 21st December, but owing to delay arising from the action of the objectors the order for costs was not made until the 16th June 1894, but then by the same Magistrate who passed the order under s. 145,—*Held* that the order was not void for want of jurisdiction, and there being no suggestion that it was unjust or improper on the merits, the Court declined to interfere with it in the exercise of their discretionary power of revision under s. 439. BINODA SUNDARI CHOWDHURANI *v.* KALI KRISTO PAL CHOWDHURY . . I. L. R., 22 Calc., 387

176. ———— *Criminal Procedure Code (1882), s. 148—Assessment of costs by Magistrate other than the Magistrate passing the decision and making the order for costs.*—When an order to pay costs under s. 148 of the Criminal Procedure Code (Act X of 1882) has been made by the Magistrate who decided the case, another Magistrate has jurisdiction to assess the amount of costs. *Giridhar Chatterjee* v. *Ebadulluh Naskar I. L. R., 22 Calc., 384,* followed. *Bhojal Sonar* v. *Nirban Singh, I. L. R., 21 Calc., 609,* referred to. MAHOMED ERSHAD ALI KHAN CHOUDHRY *v.* SARODA PROSAD SHAHA . . I. L. R., 23 Calc., 37

177. ———— *Criminal Procedure Code (1882), s. 148—Order for, and assessment of, costs—Power of Magistrate—Delay—Notice to parties.*—An order for, and the assessment of, costs under s. 148 of the Criminal Procedure Code should be made at the time of passing the decision under s. 145 of the Code in the presence of the parties. Such costs should not be ordered and assessed by the Magistrate after a long interval, and without allowing all the parties affected an opportunity to appear and show cause. QUEEN-EMPRESS *v.* TOMIJUDDI . . . I. L. R., 24 Calc., 757

POST OFFICE ACT (XVII OF 1854)

——— s. 49—*Liability of Government for* [illegible]

——— s. 50.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACT [3 Bom., Cr., 8

——— *Conviction for fraudulently secreting letter—Subsequent charge of fraudulently making away with letter.*—Where a prisoner was convicted and sentenced, under s. 50 of Act XVII of 1854, upon the charge of fraudulently secreting a post letter and on appeal such conviction and sentence were confirmed,—*Held* that he could not subsequently be convicted under the same section of having fraudulently made away with the same letter upon the same occasion, both acts being connected and substantially a part of one criminal transaction. QUEEN v. DALAPATI RAU . . 1 Mad., 83

POST OFFICE ACT (XIV OF 1866).

See ABETMENT . 7 W. R., Cr., 54

See CARRIERS . . 3 N. W., 105

——— s. 5.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—LETTERS IN POST OFFICE [I. L. R., 13 Mad., 242

——— ss. 47, 48.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—POST OFFICE ACT. [3 Bom., Cr., 8 5 Bom., Cr., 38

——— *Opening newspaper and replacing it in envelope—Offence.*—*Per* KEMP, J. (GLOVER, J., doubting), that the opening of a newspaper by a person employed in the Post Office and replacing it [illegible] There must be a fraudulent intention in the act of the accused before he can be convicted under s. 48. QUEEN v. PANNA LAL MOOKERJEE [10 W. R., Cr., 4

——— s. 48—*Secreting and fraudulently appropriating letters—Theft—Dishonest misappropriation—Penal Code (Act XLV of 1860), ss. 378, 403.*—The accused, being in the employ of Government in the Post Office Department while assisting in the sorting of letters, secreted two letters with the intention of handing them to the delivery peon, and sharing with him certain moneys payable upon them. He was charged under the Indian Post Office Act, s. 48. *Held* (1) that since the intention of the accused was not to prevent the delivery of the letters

POST OFFICE ACT (XIV OF 1866)—*concluded.*

to the addressees, he was not guilty of the offence of secreting them within the meaning of that section; [illegible] Code. QUEEN EMPRESS v. VENCATASAMI [I. L. R., 14 Mad., 229

POSTPONE-PETITION.

See CIVIL PROCEDURE CODE, 1882 ss. 257, 258 (1859, s. 206) [I. L. R., 1 Mad., 387

POTTAH.

See CASES UNDER JURISDICTION OF CIVIL COURT—POTTAHS

——— Construction of—

See CASES UNDER ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT—CONSTRUCTION OF DOCUMENTS AS TO LIABILITY TO ENHANCEMENT

See CASES UNDER LEASE—CONSTRUCTION

——— Tender and acceptance of—

See JURISDICTION OF CIVIL COURT—POTTAHS I. L. R., 17 Mad., 1 [I. L. R., 18 Mad., 434

See CASES UNDER KABULIAT—REQUISITE PRELIMINARIES TO SUIT.

See CASES UNDER MADRAS RENT RECOVERY ACT VIII OF 1865

——— Grant of pottah by Collector—*Conditional grant—Effect of reversal of grant—Appeal to Board of Revenue.*—The grant of a pottah by a Collector is conditional on the result of an appeal against such grant to the Board of Revenue. TIRUMALASWAMI AYYANGAR v. TIRUMALAI GOUNDAN [I. L. R., 10 Mad., 334

POUNDAGE.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES [I. L. R., 20 Mad., 158

——— Right to—

See SHERIFF 4 Bom., O. C., 139 [8 Bom., O. C., 22 I. L. R., 2 Calc., 385, 397 note

POUNDAGE-FEE.

——— Application to receive—

See LIMITATION ACT, ART. 179—STEP IN AID OF EXECUTION. [I. L. R., 22 Calc., 627 I. L. R., 23 Calc., 198

POWER-OF-ATTORNEY—*continued.*

whether *B* had authority to enter into that transaction. *Per* GARTH, *C.J.*—That although, on the authority of *The Bank of Bengal* v. *Fagan*, *5 Moore's I. A.*, 27, a power to negotiate Government securities would authorize the negotiation of Government securities by way of pledge, yet *W* was entitled to a decree, on the ground that *A* and *B* had no power, under the power-of-attorney, to brrrow money in the name of *W*; and that therefore the defendant was not entitled to retain the security given for the advance (*viz.*, the Government promissory note). WATSON *v.* JONMENJOY COONDOO . I. L. R., 8 Calc., 934

On appeal to the Privy Council,—*Held* that, with regard to the general objects of the power, *B* had under it no authority to pledge, and that the lender of the money acquired no title to the note as against *W*. The power-of-attorney was not in the same form as that in the *Bank of Bengal* v. *Macleod*, *5 Moore's I. A.*, 1, and *Bank of Bengal* v. *Fagan*, *5 Moore's I. A.*, 27, not containing, in express words, power to indorse. Had it done so, the question would have been whether there was anything to prevent it from being a power, in the discretion of the donee of it, to indorse the note, and convert it into one payable to bearer, whenever he thought fit to do so, for any purpose. It was not laid down in the judgment in those cases that the words used in a power-of-attorney, to express its objects, are always to be construed disjunctively, though they may be so construed; and there is no reason why a rule of construction, intended to aid in arriving at the meaning of the parties, should not be applied in construing a power-of-attorney as much as any other document. JONMENJOY COONDOO *v.* WATSON

[I. L. R., 10 Calc., 901

13. ——————— *Principal and agent—Bank manager acting as private agent—Transaction for benefit of Bank.*—*A*, being in uncontrolled management of the National Bank in Calcutta and purporting to act under a power-of-attorney intended to be given to him in his private capacity, but addressed to him as "acting manager of the National Bank" by *B*, a constituent of the Bank, without drawing any cheque on *B*'s account and simply by means of transferring in the books of the Bank R15,000 from *B*'s deposit account with the Bank to the account of one *C* who was indebted to the National Bank, purported to make an advance of R15,000 from *B* to *C*, whereas, in fact, the real trasaction amounted only to transferring the liability of *C* to that extent from the Bank to *B*. *Held* that, so far as this transaction was concerned, *A* could not divest himself of his character of Bank manager, and that, acting as the agent of both parties, he acted to the prejudice of *B* and to the advantage of the Bank, and that there was, in fact, a breach of his duty to *B* to which the Bank was a party. *Held* also that *A* was not able under the power-of-attorney to bind *B* by consenting to any dealings by the Bank or *C* with goods in the Bank's godowns which would prejudice *B*. BEER *v.* NATIONAL BANK OF INDIA

[19 W. R., 67

14. ——————— *Stamp—Operation of power confined to British India—Stamp Act*

POWER-OF-ATTORNEY—*concluded.*

(I of 1879), s. 5.—It is not necessary for the Courts in India to consider whether a power-of-attorney issued in England, but which is intended to operate in British India, complies with the fiscal requirements of the stamp laws in England. It is sufficient if such power-of-attorney is stamped according to the stamp laws of British India. *Bristow* v. *Sequeville*, *5 Ex.*, 275, and *James* v. *Catherwood*, *3 D. & R.*, 190, followed. *Clegg* v. *Levy*, *3 Camp.*, 166, not followed. *Semble*—If such a power-of-attorney was intended to operate in England, as well as in British India, it would not be invalid, so far as it was intended to operate in British India, because the requirements of the stamp laws in England had not been fulfilled. It would be sufficient if it complied with the requirements of the Indian law. IN THE GOODS OF MCADAM

[I. L. R., 23 Calc., 187

POWER OF SALE.

See MORTGAGE—CONSTRUCTION OF MORTGAGES . I. L. R., 16 Bom., 303
[I. L. R., 13 All., 28
I. L. R., 17 Bom., 425
I. L. R., 20 Bom., 296
I. L. R., 21 All., 4

See MORTGAGE—POWER OF SALE.

See STAMP ACT, 1879, SCH. I, ART. 44.
[I. L. R., 21 Calc., 241

PRACTICE.

PRACTICE—*continued*

PRACTICE—*continued*.

See Cases under Appeal to Privy Council—Practice and Procedure

See Cases under Privy Council, Practice of.

See Cases under Small Cause Court, Mofussil—Practice and Procedure

See Cases under Small Cause Court, Presidency Towns—Practice and Procedure

See Cases under the Heading in respect of which the Particular Practice is required

1. CIVIL CASES

[illegible]

ment in order to obtain further evidence; the Court granted an adjournment on the terms that the plaintiff should bear the whole costs of the hearing SHANKS *v.* SAVAGE . I. L. R., 7 Calc., 177

2. ——— Admiralty Court—*Consolidation of salvage claims—Civil Procedure Code (1882)—Rules and Regulations under Stat 2 & 3 Will. IV c 51—Procedure*—On an application by the impugnant for the consolidation of three separate salvage claims made by three different promovents for salvage services rendered by them.—*Held* (following the more recent English practice) that the claims should not be consolidated against the will of the promovents, but should be heard one after the other successively, subject, however, to one set only of costs being allowed to them in [illegible]

[illegible]

the Rules and Regulations made in pursuance of 2 and 3 Will. IV, c 51 nor any procedure for consolidation in the Civil Procedure Code), the practice of the Court of Admiralty in England ought to be *followed so far as such practice can be applied to this* country by analogy. IN THE MATTER OF THE BRITISH SAILING SHIP "FALLS OF ETTRICK" THE "CHUBAN" *v.* "FALLS OF ETTRICK"

[I. L. R., 22 Calc., 511

3. ——— *Application for consolidation of salvage claims—Application for*

POWER-OF-ATTORNEY—*continued.*

whether *B* had authority to enter into that transaction. *Per* GARTH, *C.J.*—That although, on the authority of *The Bank of Bengal* v. *Fagan*, *5 Moore's I. A.*, 27, a power to negotiate Government securities would authorize the negotiation of Government securities by way of pledge, yet *W* was entitled to a decree, on the ground that *A* and *B* had no power, under the power-of-attorney, to brrrow money in the name of *W*; and that therefore the defendant was not entitled to retain the security given for the advance (*viz.*, the Government promissory note). WATSON *v.* JONMENJOY COONDOO . I. L. R., 8 Calc., 934

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[I. L. R., 10 Calc., 901

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PRACTICE.

1 CIVIL CASES

to entitle him to a decree and asked for an adjournment in order to obtain further evidence the Court granted an adjournment on the terms that the plaintiff should bear the whole costs of the hearing SHANKS *v* SAVAGE I L R, 7 Calc, 177

2 ———— Admiralty Court—*Consolidation of salvage claims—Civil Procedure Code (1882)—Rules and Regulations under Stat 2 & 3 Will IV c 51—Procedure*—On an application by the impugnant for the consolidation of three separate salvage claims made by three different promovents for salvage services rendered by them—*Held* (following the more recent English practice) that the claims should not be consolidated against the will of the promovents but should be heard one after the other successively, subject however to one set only of costs being allowed to them in the event of the Court finding at the hearing that the application for consolidation was resisted without sufficient grounds In such a case (as there is no procedure for such an application prescribed by the Rules and Regulations made in pursuance of 2 and 3 Will IV c 51 nor any procedure for consolidation in the Civil Procedure Code) the practice of the Court of Admiralty in England ought to be

3 ———— — *Application for consolidation of salvage claims—Application for*

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

commission to take evidence before written statements are filed.—On an application by the impugnant for the consolidation of two separate salvage claims made by two different promovents for salvage services rendered by them and for the issue of a commission to examine the witness of the impugnment *de bene esse,*—*Held* that it is within the discretion of the High Court to consolidate the actions without regard to the consent of the parties, each of the promovents being allowed to appear separately through their own attorney and counsel. *Held* further that, though no written statements had yet been filed, the application for consolidation and for a commission to examine *de bene esse* was not *premature*. *In re the "Falls of Ettrick," I. L. R., 22 Calc., 511,* referred to. *The "Strathgarry," (1895) L. R., P. D., 264,* followed. IN THE MATTER OF THE "DRACHENFELS." RETRIEVER *v.* DRACHENFELS

[3 C. W. N., 67

4. ——— Affidavits—*Entitling affidavits*—In showing cause against a *rule nisi* for a *mandamus* in proceedings under the Calcutta Municipal Act to obtain compensation from the Justices, the affidavits should be simply entitled "In the High Court." The affidavits, though wrongly entitled, were admitted. JUSTICES OF THE PEACE FOR CALCUTTA *v.* ORIENTAL GAS COMPANY 8 B. L. R., 438: 17 W. R., 364

5. ——— *Affidavit on application to take documents out of Court.*—An affidavit in support of an application for taking documents out of the custody of the Court for the purposes of another suit should state in what way they are material to that suit. MOLLOW, MARCH & Co. *v.* PERTAB CHUNDER SINGH

[1 Ind Jur., N. S., 283

6. ——— *Affidavit on showing cause against motion or petition.*—An affidavit intended to be used to oppose or show cause against a motion or petition is filed in time, if filed, on or before the sitting of the Court, on the day that cause is in fact shown, although not filed before the sitting of the Court on the day for which notice was given. IN RE HURRUCK CHUND GOLICHA

[I. L. R., 5 Calc., 605: 6 C. L. R., 382

7. ——— *Affidavits on motion Affidavits filed after adjournment for convenience of counsel.*—The Court refused, without the consent of the other side, to allow an affidavit in support of a motion to be read, which had been filed after an adjournment granted for convenience of counsel. COURJON *v.* COURJON

[9 B. L. R., Ap., 10

NEERUNJUN MOOKERJEE *v.* OOPENDRO NARAIN DEB . . . . . 10 B. L. R., 57

8. ——— *Act XVIII of 1863—Verification of affidavit.*—When an individual, who is unable to read and write, presents himself to affirm solemnly or make oath to the truth of an affidavit, it will be sufficient, in order to meet the requirements of s. 9, Act XVIII of 1863, in obtaining his verification, to allow him to affix his "mark" in lieu of his "signature," and, in affirming or swearing him, to vary the usual words by saying "mark instead of signature," in lieu of "signature." ANONYMOUS . . . . 9 W. R., 357

9. ——— *Use of affidavits in motions—Rule to show cause.*—The practice is in motion to stay execution, and others, to put in a verified petition or affidavit, the costs of which is allowed in taxation; but where a rule to show cause had been obtained on the facts set out in the plaint, WHITE, *J.*, declined to refuse the hearing of the rule simply because no verified petition or affidavit had been filed. KRISTO MOHINEY DOSSEE *v.* KALLY PROSONNO GHOSE

[I. L. R., 6 Calc., 485; 8 C. L. R., 43

10. ——— *Non-production of affidavit—Withdrawal of suit.*—The plaintiff's attorney being under the misapprehension that one of the plaintiffs, who was a material witness, was in Bombay, when in fact he was in England, and an application to consent to a commission had been made to the defendant's attorney, and refused on the eve of the hearing, an application was made to the Judge in Chambers on the morning of the day fixed for the hearing, and supported by an affidavit, for the issuing of a commission and for an adjournment of the suit; and the Judge declining to make an order in Chambers, the application was renewed in Court, when the Judge refused to take notice of what occurred before himself in Chambers, and made note that the application for a commission was made upon no affidavit; and as the affidavit (presented in Chambers), having been sent to the office of the plaintiff's attorneys for a copy to be made and served upon the defendant, was not then in Court, the application for a commission and to adjourn the hearing was refused, and plaintiff's counsel not being instructed to proceed with the hearing, and leave to withdraw the suit having been also refused, the suit was dismissed. *Held* that the Judge was wrong in refusing to postpone the case for the production of the affidavit in Court, and that there was no legal ground whatever for the refusal to withdraw the suit, which was accordingly restored to its place in the list and remanded in order to be tried. DADABHAI NAOROJI & Co. *v.* SORABJI COWASJI

[3 Bom., O. C., 55

11. ——— *Application for decree on terms of agreement to compromise suit—Civil Procedure Code, 1882, s. 375.*—After the hearing of the suit had begun, the plaintiffs and defendants came to an agreement by which they settled all the matters in dispute between them in the suit. The agreement was in writing, and dealt in one clause with the dispute, the subject-matter of the suit, and in a second clause, with another dispute of long standing between the parties, with which the suit had nothing to do. The plaintiffs subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement, the defendants took out a *rule nisi*, calling on the plaintiffs to show cause why the agreement should not be recorded in Court and why the Court

PRACTICE—*continued*

1 CIVIL CASES—*continued*

should not pass a decree in accordance therewith under the provisions of s 375 of the Civil Procedure Code The rule was argued on affidavits on either side the plaintiffs objecting that in any case the matter could not be decided on affidavits but evidence must be gone into *Held* that in the circumstances of the case no definite procedure having been enjoined by the Code the matter might properly be decided on affidavits RUTTONSEY LALJI v POORIBAI

[I L R., 7 Bom , 304

12 ———— Appeal—*Appeal against a co plaintiff—Consent of parties*—By consent of parties the High Court allowed an appeal by one plaintiff against another plaintiff and adjudicated upon their rights BHAGIRTHIBAI v BAYA

[I L R , 5 Bom , 264

13 ———— *Appeal by one*

[illegible]

favour ... t The ... was heir ... of deceased and pass ... against A On second appeal to the High Court —*Held* that the Judge had no power under s 36" of the Code to admit on the record both rival claimants as legal representatives or adjudicate by his decree between their rival claims and that the Appellate Court ought not to have allowed one plaintiff to appeal against another or to have decided the rights of different plaintiffs *inter se* VITHU v BHIMA

[I L R , 15 Bom , 145

14 ———— *Appeal between co defendants—Right of appeal*—Where a Subordinate Judge dealt with a case at the hearing as raising not only a question between the plaintiff and defendants but also as between the defendants—*Held* that one of the defendants could appeal against the decree as between himself and the other defendants *Gudadhar Banerjee* v *Mun Mohinee Dossea* 7 Calc W R, 366 and *Atma Ram* v *Balkishen* I L R, 5 All 266 distinguished SOIRU PADMANABH RANGAPPA v NARAYANRAO BIN VITHALRAO I L R , 18 Bom , 520

15 ———— *Respondent not appearing in lower Court—Right of appeal*—An appellant who was respondent in a lower Court of ...

[illegible]

16 ———— *Right of respondent who has filed cross objections to appeal, where appellant withdraws his appeal*—No leave to appeal should be granted to a respondent who has filed cross objections unless the Court is thoroughly satisfied upon affidavit that he was ready to appeal and would have appealed within the proper time if the other side had not done so GOUR HARI SANYAL v PREM NATH SANYAL

[I L R , 9 Calc , 738 12 C L R , 395

17 ———— *Decis on showing grounds of judgment appealed from*—The copy of a decision to which reference is made by the lower Appellate Court for the grounds on which an appeal is disposed of is not necessary at the time of filing a special appeal ANONYMOUS

[1 Ind Jur , O S , 50

18 ———— *Pleaders Certifying grounds of appeal*—Pleaders should see that the grounds of appeal they certify to are full and need no addition. RAM KRISTO DEB v RAJ CHUNDER SURMAH 11 W R , 246

19 ———— *Certificate of grounds of appeal—Vakil a party to suit* Where a party appealing to the High Court is himself a vakil of the Court he is not at liberty to certify his own grounds of appeal THAKOOR DOSS MOOKERJEE v AMEER MUNDUL 14 W R., 168

20 ———— *Certifying that*

[illegible]

p t i either an affidavit of some person who heard the point raised or a copy of the petition to the Judge drawing attention to the omission with his orders thereon YUSOOF ALI CHOWDRY v FYZOONISSA KHATOON CHOWDRY 15 W R , 296

21 ———— *Grounds of appeal argued not in memorandum of appeal* Although as a rule the Court will not permit grounds of appeal to be taken in argument which have not been taken in the memorandum of appeal yet where a decree comes before it, which is upon its very face illegal the Court is bound to take up the point itself and rectify the mistake POBAN SOOKH CHUNDER v PARBUTTY DOSSEE

[I L R. 3 Calc , 612 1 C L R., 404

22 ———— *Civil Procedure Code (1882) s 558 Application to restore an appeal dismissed ex parte—Evidence—Practice*—When an application is made to restore an appeal which has been dismissed *ex parte* for default of appearance the applicant must produce all his evidence in support of the application before the ... not do so and ... be allowed to ... t of Appeal on ... is application ... *Das Weekly* ... MUZAFFAR AL... , 20 All , 266

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

commission to take evidence before written statements are filed.—On an application by the impugnant for the consolidation of two separate salvage claims made by two different promovents for salvage services rendered by them and for the issue of a commission to examine the witness of the impugnment *de bene esse*,—*Held* that it is within the discretion of the High Court to consolidate the actions without regard to the consent of the parties, each of the promovents being allowed to appear separately through their own attorney and counsel. *Held* further that, though no written statements had yet been filed, the application for consolidation and for a commission to examine *de bene esse* was not *premature*. *In re the "Falls of Ettrick," I. L. R., 22 Calc., 511,* referred to. *The "Strathgarry," (1895) L. R., P. D., 264,* followed. IN THE MATTER OF THE "DRACHENFELS." RETRIEVER v. DRACHENFELS

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[9 B. L. R., Ap., 10

NEERUNJUN MOOKERJEE v. OOPENDRO NARAIN DEB . . . . . 10 B. L. R., 57

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[3 Bom., O. C., 55

11. ——— *Application for decree on terms of agreement to compromise suit—Civil Procedure Code, 1882, s. 375.*—After the hearing of the suit had begun, the plaintiffs and defendants came to an agreement by which they settled all the matters in dispute between them in the suit. The agreement was in writing, and dealt in one clause with the dispute, the subject-matter of the suit, and in a second clause, with another dispute of long standing between the parties, with which the suit had nothing to do. The plaintiffs subsequently objecting to consent to a decree being taken in terms of the first clause of the agreement, the defendants took out a *rule nisi*, calling on the plaintiffs to show cause why the agreement should not be recorded in Court and why the Court

PRACTICE—*continued*

1 CIVIL CASES—*continued*

should not pass a decree in accordance therewith,

case, no definite procedure having been enjoined by the Code, the matter might properly be decided on affidavits. RUTTONSEY LALJI *v.* POORIBAI [I. L. R., 7 Bom., 304

12. ——— Appeal—*Appeal against a co plaintiff—Consent of parties*—By consent of parties the High Court allowed an appeal by one plaintiff against another plaintiff, and adjudicated upon their rights. BHAGIRTHIBAI *v.* BAYA [I. L. R., 5 Bom., 264

13 ——— *Appeal by one plaintiff against another—Rival claimants put on the record as representatives of deceased plaintiff*—In a suit for redemption one of the plaintiffs died *A*, the adopted son, and *B*, the daughter, made separate applications under s 365 of the Civil Procedure Code to be placed on the record The Judge ordered them both to be put on the record and pro-

admit on the record both rival claimants as legal representatives or adjudicate by his decree between their rival claims, and that the Appellate Court ought not to have allowed one plaintiff to appeal against another or to have decided the rights of different plaintiffs *inter se* VITHU *v* BHIMA [I. L. R., 15 Bom., 145

14 ——— *Appeal between co defendants—Right of appeal*—Where a Subordinate Judge dealt with a case at the hearing as raising not only a question between the plaintiff and defendants but also as between the defendants—*Held* that one of the defendants could appeal against the decree as between himself and the other defendants *Gadadhar Banerjee* v. *Mun Mohinee Dossea, 7 Calc W. R., 366*, and *Alma Ram* v *Balkishen, I. L. R., 6 All., 266* distinguished. SOIRU PADMANABH RANGAPPA *v.* NARAYANRAO BIN VITHALRAO I. L. R., 18 Bom., 520

15. ——— *Respondent not appearing in lower Court—Right of appeal.*—An appellant who was respondent in a lower Court of Appeal is not precluded by reason of his non-appearance in such Court, from preferring an appeal to the High Court. KALIKISHORE ROY *v.* DHUNUNJOY ROY . . I. L. R., 3 Calc., 228

16. ——— *Right of respondent, who has filed cross-objections to appeal, where appellant withdraws his appeal*—No leave to appeal

side had not done so. GOUR HARI SANYAL *v.* PREM NATH SANYAL [I. L. R., 9 Calc., 738: 12 C. L. R., 395

17 ——— *Decis on showing grounds of judgment appealed from*—The copy of a decision to which reference is made by the lower Appellate Court for the grounds on which an appeal is disposed of is not necessary at the time of filing a special appeal ANONYMOUS [1 Ind. Jur., O. S., 50

18. ——— *Pleaders Certifying grounds of appeal*—Pleaders should see that the grounds of appeal they certify to are full and need no addition RAM KRISTO DEB *v.* RAJ CHUNDER SURMAH 11 W. R., 246

19 ——— *Certificate of grounds of appeal—Vakil a party to suit* Where a party appealing to the High Court is himself a vakil of the Court, he is not at liberty to certify his own grounds of appeal THAKOOR DOSS MOOKERJEE *v.* AMEER MUNDUL 14 W. R., 168

20. ——— *Certifying that*

the point raised or a copy of the petition to the Judge drawing attention to the omission, with his orders thereon YUSOOF ALI CHOWDRY *v.* FYZOONISSA KHATOON CHOWDRY 15 W. R., 296

21 ——— *Grounds of appeal argued not in memorandum of appeal* Although, as a rule, the Court will not permit grounds

[I. L. R., 3 Calc., 612: 1 C. L. R., 404

22 ——— *Civil Procedure Code (1882), s. 558—Application to restore an appeal dismissed ex parte—Evidence—Practice*—When an application is made to restore an appeal which has been dismissed *ex parte* for default of appearance, the applicant must produce all his evidence in support of the application before the Court to which it is made If he does not do so and

allowed to

Appeal on

application

is Weekly

ZAFFAR AL.

All., 266

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

23. ———————— *Arguments on appeal under Letters Patent, High Court, North-Western Provinces, cl. 10—Points on which appellant may be heard.*—In appeals under the Letters Patent, s. 10, an appellant is not entitled to be heard on points which he has not raised before the Judge against whose decree he is appealing. BRIJ BHUKHAN v. DURGA DAS . . I. L. R., 20 All., 258

24. ———————— *Rules of Court, 30th November 1889—Memorandum of appeal, Misdescription in—Appeal described as "first appeal from order" instead of "first appeal from decree."*—It is not a fatal objection to an appeal that the same is described in the memorandum as "First appeal from Order," being in reality a first appeal from a decree, it not being shown that the respondent was in any way prejudiced by such misdescription, or that by reason thereof an insufficient stamp was placed on the memorandum. *Kedar Nath v. Lalji Sahai, I. L. R., 12 All., 61, quoad* this point, distinguished. SANT LAL v. SRI KISHEN [I. L. R., 14 All., 221

25. ———————— *Necessity for copy of decree appealed against accompanying a memorandum of appeal—Civil Procedure Code (1882), s. 541.*—A memorandum of appeal is not a good memorandum of appeal in law unless it is accompanied by a copy of the decree appealed against. *Gulab Devi v. Sankar Lal, Weekly Notes, All. (1892), 47,* followed. CHAMELA KUAR v. AMIR KHAN . . . . I. L. R., 16 All., 77

26 ———————— *Appeal, Hearing of, when records have been accidentally destroyed—New trial, Right of.*—Where, in the interval between the original hearing of a case and the appeal, the record or the greater part of it was destroyed in an earthquake, and the Appellate Court set aside the judgment of the first Court and directed the suit to be tried *de novo*,—*Held* that the mere fact that the record was accidentally destroyed cannot give the appellant a right of re-trial of the original suit, and that it is open to the Court of Appeal to try the case upon any materials proved to have been used at the hearing of the first Court, and it is for the appellant to put those materials before the Court. HAR KUMAR PAL CHOWDRY v. ASIATULLAH [3 C. W. N., 150

27. ———— **Application after refusal**—*Making application to another Judge, after refusal by one Judge to make it.*—It is irregular, when an application has been made to one Judge of the High Court and refused, that the same application should be made to another Judge without stating the facts of the former refusal. VYTHELINGA MUDELLY v. CUNDASAWMY MUDELLY . 8 Mad., 21

28. ———————— *Application to another Judge after refusal of application by one Judge of High Court—Review—Appeal.*—If an interlocutory order is wrongly refused by one Judge, the proper course is to apply for a review or to appeal from it, not to seek to obtain the order by resorting to another Judge, even though arguments should then be forthcoming which were not put before the first Judge. MOTIVAHU v. PREMVAHU [I. L. R., 16 Bom., 511

29. ———— **Application by person not party to suit**—*Lessors—Receiver.*—Case in which persons not parties to a suit in which a receiver had been appointed were permitted to apply, by motion or notice in the suit, for the purpose of establishing their rights to obtain an order directing the receiver to make over to them certain properties of which he was holding possession after expiry of the lease under which those properties had been held by him, and which had been granted to his predecessor in title by certain persons through whom the applicants claimed as representatives. *Neate v. Pink, 15 Sim, 450,* as explained by FRY, J., in *Brocklebank v. East London Railway Company, L. R., 12 Ch. D., 839,* referred to. MAHOMED MEDHI GALISTANA v. ZOHARRA BEGUM [I. L. R., 17 Calc., 285

30. ———— **Cause list**—*Transfer of case from undefended to defended board—Costs.*—A case entered on the undefended board can only be transferred to the defended board on payment of the costs of the adjournment, if any, thereby occasioned. BINDOOMADHUB MITTER v. WOOMESH CHUNDER PAUL . . . . . . 2 Hyde, 86

BHOYRUB CHUNDER DOSS v. CHUNDI CHURN MITTER . . . . Bourke, O. C., 238

31. ———————— *Setting down case in general cause list—Entering appearance.*—The Court has power to order a case to be set down at once in the general cause list, if the defendant enters appearance by his attorney before the time for appearance fixed in the summons has expired. When a defendant so appears, the Registrar ought so to set down the case as a matter of course, or at least ask the Judge in Chambers whether he should do so or not. CUMMING v. GREEN [4 B. L. R., Ap., 75

32. ———————— *Cases to be entered in the list of suits for liquidated claims—Rules 281 and 284 of the Calcutta High Court, Original Jurisdiction—Removal of cases improperly entered in that list—Ordinary mortgage suit—Notice of transfer of case.*—*Held* that the practice of the Court having been for many years to place ordinary mortgage suits on the list of suits for liquidated claims in the view that the incidental relief sought in such suits did not prevent them from being regarded as suits in which the claim was in substance a claim only for a liquidated demand in money, the practice should be adhered to. *Held* also that, when a suit is transferred from the general list of causes (at the instance of the plaintiff), it is desirable that this should be done on notice to the defendant, so that he may not be taken by surprise. BENODE LALL ROY v. BUSSUNTO KUMARI DEBI [I. L. R., 27 Calc., 355

33. ———— **Certificate of sale** - *Unregistered certificate of sale—Fresh certificate of sale.*—

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

On 10th July 1883 the applicant bought at a Court-sale a portion of a house for R385, and on confirmation of the sale on the 10th October 1883 obtained the sale certificate, which, however, he did not register. On attempting to obtain possession, the applicant was obstructed He applied for removal of the obstruction to the Subordinate Judge, and submitted with his application the unregistered certificate. The Subordinate Judge rejected the application on the ground that the certificate

being returned IN THE MATTER OF THE APPLICATION OF LAKSHMAN . I. L. R., 9 Bom., 472

34. ———— — *Grant of fresh certificate of sale to auction-purchaser while one already granted is in existence—Insufficient stamp.*—A Court having once granted a certificate of sale

35 ———— Commission—*Commission to examine witnesses—Non-attendance of witnesses—Mode of enforcing attendance—Code of Civil Procedure (1882), ss 399 and 400, and Sch IV, No. 156.*—On an application to the High Court to authorize a commissioner to issue process for

the witnesses to be examined reside. MAHOMED ALI v. WAZID ALI . I. L. R, 23 Calc., 404

36. ———— Commissioner for taking

in the case of a general certificate, comprise the result of all the proceedings under the decree or order

without regard to any previous accounts stated or settled between the parties. RUSTOMJI BURJORJI v. KESSOWJI NAIK . I. L. R., 3 Bom., 161

37. — ———— *Report of Commissioner—Motion to discharge or vary—Affidavits, Filing of—Memorandum of objections*—In moving to discharge or vary the report of the commissioner for taking accounts, the right practice is to move on a memorandum of objections filed on the Prothonotary's office, and upon the evidence taken by, and the proceedings before, the commissioner, and not on affidavits made for the purpose of the motion. In such a motion affidavits should only be filed (*a*) when ordered by the Court, if it desire fresh evidence, or (*b*) by special leave of the Court for the purpose of advancing a fact which does not appear on the face of the proceedings before the commissioner. SUMAR AHMED v. ISMAIL HAJI HABIB [I. L. R., 1 Bom., 158

38. ———— *Notice to vary final report—Limitation—Rule of Court, Ch. 6, cl. 6 (ed 1867).*—*Held* that under the rule, which

after the filing of the report, the Court has ... to extend the time for making such motion HORMASJI CURSETJI ASHBURNER v. BOMANJI CURSETJI ASHBURNER . . I L. R., 9 Bom., 250

39.———— *Commissioner's report, Application to vary time for—Extension of time—High Court Rules, Ch. VI, Rule 6.*—A party desiring to move to vary a report made by the commissioner must not only file his exceptions to such report, but must also make his motion to vary it within twenty days after the filing of the report, or if the Judge or the Court have allowed him further time for such application, then within the further time so allowed. NARROTTAM VIZBHOOKANDAS v. HARICHAND RAMCHAND I L. R., 13 Bom., 368

40. ———— *Disobedience of order made by commissioner for taking accounts—Attachment, Issue of.*—An attachment will issue to compel a party to a suit to obey an order made by the commissioner for taking accounts upon the certificate of the commissioner that such order has been made and disobeyed, without, in the first instance, making such order a rule of Court DHURANDHARDAS SAKHARAM v. BHAU GOVIND . 10 Bom., 4

41. ———— Consent decree—*Civil Pro-*

[5 C L. R., 464

42. — ———— *Mode of consent.* The practice of the High Court at Calcutta in its original side in the case of decrees by consent is to require the defendant in person, or some one instructed by him, to appear in Court to consent SAUNDERS v. ROMANATH PAUL 1 Ind. Jur., N.S., 395

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

43. ——————— *Setting aside consent decree—Motion—Separate suit—Allegation of fraud—Affidavits.*—A consent decree cannot be set aside on motion on the ground that it was obtained by fraud and misrepresentation. A separate suit must be brought for that purpose. Charges of fraud cannot properly be tried upon affidavits. *Gibert* v. *Endean, L. R., 9 Ch. D., 259; Huddersfield Banking Company* v. *Lister & Son, 11 Ch., 273;* and *Ainsworth* v. *Wilding, 1 Ch., 673,* applied. FOOLCOOMARY DASI *v.* WOODOY CHUNDER BISWAS

[I. L. R., 25 Calc., 649

44. ——————— **Costs**—*Partition-proceedings—Form of order for costs—Order for execution on non-payment.*—Where one of the parties to a partition-suit bears all the costs of the proceedings subsequent to decree, and the other parties make default in payment to him of their respective shares of the costs, he is not entitled to embody in his order against them for payment an order for execution. He must first obtain an order for payment, and, if payment be not obtained, application for execution may be made. BROJOLALL SEN *v.* MOHENDRO NATH SEN

[I. L. R., 18 Calc., 199

45. ——————— **Counsel**—*Hearing counsel—Hearing of preliminary issue.*—Two counsels for the same party may be heard in argument of a preliminary issue. FATMABAI *v.* AISHABAI

[I. L. R., 12 Bom., 454

46. ——————— **Counsel's fees**—*Costs—Attorney and client—Taxation—Refreshers to counsel—Rules of Court, 707, 708.*—Refreshers are not, as a general rule, to be allowed on motion heard by affidavit; but the Court hearing the motion can, in its discretion, and if applied to for the purpose, give special directions allowing costs as on the hearing of a case. In the absence of such special directions, refreshers should not be allowed. GARDEN REACH SPINNING AND MANUFACTURING COMPANY *v.* EMPRESS OF INDIA COTTON MILLS COMPANY

[I. L. R., 12 Calc., 551

47. ——————— **Court-fees**—*Remission of process fees—Rules of High Court, Calcutta, Ch. XIV—Process fees—Remission of fees in analogous appeals by the same appellants.*—Where twenty-nine appeals were presented by certain appellants, and an application was made for remission of process fees, and that only 5 sets of process fees instead of twenty-nine should be charged under Ch. XIV of the Rules of High Court, on the ground that the appeals were analogous and on behalf of the same appellants, the Court (GHOSE and RAMPINI, *JJ.*) refused the application. *Held* by RAMPINI, *J.*, that the High Court has no power to grant the remission, and that the fees prescribed by the rules *must* be levied. IN THE MATTER OF THE APPLICATION OF STUDD

[I. L. R., 26 Calc., 124
3 C. W. N., 82

48. ——————— **Courts of Justice**—*Object of Courts of Justice—Shortening litigation.*—The object of Courts of Justice, under the Code of Civil Procedure, is, if possible, to decide at one and the same time all questions which can justly be so decided, and not to assist in unnecessarily prolonging litigation. FIDAYE SHIKDER *v.* OZEEOODDEEN

[7 W. R., 87

49. ——————— **Damages, Assessment of**—*High Court, Original Side.*—Practice of Original Side as to assessing the amount of damages discussed. MANIRAM *v.* BIBI MASHIHAN **4 B. L. R., Ap., 66**

50. ——————— **Execution of decree, Application for**—*Civil Procedure Code, 1859, s. 212.*—An application for execution of a decree need not be accompanied with either the original decree or a copy. GUNGA GOBIND GOOPTOO *v.* MAKHUN LALL HATTEE

[9 W. R., 362

KHETTUR MOHUN CHUTTOPADHYA *v.* ISHUR CHUNDER SURMA . . . **11 W. R., 271**

MODHOO DOSSIA *v.* NOBIN CHUNDER ROY

[16 W. R., 25

51. ——————— *Copy of judgment.*—A Court, in executing a decree in a case which has been appealed to the Privy Council, should not receive a mere copy of the printed judgment of the Privy Council as if it were a decree. JOY NARAIN GIREE *v.* GOLUCK CHUNDER MYTEE

[20 W. R., 444

52. ——————— **Execution of deed**—*Motion to compel execution by infant of conveyance of land.*—Motion to compel the execution, by an infant, of a conveyance of land, refused on the ground that such an order on such motion was virtually a decree for specific performance. MONOMATHONAUTH DAY *v.* AUSHOOTOSH DAY . . . . **Cor., 8**

53. ——————— **Extraordinary jurisdiction of High Court, Application in** *Copies of orders of lower Courts.*—All applications to the High Court, in the exercise of its extraordinary civil jurisdiction, should be accompanied by a copy of the orders of the lower Courts made in respect of the matter of such application, and should be presented within the time allowed for the presentation of special appeals. IN THE MATTER OF THE PETITION OF NAGAPPA BIN HULGAPPA **5 Bom., A. C., 215**

54. ——————— **Fund in Court**—*Costs—Attorney's lien—Lien—Attaching creditor—Fund in Court attached.*—A sum of money had been paid into Court as admittedly due to the plaintiff in a certain suit; the plaintiff not having satisfied in full his attorney's taxed bill of costs, the attorney applied for payment out of the fund in Court; previously to this application, the fund had been attached by a third party. *Held* that the attorney was entitled to enforce his lien as against the attaching creditor for all costs incurred up to the date of attachment; that the attaching creditor was then entitled to be satisfied before the attorney could claim payment out of the balance in Court of any sum remaining due to him on account of his costs. SUPRAMANYAN SETTY *v.* HURRY FROO MUG . **I. L. R., 14 Calc., 374**

PRACTICE—*continued*

1 CIVIL CASES—*continued.*

55. ———— Inspection and production of documents—*Civil Procedure Code (Act XIV of 1882), s 136—Non compliance with order for production of documents—Defence struck out*—Where a defendant neglects to comply with an order for production and inspection, the Court will, although in the last resort order his defence to be struck out ASSENOOLLA JOO *v* ABDOOL AZIZ

[I. L. R., 9 Calc , 923

56. ———— *Failure to answer within the time limited—Dismissal of suit—Civil Procedure Code (Act XIV of 1882), Ch. X, ss 121, 126, and 136* The question as to whether the Courts below have exercised a proper discretion in dismissing a suit under s 136 of the Civil Procedure Code is one into which the High Court will not enter on special appeal When interrogatories are delivered with the leave of the Court under s 121 of the Civil Procedure Code, and the Court orders such interrogatories to be answered within ten days under s 126, there is virtually an order passed under the provision of Ch X of the Code; and consequently upon the

57. ———— *Filing list of documents—Suit for land—Title deeds—Affidavit*—In a suit for possession of land, the order that the party in possession do set forth a list of documents is to be confined to documents other than title-deeds. Where the title deeds are required by the plaintiff on

58 ———— *Discovery—Civil Procedure Code, 1882 ss 131, 134, and 136*—If a notice under s 131 of the Civil Procedure Code be not answered as provided by s 132, the party

PERSHAD . . I. L. R., 14 Calc., 768

59 ———— *Affidavit of documents—Sealing up immaterial parts—Sufficiency of affidavit*—A defendant in his affidavit of documents objected to allowing inspection of such portions of certain account books as did not contain entries relating to the matters in question in the suit, and

Thereupon the defendant took out a summons to consider the sufficiency of the affidavit. It was objected that this was not the proper mode of procedure, and that the plaintiff should have, under s 269,

PRACTICE—*continued.*

1. CIVIL CASES—*continued*

Belchambers' Rules and Orders applied for production and inspection. *Held* that in matters of this

him, do not relate to the matters in question in this suit HORENDRO NATH MUKERJEE *v.* GIRINDRA KUMAR DUTT 3 C. W. N., 495

60. ———— *Affidavit of documents—Sealing up immaterial parts—Sufficiency of affidavit.* A plaintiff in his affidavit of documents objected to allowing inspection of such portions of certain account books as he stated did not contain

summons to consider the sufficiency thereof It was objected that this was not the proper mode of procedure, and that the defendant should take steps when inspection was refused *Held* that, though technically the better way of raising the question would have been to take out a summons for production, the course taken by the defendant might, if preferred, be adopted, and that he was entitled to an order that the plaintiff should make a better and further affidavit showing what parts of the documents he claimed to seal up, and the grounds upon which the claim was based. JADUB LOLL SHAW *v* KANAI LOLL SHAW

[I. L. R , 20 Calc , 587

61 ———— *Insufficient affidavit of documents, Meaning of—Application for further affidavit of documents—Civil Procedure Code, 1882, ss 129, 130 134 135*—When the affidavit of documents is not insufficient in its terms and does not fail to comply with the requirements of the Code, and a further affidavit of documents is demanded by a party alleging that his opponent has documents in his possession which he has failed to disclose in his affidavit of documents the proper

62 ———— *Inspection by agent of a party*—When under an order giving liberty to a party to a suit, his attorneys and agents, to inspect and peruse the documents produced by the

that the agent will be a person standing in the position of the party for the purposes of the suit. *Held*

PRACTICE—*continued.*

1. CIVIL CASES—*continued*

63. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 59, 140—Madras High Court Rules, Nos. 39, 43, 44, and 47.*—A defendant is entitled, under the High Court Rules, to be furnished with a copy of documents sued on, which are deposited with the plaint. MAHOMED ABDUL AZIZ *v.* SUBBA NAIDU . I. L. R., 21 Mad., 490

64. ————Interrogatories—*Civil Procedure Code, 1877, s. 121—Ex-parte order for interrogatories.*—S 121 of the Code of Civil Procedure contemplates (1) leave to interrogate, and (2) the service of the interrogatories through the Court. It is the duty of the Court under that section to determine whether the applicant should be allowed to interrogate the other side, but not to determine at that stage what questions the party interrogated should be compelled to answer. Where an *ex-parte* order is made in chambers giving leave to interrogate, the party ordered to answer has a right to come into Court to have the order set aside if the case is one in which interrogatories should not have been allowed. When an order for the administration of interrogatories is properly made, a party objecting to the interrogatories administered may, at his peril, omit to answer the interrogatories to which he objects; but the more prudent course is to file his affidavit in answer, stating in it his objections to answer such questions as he objects to. Where interrogatories are scandalous, or in any way an abuse of the process of the Court, the Court may interfere at any stage. The powers given to the Court by s. 136 should not be exercised except in extreme cases. SHAM KISHORE MUNDLE *v.* SHOSHIBHOOSUN BISWAS

[I. L. R., 5 Calc., 707 : 5 C. L. R., 509

65. ———————— *Discovery—Guardian ad litem—Party for purposes of discovery.* Where a guardian *ad litem* of a lunatic defendant was made a party defendant for purposes of discovery,—*Held* that the discovery was not intended to include the right to administer interrogatories to him. WAGHJI TRACKERSEY *v.* KHATAO ROWJI . . . . I. L. R., 10 Bom., 167

66. ———————— *Cross-interrogatories.*—Where interrogatories have been administered for the examination of a witness by one party, and the other party delivers cross-interrogatories, the latter must, if he objects to any of the other party's questions, make his objections on the face of his cross-interrogatories, and such objections shall be argued at the hearing. GOBIND CHUNDER ROY *v.* SIB NATH SHAW . . . . 5 C. L. R., 171

67. ———————— *Evidence.*—A party at whose instance interrogatories have been administered must put in the answers as part of his evidence if he wishes to use them at the hearing. GOSTO BEHARY PAL *v* JOHUR LALL PAL

[I. L. R., 4 Calc., 836 : 4 C. L. R., 164

68.———————— *Refusal to answer—Particulars of damage—Civil Procedure Code (Act XIV of 1882), ss. 125, 127.*—The plaintiff alleged that the defendant bank improperly and without notice, and in violation of an agreement, sold some Government promissory notes, which had been deposited as security for certain loans, and claimed a specified sum as damages or in the alternative a decree for an account. The defendant bank denied the alleged agreement, and asserted that the notes had been sold after due notice and on failure of the plaintiff to comply with the terms on which the loans were made. Interrogatories were administered for the examination of the plaintiff, and amongst them one in the following terms: "State how your estimate of damages to the amount of R1,30,000 mentioned in the eighth paragraph of the plaint is arrived at?" Upon the plaintiff declining to answer that interrogatory, the defendant bank applied on notice for an order under s. 127 of the Code of Civil Procedure requiring him to answer it fully. *Held* that the plaintiff was not bound to answer it. If, on the one hand, it was intended to elicit the principle on which the damages were estimated by the plaintiff, the defendant was not entitled to discovery on that point. If, on the other hand, it was sought to elicit an account of the transactions between the parties, it was unnecessary, as the transactions were within the knowledge of the defendant bank; and if it were not, then the enquiry was premature, as the question whether there had been any wrongful act committed and whether the plaintiff was entitled to any damages should be first determined. NECKRAM DOBAY *v.* BANK OF BENGAL . I. L. R., 14 Calc., 703

69.———— Leave to sue or defend—*Leave to sue—Civil Procedure Code, 1877, s. 19—Immoveable property situate in different districts—Letters Patent, cl. 12—Plaint, Admission of.*—Under s. 19 of the Civil Procedure Code, it is not necessary to obtain the leave of the Court to sue in respect of immoveable property situate partly within and partly without the ordinary original civil jurisdiction of the High Court. NARAIN SINGH *v.* RAM LALL MOOKERJEE . I. L. R., 3 Calc., 370

70. ———————— *Leave to sue—Civil Procedure Code, 1877, s. 30—Suit by one creditor on behalf of others.*—A suit by one or more creditors on behalf of other creditors cannot be entertained without the leave of the Court being obtained for its institution. Such leave cannot be granted at the hearing. ORIENTAL BANK CORPORATION *v.* GOBIND LALL SEAL

[I. L. R., 9 Calc., 604 : 13 C. L. R., 142

71. ———————— *Suit brought without leave—Costs.*—Where a suit was brought by one legatee on behalf of himself and others without leave of the Court, and the plaintiff was a minor suing by his next friend, the next friend was made to pay the costs of the suit. GEEREEBALLA DABEE *v.* CHUNDER KANT MOOKERJEE . I. L. R., 11 Calc., 213

72.———————— *Leave to defend—Promissory note, Summary procedure on—Civil Procedure Code, 1877, s. 533—Power to extend time to defendant to come in and defend.*—The High Court has power to extend the time within which a defendant, in a suit brought under Ch. XXXIX (summary procedure on negotiable instruments) of

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

the Civil Procedure Code, can come in and obtain leave to defend therefore, in a suit in which it appeared that the defendant resided at Peshawar, the time for the defendant to obtain leave from the Court to appear and defend was extended to twenty eight days GROOM *v.* WILSON . I. L. R., 3 Calc., 539

73 ———— *Application to take plaint off the file after leave given—Summons*

and the plaint taken off the file. *Ismail Hadjee Habbeeb v. Mahomed Hadjee Joosub, 13 B. L. R., 91,* referred to. KESSOWJI DAMODAR JAIRAM *v.* LUCKMIDAS LADHA I. L. R., 13 Bom., 404

74 ———— Motions—*Hearing two counsel.* —It is not the practice to hear more than one counsel or vakil in support of original motions or applications against which no cause is shown in the first instance IN THE MATTER OF THE PETITION OF BARODA SOONDREE DASSEE

[B. L. R., Sup Vol., 609: 6 W. R., Mis., 114

75 ———— *Taking further evidence on hearing of motions—Oral evidence—Adjournment.*—There is nothing in the practice of the Court on the original side to prevent a Judge taking further evidence on the hearing of a motion either by affidavit, or *viva voce*, and the Court may adjourn the hearing for that purpose. RAMASUNDARI DASI *v.* RAMNARAYAN MITTER

[8 B. L. R., Ap., 65

76 ———— Next friend—*Minor defen-*

Mofussil Court against two defendants, one of them being a minor. Before a guardian *ad litem* had been appointed for the minor defendant, an application was made to the High Court to transfer the case from the Mofussil Court to the High Court in its ordinary original civil jurisdiction by the minor defendant through a next friend. It was contended that the application was informal, and could not be granted

KRISTO MITTER . I. L. R., 16 Calc., 771

77. ———— Notice, Re-issue of—*Notice*

78 ———— Objections—*Objection taken at*

specific performance counsel for the plaintiffs contended that the defendants were not entitled to ask for a rectification of the decree, inasmuch as their notice of motion did not intimate that the point

the form of the motion as made to the Court was acquiesced in. The objection was then too late. KARIM MAHOMED *v.* RAJOOMA

[I. L. R., 12 Bom., 174

79 ———— Orders—*Order "to file with the record."*—The practice of making the order that an application "be filed with the record" condemned as meaningless. NILMONEE BANERJEE *v.* SHURBO MUNGALA DEBEE . 7 W. R., 193

LUCHMEE NARAIN SAHEE *v.* KOSHUKEE DUTT JHA [8 W. R., 107

80 ———— *Practice of Courts of co-ordinate jurisdiction as to considering orders binding.*—A District Judge has no authority, when hearing an appeal from a Munsif's decision, to

any other Bench before which the case may afterwards come on has to keep itself within those directions. BROJO SOONDUR GOSSAMEE *v.* JUGGUT CHUNDER DEY 21 W. R., 199

See VYTHELINGA MUDELLY *v.* CUNDASAWMI MUDELEI . 8 Mad., 21

81. ———— Paper-books—*Preparation of paper-books—Appeals to High Court.* In appeals to the High Court, where the subject matter is more than R10,000, the appellant is bound to put the whole case (and not merely his own particular case) fully before the Court in his paper-book so far as the documents and depositions are concerned. And if he fails to do so without very good reason, he ought not to be allowed to read at the hearing anything which is not in the paper-book. KULIAN DOSS *v.* GOBIND KOOER . 24 W. R., 143

82. ———— *Untranslated accounts not in paper-books—Special leave.*—Under

83. ———— *Costs of translation of papers not included in list for paper-book.*—The petitioner in a regular appeal to the High Court should not be called upon to deposit the

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

costs of translating, etc., any papers of which he has not furnished a list with a view to their inclusion in the paper-book. What papers a party requires or ought to print is a matter which he or his vakil must, in the first instance, determine; the Deputy Registrar preparing his estimate and demanding payment according to the requirements made on him. LALLA BHOOP NARAIN *v.* ABASEE BEGUM
[23 W. R., 458

84. ——— *Omission to furnish list of papers—Notice of estimate of cost of printing.*—If the petitioner in a regular appeal to the High Court does not furnish the Deputy Registrar with a list of papers which he desires to have prepared and placed in the paper-book, that officer ought not to serve him with an estimate of the cost of printing. BHOGOBUTTY KOONWAR *v.* ANURAGEE KOONWAR . . . . 23 W. R., 459

85. ——— *Appeal—Delivery of paper-book—Costs—Rule 49 of Original Side.*—Where the respondent has not delivered paper-books, as he is allowed to do by rule 49 of the Rules of the High Court, Original Jurisdiction, on default of the appellant to deliver them, and the appellant does not appear at the hearing, the appeal will be dismissed without costs. HURROSOONDERY DOSSEE *v.* CALLYPUDO DUTT
[14 B. L. R., Ap., 11 : 23 W. R., 136

86. ——— *Rules of Original Side, High Court—Appeal—Paper-book: Delivery of—Costs.*—When an appeal is filed, but no paper-books are delivered by the appellant, the respondent is entitled, without taking upon himself to deliver paper-books, to have the appeal dismissed with costs. *Hurroosoondery Dossee* v. *Callypoddo Dutt, 14 B. L. R., App., 11,* not followed. KABULI *v.* BHULI . . I. L. R., 17 Calc., 289

87. ——— *Filing paper-books for appeal—Application for enlargement of time to file paper-books—Subsequent application at the hearing of the appeal to file paper-book then ready—Discretion of Court—Sufficient cause—High Court Rules, Appellate Side, Ch 7, Rule 11.*—An extension of time for filing paper-books in an appeal will not be granted unless "sufficient grounds" be shown for granting the application. Where the appellants waited from the 13th August 1898, the date of filing their memorandum of appeal, till the 22nd September 1898, before applying for office copies of the necessary papers to enable them to prepare their paper-books, and an application was made by the appellants on the 12th December 1898 for two months' further time to file their paper-books, the delay between the 13th August and the 22nd September 1898 being unexplained,—*Held* that no sufficient cause had been shown for extension of time, nor was the case altered by the fact that the paper-books were ready when a subsequent application was made on the appeal being called on for hearing, and an application for leave to file them was consequently dismissed. MOTI CHAND *v.* FOOL CHAND
[I. L. R., 27 Calc., 57

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

GOPAL CHUNDER DAS *v.* RADHABULLUB DAS
[I. L. R., 27 Calc., 60 note

88. ——— **Parties**—*Error in title of appeal—Party on record by mistake—Objection to his appearance by party who caused error.*—A suit was brought by a minor, who appeared by her next friend, and a decree was given in her favour. The defendant appealed, making the next friend alone respondent, and had the decree of the Court of first instance modified in his favour. The next friend appealed to the High Court, where the respondent objected to the next friend being heard, on the ground that she was no party to the suit. *Held* that the Court would not entertain the objection at the instance of the party through whose fault the error occurred, but that the judgment of the Court below should be set aside, and that of the Court of first instance restored. BHOBOTARINI DEBI *v.* SREE RAM PAUL . . . I. L. R., 9 Calc., 629

89. ——— *Adding party as co-appellant—Notice.*—A party should not be added as co-appellant without notice to the appellant. JANKIBAI *v.* ATMARAM BABARAV
[8 Bom., A. C., 241

90. ——— *Suit instituted on behalf of minor by next friend—Application for execution of decree by plaintiff on attaining majority and after death of next friend without complying with requirements of s. 451, Civil Procedure Code—Title of suit.*—Unless there is an absolute bar created by positive enactment, a person who has attained his full age is *primâ facie* entitled to proceed with a suit instituted on his behalf during his minority, or to make any application therein, and, if necessary, the Court will, as a matter of course, give him leave to proceed or act in his own name. When a person, on whose behalf a suit had been revived and carried on by his next friend, made, after attaining his majority, and long after the death of the next friend, an application in his own name for execution of the decree in the suit without having complied with the requirements of s. 451 of the Civil Procedure Code as to electing to proceed with the suit and obtaining leave of the Court to do so, and the application was admitted and notice of execution given to the defendant,—*Held,* under the circumstances, that such omission to comply with the requirements of s. 451, though an irregularity, was not a bar to the application being allowed to proceed. An application, under s. 451 for leave to proceed with a suit, does not require any notice, but may be made *ex-parte* at any time. Even if the application in this case therefore were not itself a sufficient indication that the applicant elected to proceed with the suit, and that the Court in allowing him to proceed in his own name gave him the required leave (and *semble* that would be the case), the Court could give such leave at the hearing of the application *nunc pro tunc.* The provision of s. 451, which requires the title of a suit to be corrected in such a case, applies to a pending suit, and not to a suit after final

PRACTICE—*continued*

1. CIVIL CASES—*continued*

decree in which it only remains to proceed in execution DOORGA MOHUN DASS v TAHIR ALLY TAHIR ALLY v KOORSOMBOO

[I. L. R, 22 Calc., 270

91. —————— *Appearance of parties—Appearance where party is represented by attorney in the record—Consent decree*—A defendant who has an attorney on the record can not appear to consent to a decree even if the plaintiff makes no objection to his doing so PANCHANON SING v JEEBUN KISTO BOSE 1 C W. N, 303

92 —————— *Application for payment of money by Receiver—Consent order* A plaintiff who has an attorney on the record can not appear in person to consent to an application for payment of money by the Receiver CHAITAN CHARAN MULLICK v GOCOOL CHANDRA MULLICK

[1 C. W N., 303

93 —————— *Deposit by defendant of money in Court in satisfaction of claim—Right of plaintiff to draw out such money and prosecute suit for balance claimed—Discretion of Court—Code of Civil Procedure (Act XIV of 1882), ss 377, 375*—Suit for recovery of R5 500 on three promissory notes Defendant pleaded minority at the date of the transactions denied all ... mitted ... nterest ... of his ... ot that sum it was paid into Court The plaintiff then

...

DWARKA DASS AGURWALLAH v GIRISH CHUNDER ROY I. L. R., 26 Calc, 766

94 —————— Payment out of money deposited in Court—*Petition without suit—Payment out of Court of moneys on petition without suit*—Case in which an order was made on a petition without suit directing the payment out of certain moneys paid into Court under an order entitled In the matter of Florence Emily Brownlow, and Lilian Kate Brownlow, infants" IN THE MATTER OF THE PETITION OF BROWNLOW

[I. L R, 11 Calc, 219

95 —————— *Execution of decree—Receipt and paying over of money in satisfaction of decree*—If money is brought into Court under process of execution, and the party entitled to it or his vakil is present to receive it the Court shall cause it to be paid over immediately MUTTUVELU PILLAY v SAMU PILLAY 5 Mad, Ap 2

96 —————— Pleader, Appearance of—*Second appeal—Vakil Right of, to be heard*

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PRACTICE—*continued*

1 CIVIL CASES—*continued*.

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of Court *Kishen Chunder Roy* v *Hurish Chunder Bose 3 W R, 216*, followed OLIULLAH v BACHU LAL KHOITA I. L. R., 15 Calc., 706

97 —————— Probate and letters of administration—*Withdrawal of letters of administration—False representation*—When letters of administration have been granted to the Administrator General and subsequently withdrawn on a false representation, the Court will grant a rule calling on the executors to show cause why the rule should not be extended to the Registry of the Court IN THE GOODS OF SREEMUNTO BENAICH RAO IMRIT

[1 Ind. Jur, N S, 10

98 —————— *Contentious matter—Duty of Registrar—When a petition for probate or letters of administration becomes contentious—Non-appearance of caveator—Form of order*—So long as a petition for probate or letters of administration is "non contentious" it is to be dealt with by the Registrar As soon as it becomes "contentious" it is to be treated as a plaint in a suit, and the suit is governed as far as practicable, by the procedure prescribed by the Civil Procedure Code. The petition becomes contentious not upon the entry of a caveat but upon the filing of the affidavit in support of the caveat Where in consequence of the filing of the affidavit the matter becomes a suit the whole suit must be disposed of by the decree of the Court Where therefore at the

...

that the caveat be dismissed and that probate or letters of administration issue, provided that the Court is satisfied that the papers are in order CHHOTALAL CHUNILAL v BAI KABUBAI

[I. L. R., 22 Bom. 261

99 —————— *Power-of attorney—Evidence Act (I of 1872), s 85—Letters of administration, Application for*—On an application for letters of administration to the estate of a deceased, who was domiciled in Scotland, and to whose estate one *P* had been appointed executor *dative qua Father*, the application being made by one *K* under a power-of attorney granted by *I*, such power not having been executed and authenticated in the manner provided by s 85 of the Evidence Act —*Held* that the application must be refused IN THE GOODS OF PRIMROSE I. L. R., 16 Calc., 776

100 —————— *Petition by Administrator General for letters of administration—Prayer for remission of Court fees where estate is of small value—Rule of High Court, 697—Verification of petition Administrator General's Act (II of 1874), ss 12 16, 17*—A petition by the Administrator General for letters of administration

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

containing a statement as to the value of the estate, followed by a prayer for the remission of Court-fees under rule 697 of the Rules of the High Court (Belchambers' Rule and Orders, p. 278), is sufficiently verified by the signature of the Administrator General in accordance with s. 12 of Act II of 1874. The effect of that Act is to do away with the requirements of the rule in such a case, so far as it makes verification by affidavit necessary as to the value of the assets. IN THE GOODS OF MCCOMISKEY [I. L. R., 20 Calc., 879

101. ———————— *Administrator General's Act (II of 1874), s. 12—Verification of petition—Court Fees Amendment Act (XI of 1899).* — The Administrator General as a public officer is exempted from verifying otherwise than by his signature any petition presented by him under the provisions of Act II of 1874. *In the goods of McComiskey, I. L. R., 20 Calc., 879,* followed. The form of affidavit prescribed by Act XI of 1899 indicates that it does not apply to an application by the Administrator General. IN THE GOODS OF AVDALL . . . I. L. R., 26 Calc., 404 [3 C. W. N., 298

102. ———————— *Application for letters of administration by constituted attorney—Power-of-attorney executed in Glasgow—Verification—Declaration as to execution of power.*—The Chief Magistrate of the city of Glasgow being a person lawfully authorized to administer oaths, a declaration as to the execution of a power-of-attorney taken before him and authenticated by his certificate and the common seal of the city of Glasgow, and by a notarial certificate, is sufficient proof of the execution of the power. IN THE GOODS OF HENDERSON [I. L. R., 22 Calc., 491

103. ———————— *Evidence Act (I of 1872), s. 85—Power-of-attorney—Declaration before notary public in proof of power-of-attorney.*—On an application for letters of administration with the will annexed, made by the attorney of the executors therein named, it appeared that the applicant's power-of-attorney was not executed in the presence of a notary public; but with regard to the execution by each of the executors, one of the attesting witnesses had made a declaration before a notary public to the effect that he witnessed the execution of the power-of-attorney by one of the executors, and that the signature of the other attesting witness was the proper signature of the person bearing that name, and each declaration was signed, sealed, and certified by a notary public. *Held* that the power-of-attorney was sufficiently proved. IN RE SLADEN . I. L. R., 21 Mad., 492

104. ———————— *Court Fees Act (VII of 1870), s. 3, sch. I, art. II, s. 19H—Court Fees Amendment Act (XI of 1899)—Payment of ad valorem fee on probate or letters of administration.*—In an application for probate or letters of administration the *ad valorem* fee prescribed by statute should be prepaid to the satisfaction of the Court. Such payment must be made to the Registrar and certified by him or by the Taxing Officer where an exemption is claimed and allowed. This certificate should be produced to the Court with the application and affidavit of valuation. IN THE GOODS OF OMDA BIBEE [I. L. R., 26 Calc., 407 3 C. W. N., 392

105. ———————— *Bond, Form of—Succession Act (X of 1865), s. 256.*—The Indian Succession Act, s. 256, requires that an administration bond should be taken in every case. It may, however, be varied by special order of the Court, in the case of a limited or special administration, and follow the English form. IN THE GOODS OF GUBBOY [I. L. R., 26 Calc., 408 3 C. W. N., 364

106. ———————— **Record, Documents forming**—*Documents not proved.*—Documents which have not been proved, but simply filed in accordance with a usage in the mofussil, should not be put up with the record. It is the duty of a Judge to pass over such documents as unproved, but it is also the duty of the pleader of the party against whom they are intended to be used to insist that they should not remain on the record at all. KALLIDA PERSHAD DUTT *v.* RAM HARI CHUCKERBUTTY [I. L. R., 5 Calc., 317

107. ———————— *Remission of case by Privy Council for enquiries—Record to be forwarded with decree.*—When the Privy Council remits a case with directions that the Zillah Court may arrive at certain results by certain inquiries, the objects and reasons of those inquiries, as set forth in the judgment of the Privy Council, are part of the judicial record, and should be forwarded to the Zillah Court with the decree of the Privy Council. GOLUCK CHUNDER DUTT *v.* MOHUN LOLL SOOKUL [5 W. R., 271

108. ———————— **Reference to High Court**—*Reference by Collector of decision under Mamlatdar's Courts Act—Civil Procedure Code (1882), s. 622—Practice.*—The High Court will not interfere on a reference by the Collector with a Mamlatdar's Courts decision in a possessory suit. The aggrieved party can himself apply to the Court. *Satu v. Shivrambhai, P. J., 1894, p. 52,* followed. PANDU *v.* BHAVDU . I. L. R., 21 Bom., 806

See VORA ISABALLI *v.* DAUDBHAI MASABHAI [I. L. R., 14 Bom., 371

109. ———————— **Reference to Registrar**—*Statement of facts, Filing of, after appointed time—Right of party failing to appear and support such statement—Rules of High Court, Calcutta, Nos. 522, 537.*—On the 4th February 1869 one G was granted a month's time to file his statement of facts in a reference which was pending before the Registrar, and in default thereof it was ordered that the reference should be heard *ex-parte* against him. The statement of facts was filed before the Registrar seven days after the proper time. The Registrar refused to deal with the statement of facts without

PRACTICE—*continued*

1. CIVIL CASES—*continued*

person, but had no right to employ counsel or attorney *Held* that *G* was entitled to file his statement of facts, and that the reference should be proceeded with in the usual course TARAK MOHINEY DASSEE *v* GREES CHUNDER DASS I. L. R., 26 Calc., 585

110. ———— Remand—*Remand on point raised as issue in lower Court*—A case ought not, as a rule, to be remanded upon a point which has been framed as an issue by the Court below and brought to the attention of the parties, and where they have failed at the trial to give any evidence upon it RAM PRASAD *v* ABDUL KARIM [I. L. R., 9 All., 513

111. ———— Report of Registrar—*Exceptions to report—Notice Rule 565 of Belchambers' Rules and Orders of the High Court, Original side*—In making an application to discharge or vary a report, it is necessary that notice should be given within the time required by rule 565 of the Rules and Orders of the High Court, Original Side, and that such notice should be accompanied with the grounds of exceptions relied on by the party objecting to the report LUCHMEE NARAIN *v* BYJANAUTH LAHIA . . I. L. R., 24 Calc., 437

LUCHMEE NARAIN *v* RUNGO LAL LOHEA [2 C. W. N., 57

112 ———— Review—*Certifying review without good grounds*—Junior pleaders of the ... rtify for ... been in ... pleaders ... ought to ... ing of the review. ROUSSEAU *v* PINTO 10 W. R., 54

TOOG OUNG *v* BRITISH INDIA STEAM NAVIGATION COMPANY . 24 W. R., 430

113 ———— Revival of suit—*Civil Procedure Code (Act X of 1877), s 372 Plaint taken as petition to revive*—A suit was instituted by the ... having a scheme settled by which the trusts were to be carried out; but before the scheme was finally settled and approved, and while the proceedings were pending, the case was struck out of the board for want of prosecution Subsequently, both the plaintiff and defendant died The heirs of the plaintiff then instituted a suit against the Administrator General as representing the estate of the defendant ... and prayed ... as supplemental to the original suit *Held* that the original suit though no longer upon the board, was capable of ... pursue was to allow the plaintiffs to amend their plaint by putting it in the form of a petition under s 372 of the Civil Procedure Code the defendant being at liberty to put in any answer which he might have done if the proceeding had been by petition in the first instance *Per* PONTIFEX, *J*—The words "pending the suit" in s 372 relate to a suit in which no final order has been made GOCOOL CHUNDER GOSSAMEE *v* ADMINISTRATOR GENERAL OF BENGAL [I. L. R., 5 Calc., 726: 5 C. L. R., 569

114. ———— Rule to show cause—*Rule nisi to show cause why a person should not be made a party defendant—No grounds stated in or served with the rule—Rule granted during hearing of suit—Civil Procedure Code (Act XIV of 1882), s 32*—During the hearing of a suit for recovery of immoveable property it appeared from ... the Court directed a rule to issue calling on him to show cause why he should not be added as a party defendant or give security for costs The ... what he had to answer, and consequently, the rule being informal, it was discharged with costs. RAM NARAIN KALLIA *v*. MONEE BIBEE RAMNARAIN KALLIA *v* GOPAL DOSS SING I. L. R., 9 Calc., 735

115 ———— Rulings of High Court—*Different rulings of different High Courts—Judges, What rulings to be followed by*—Where there are different rulings of the different High Courts on a particular point, a Judge should follow the rulings of the High Court to which he is subordinate SWAMIRAO NARAYAN DESHPANDE *v* KASHINATH KRISHNA MUTALIK DESAI [I. L. R., 15 Bom., 419

BALAJI GANESH *v*. SAKHARAM PARASHRAM ANGAL . . I. L. R., 17 Bom., 555

116 ———— Sale by Receiver—*Obstruction of possession—Purchaser, Rights of—Code of Civil Procedure (Act XIV of 1882), Ch XIX, and s 647—Costs*—Practice of the Original Side of the Court followed in recognizing the right of a purchaser at a Receiver's sale to obtain the assistance of the Court in obtaining possession under the provisions of the Court relating to sales in a suit. MINATOONNESSA BIBEE *v* KHATOONNESSA BIBEE [I. L. R., 21 Calc., 479

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

117. ———— Sale by Registrar—*Purchase money, Payment of, into Court—Conditions of sale—Interest—Costs.*—Where the purchaser of a property at a Registrar's sale is out of time in paying into Court the balance of his purchase-money, the practice of the Original Side of the High Court is that payment of interest shall follow as a matter of course. But if there has been delay on the part of the party having the carriage of the proceedings, and if that party appears on the summons taken out by the purchaser for the purpose of paying into Court the balance of such purchase-money, he shall not be allowed his costs against the purchaser. KANYE LALL DASS *v.* SHAMA CHURN DAWN [I. L. R., 21 Calc., 566

118. ———— Security for costs—*Bond to secure costs of appeal—Rule nisi against obligor—Sureties.*—The proper mode of proceeding to put a bond to secure the costs of an appeal in suit is to move upon affidavits, showing a breach of the condition of the bond, for a *rule nisi*, calling upon the obligor and sureties to show cause why the Court should not order that the bond be assigned to some person named in the rule POYNOR BIBEE *v.* NUJJOO KHAN . I. L. R., 5 Calc., 437 : 5 C. L. R., 524

119. ———— *Appeal—Poverty*—Mere poverty is no ground for requiring an appellant to give security for the costs of the appeal. MANECKJI *v.* GOOLBAI . I. L. R., 3 Bom., 241

See SESHAYYANGAR *v.* JAINULAVADIN [I. L. R., 3 Mad., 66

120. ———— *Filing copy of Judge's notes—Certificate of payment of security for costs.*—A certified copy of the Judge's notes not having been filed, and there being no certificate from the Prothonotary that security had been given for costs, the appeal was dismissed for non-compliance with the rules of the Court. BHIMJI GRIDHAR *v.* MORGAN . . . . 3 Bom., O. C., 63

121. ———— *Time for objecting to appeal for non-compliance with rules of Court.*—Appeal dismissed, as the appellants had not given security for costs, and as the appeal had not been filed within the time required by the rules of the Court. It is sufficient for the respondent to object at the hearing of the appeal in the case of non-compliance with the rules of Court, and he need not apply specially to have the appeal rejected, when the memorandum of appeal is preferred. MUHAMMADBHAI DHARAMSI *v.* BHANJI TOPAN . . . 3 Bom., O. C., 64

122. ———— *Civil Procedure Code, s. 549—Dismissal of appeal—Practice.*—The last paragraph of s 549 of the Civil Procedure Code seems to contemplate that, on failure to furnish security within the time fixed, an order for rejecting the appeal should be obtained from the Court that gave the order to furnish security. Upon the application of the respondent in a second appeal pending before the High Court, an order was passed requiring the appellant to furnish security for the costs of the appeal, and to lodge such security at any time before the hearing. This order purported to be made under s. 549 of the Civil Procedure Code, but neither the application nor the order stated the amount of the security required. At the hearing of the appeal, no security having been lodged, the respondent objected that, with reference to the terms of s. 549, the Court had no option but to dismiss the appeal. *Held* that the proper course was to have applied to the Judge who passed the order for security, at any time before the case came on for hearing, for the rejection of the appeal, and that it was too late at the hearing to ask the Court to reject the appeal. THAKUR DAS *v.* KISHORI LAL [I. L. R., 9 All., 164

123. ———— Setting down case for hearing—*Civil Procedure Code, 1877, s. 135—Trial of particular issue.*—It should be a rule of practice that when an order is made under s. 135 of the Civil Procedure Code (Act X of 1877) by the Judge in chambers, the suit should be set down for the trial of the particular issue as well as of the cause itself when it comes to a hearing before the same Judge. AHMEDBHOY HUBIBHOY *v.* VULLEEBHOY CASSUMBHOY . I. L. R., 6 Bom., 572

124. ———— Small Cause Court cases transferred to High Court—*Revival of claim abandoned in Small Cause Court—Amendment of plaint.*—Where the plaintiff having a claim against the defendant for R2,500 brought his suit in the Small Cause Court for R2,000, abandoning R500, and on the application of the defendant the case was transferred to the High Court, the plaintiff, on application by summons in chambers, was allowed to amend his plaint, so as to include the R500 abandoned in the Small Cause Court. RAM LALL *v.* BRAJAHARI PAUL [1. C. W. N., 32

125. ———— Stay of proceedings—*Suit between same parties and for same property before Privy Council—Stay of suit.*—A suit should not be allowed to go on while an appeal relating to the same property and between the same parties is pending before the Privy Council. SHEOPROSUN MISSER *v.* RAJENDERKISHORE SINGH [W. R., 1864, 100

126. ———— *Procedure—Staying suit until costs of a previous suit in a foreign Court have been paid.*—The Courts in India have no power to stay proceedings in a suit instituted therein because the costs of a previous suit between the same parties brought in the High Court of Justice in England have not been paid. BOWLES *v.* BOWLES . . . I. L. R., 8 Bom., 571

127. ———— *Dismissal of suit, Effect of—Application to restrain receiver parting with funds, pending appeal—Power of Court.*—Under the Code of Civil Procedure, once a suit has been dismissed, the Court dismissing it is *functus officio*, save that it may stay execution of its own decree or order for costs. An application therefore made to a Court of first instance after dismissal of the suit, but before appeal filed, asking that the

PRACTICE—*continued.*

1. CIVIL CASES—*continued.*

128. ———— *Companies Act (VI of 1882), s. 134—Winding up company—Stay of proceedings when petition to wind up is pending—High Court Rule No. 10, cl. (r).*—The plaintiff sued the defendant company to recover R10 000 The claim was not disputed, but shortly after the

stances he was entitled to obtain a decree, having regard to the fact that no such order had been made, and that by the rules of the Court [Rule No 10, cl. (r)] such order could only be made in chambers. *Held*, on application by the defendants at the hearing, that the proceedings must be stayed. VIRBAIJI *v.* WADIA MILLS CO. . I. L. R., 18 Bom., 65

129. ———— *Application for stay of execution—Costs.*—Where the defendants in an original suit applied to the Appellate Court for

appeal — applicant costs of

[I. L. R., 25 Calc., 893

130. ———— Testamentary matters—*Testamentary and probate matters—Probate Act (V of 1881).*—The practice in India in testamentary matters previously to Act V of 1881 was the same as that of the Ecclesiastical Court in England, except so far as that practice might be inconsistent with the Civil Procedure Code IN THE MATTER OF PITAMBER GIRDHAR . I. L. R., 5 Bom., 638

See IN THE GOODS OF BHUGGOBUTTY DASSEE. PROSUNNOMOIEE DOSSEE *v.* AGHORE CHANDRA DUTT . . . . . 4 C. W. N., 757

131. ———— Translation of papers—*Application for translations*—Translations of papers, if required, should be applied for before the case is posted. KONDAYYA GAUNDAN *v.* RAMASVAMI GAUNDAN . . . . 1 Mad., 130

132. ———— Transfer of case—*Applications under s. 4, Act XXIII of 1861.—Suits on bonds, etc.*—In all applications under s. 4, Act XXIII of 1861, in suits brought on a bond or other document, the place at which the document was executed must be definitely stated. ANONYMOUS

[7 Mad., Ap., 34

133 ———— Transmission of documents—*Documents relating to security for costs of appeal.*—Judges should not transmit to the High Court documents used before them to make out the title of parties offering immoveable property as security in Privy Council cases, but should, in reporting upon the securities, state particulars of the documents upon which the title of the surety appears to be made out. IN THE MATTER OF AMEEROONISSA KHATOON . . . . 14 W. R., 94

134. ———— Withdrawal of suits or appeals—*Withdrawal of suit—Landlord and tenant—Forfeiture for non-payment of rent—Right*

relieved from the forfeiture on payment of what was due. GHOLAM MOHAMED *v.* CALCUTTA CLUB

[Cor., 67

135. ———— *Withdrawal of second appeal—Discovery of new evidence—Review by lower Court—Civil Procedure Code (Act X of 1877), s. 623*—Having regard to the decisions in *Nanabhai* v. *Nathabhai, 9 Bom., 69*, and *Narayan*

2. CRIMINAL CASES

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE

136. ———— Adjournment—*Adjournment of trial by proclamation*—The adjournment of a trial by public proclamation is irregular and objectionable. ANONYMOUS . 6 Mad., Ap., 30

137. ———— Affidavits—*Contradicting allegation in verified petition.*—Important statements made in a verified petition to the High Court, if untrue, should be contradicted on affidavit. REG. *v.* KASHINATH DINKAR . . 8 Bom., Cr., 126

138. ———— *Showing want of jurisdiction and error in law on merits*—Though affidavits may be used to show a want of jurisdiction in a Magistrate, even though the affidavits contradict for this purpose the finding of the Magistrate, they cannot be used as affording materials for reviewing the Magistrate's decision on the merits. REG. *v.* NATHALAL PITAMBAR . 10 Bom., 102

139. ———— *Inadmissibility of affidavit of accused when Magistrate has recorded plea of guilty.*—Where a Magistrate has recorded that an accused person has pleaded guilty, an affidavit to the contrary sworn to by the accused is not admissible in evidence on revision by the High Court. QUEEN-EMPRESS *v.* BHASHYAM CHETTI

[I. L. R., 10 Mad., 209

PRACTICE—*continued.*

2. CRIMINAL CASES—*continued.*

140. ——————— *Hearing of rule to show cause—Supplementary affidavit of facts subsequent to issue of rule.—Semble*—A supplementary affidavit stating facts which have transpired subsequent to the issue of the rule may be filed. RATNESSARI PERSHAD NARAYAN SINGH v. EMPRESS [2 C. W. N., 498

141. ——————— Approvers—*Application for sanction to prosecute an approver.*—An application to the High Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the Crown in open Court. QUEEN-EMPRESS v. MANIK CHANDRA SARKAR [I. L. R., 24 Calc., 492

142. ——————— Caution to accused—*Warning accused before hearing his statement.*—In an allegation of having warned an accused person before taking down his statements, a Magistrate should state how the accused was warned. QUEEN v. DEDAR NUSHYO . . . . 14 W. R., Cr., 81

143. ——————— Evidence, Mode of recording—*Applications under Criminal Procedure Code, 1861, s. 196.*—All applications from Judges and Magistrates for bringing into operation the provisions of s. 196 of the Code of Criminal Procedure should be made through the High Court. ANONYMOUS [5 Mad., Ap., 9

144. ——————— Judgments, Copies of—*Copies of judgments for prisoners.*—Copies of judgments should be made out at once without waiting for written applications from prisoners under sentence. IN THE MATTER OF RAM CHUNDER MUNDLE [9 W. R., Cr., 19

145. ——————— Petition for bail—*Petition for prisoner's admission to bail—Form of petition—Petition containing defamatory allegations against trying Magistrate and other public officers.*—When a prisoner applied to the High Court to be admitted to bail pending the disposal of his appeal, and the petition contained defamatory allegations, consisting (*inter alia*) of irrelevant attacks on the trying Magistrate and other officers in the service of the Government of India, the Court refused to allow the petition to be filed, and ordered it to be returned. IN RE DURANT . . . I. L. R., 15 Bom., 488

146. ——————— Record in Sessions cases—*Proper contents of record.*—There ought to be only one Sessions record, which should be continuous, and should contain accurately and consecutively the whole of the proceedings in the trial, including the examination of the accused. QUEEN v. BILASH MOSULMANY . . . . 14 W. R., Cr., 46

147. ——————— *Criminal Procedure Code, 1861, ss. 372-374.*—A Sessions nuthee should contain the record of the defence set up by the prisoners in the Sessions Court. Points out how such record is to be made up with reference to ss. 372, 373, and 374 of the Code of Criminal Procedure. QUEEN v. GOPAL HAJJAM [15 W. R., Cr., 16

148. ——————— *Principal documents on record in Sessions cases.*—The principal documents in a case should be put in a prominent place on the record, not buried among a mass of less important papers in the nuthee. QUEEN v. BHEEKUN . . . . . . 8 W. R., Cr., 30

QUEEN v. RUTTON MEAH . 8 W. R., Cr., 57

See QUEEN v. BROOND SHAHOO *alias* CHUNDRA CHATTERJEE . . . . 7 W. R., Cr., 112

149. ——————— Reference to High Court—*District Magistrate, Competency of, to refer—Criminal Procedure Code (Act X of 1882), s. 438.*—When a case has been decided by the Sessions Judge on appeal from a Sub-divisional Magistrate, the District Magistrate should not refer the case to the High Court on the ground that the Sub-divisional Magistrate acted without jurisdiction. If he desires to move in the matter, he should proceed through the Legal Remembrancer. Observations of STRAIGHT, J., in *Queen-Empress* v. *Shere Singh, I. L. R., 9 All., 362,* referred to with approval. HIRAMAN DE v. RAM KUMAR AIN [I. L. R., 18 Calc., 186

150. ——————— Revision—*Criminal Procedure Code (1882), s. 439—Rule to show cause why conviction should not be quashed.*—A rule to show cause why a conviction should not be quashed under the provisions of s. 439 of the Code of Criminal Procedure ought not to be granted unless, on the materials which are before the Court when the rule is granted, it would be prepared to make the rule absolute if no cause be shown against it. BASIRADDI v. QUEEN-EMPRESS . . . I. L. R., 21 Calc., 827

151. ——————— *Form of application for revision—Motion.*—Application for revision by the High Court of an order passed in appeal by a Sessions Judge must be by motion. HAZARI v. CHUNDI CHURN CHUCKERBUTTY [16 W. R., Cr., 72

152. ——————— Rule to show cause—*Mode in which Magistrate should appear to show cause—Appearance through Legal Remembrancer.*—When a Magistrate wishes to show cause against a rule issued by the High Court, the proper course for him to adopt is to apply to the Legal Remembrancer to cause an appearance to be made for him in Court, and not to address the Registrar by letter. IN THE MATTER OF HURRO SOONDERY CHOWDHRAIN [I. L. R., 4 Calc., 20 : 3 C. L. R., 93

153. ——————— *Criminal Procedure Code (Act X of 1882), ss. 107-118—Rules issued upon the Magistrate—Right to appear of a party interested in the result.*—When a rule is issued upon the Magistrate to show cause and the order sought to be set aside is one that is only intended to secure the peace of the district by binding down the petitioner, the Magistrate is the only party entitled to be heard. Any other party interested in the result of the order cannot appear. DRIVER v. QUEEN-EMPRESS . . I. L. R., 25 Calc., 798

PRACTICE—*concluded.*

2 CRIMINAL CASES—*concluded*

Code of Criminal Procedure, 1872, the record in

155. ——— Stay of proceedings—*Duty of Magistrate on obtaining reliable, though not official, information of stay of proceedings by High Court*—When a rule is issued by the High Court and proceedings stayed, Magistrates, on receiving reliable information thereof, should stay their hands then and there. So where it was brought to the notice of the Magistrate by the mooktear for the accused who had received telegrams from counsel and

High Court to ascertain the truth *Semble*—A supplementary affidavit stating facts which have transpired subsequent to the issue of the rule may be filed RATNESSARI PERSHAD NARAYAN SINGH *v.* EMPRESS . . 2 C. W. N., 498

156. ——— Transmission of record to High Court—*Record of proceedings prior to commitment.*—The Magistrate's record of the proceedings prior to commitment should always be forwarded to the High Court QUEEN *v* KASIM ALI [15 W. R., Cr., 67

157. ——— Undefended accused—*Court to test statements of witnesses for prosecution*—*Per* PETHERAM, *C J.* Where an accused person is not defended, the Court should, in the interests of justice, test the statements of the witnesses for the prosecution, by questions in the nature of cross examination QUEEN-EMPRESS *v.* KALLU I. L. R., 7 All., 160

PRE EMPTION.

PRE-EMPTION—*continued.*

See CASES UNDER CUSTOM.

See CASES UNDER DECREE—CONSTRUCTION OF DECREE—PRE-EMPTION

See CASES UNDER DECREE—FORM OF DECREE—PRE EMPTION

See CASES UNDER LIMITATION ACT, 1877, ART 10 (1871, ART 10)

See CASES UNDER MAHOMEDAN LAW—PRE EMPTION

See CASES UNDER ONUS OF PROOF—PRE-EMPTION.

See RIGHT OF SUIT—ACCRUAL OF RIGHT [W R., 1864, 285
I. L. R., 2 All., 884
I. L. R, 3 All., 610, 770
I. L. R., 5 All., 187

See VALUATION OF SUIT—SUITS [3 B. L. R., Ap, 143
I. L. R., 13 Calc, 255
14 W. R., 228
I. L. R., 16 All., 493

1. SUBJECTS OF, AND TRANSFERS GIVING RISE TO, PRE EMPTION

1. ——— Permanently settled estates in Sylhet—*Act XXIII of 1861, s 14—Extension of Act*—S 14 of Act XXIII of 1861 was not applicable to permanently-settled estates in Sylhet, nor to estates in any district of Bengal, unless extended thereto ABDUL JABEL *v.* KHELAT CHUNDER GHOSE [1 B L. R., A C., 105 : 10 W R, 165

2. ——— Right and interest of co-sharer in estate in Sylhet—*Substitution of claimant for actual purchaser—Act XXIII of 1861, s 14*—The right and interest of a co-sharer in an estate in Sylhet being put up for sale in execution of a decree, the petitioner claimed the right of pre emption under s 14, Act XXIII of 1861, and he was thereupon substituted for the actual purchaser. *Held* that in such circumstances the Court executing a decree had no authority to substitute the claimant for the actual purchaser without the consent of the latter, and that a party claiming a share under the section cited was simply in the position of a party who, having a right of pre emption, has observed the requisite formalities to enable him to assert the right, and must resort to a civil suit to obtain the benefit thereof. The orders of the lower Courts were set aside accordingly. ABDOOL JALEEL *v* KALEE COOMAR DUTT [6 W. R., Mis., 3

3 ——— Puttadari estate—*Act I of 1841, s. 2*—A claim for pre-emption under s. 2 of Act I of 1841 was sustainable in respect of an imperfect puttadari tenure. KADIR BUX *v* RAM TAHUL BHAGUT . . . 3 N. W., 125

4. ——— Confiscated property—*Confiscation of property in suit for pre-emption*—A pre-emption suit is not barred by the fact that the

PRE-EMPTION—*continued.*

1. SUBJECTS OF, AND TRANSFERS GIVING RISE TO, PRE-EMPTION—*continued.*

property in suit had been the subject of confiscation. SHEODUT RAM TEWARY *v.* RAMADHREE [1 N. W., Pt. II, p. 35 : Ed. 1873, 93

5. ———— *Purchaser of confiscated property.—Held* that a claim for pre-emption would not lie against the purchaser of a confiscated property sold by the revenue authorities. MOHAMED VILLAYET-OOL-LAH KHAN *v.* AHMED HUSSUN KHAN . . . . 3 Agra, 70

6. ———— *Confiscation and sale of rebel's property—Right of co-sharers.*—Where Government confiscates the share of a convict, and sells it for valuable consideration, the co-sharers have a right to claim such share by right of pre-emption on such sale, and the condition in the wajib-ul-urz is binding on Government as much as it was on the original owner, Government acquiring the share subject to the same condition as the former held it. COLLECTOR OF FUTTEHPORE *v.* YAD ALI 1 Agra, 88

7. ———— Buildings—*Custom—Exercise of pre-emption in kotee and golah.*—Exercise of right of pre-emption allowed in respect of a kotee and golah, as it was proved that, according to local usage and custom, such properties were subject to pre-emption. KESHO RAI *v.* BINAYAK RAI. BINAYAK RAI *v.* LUCHMEE BAI . . 3 Agra, 179

8. ———— Separate estates—*Co-parcenary, Pre-emption on ground of.*—Properties bearing separate numbers in the Collector's rent-roll are separate estates in the legal sense of the word "estate," implying such a separation as bars a claim to pre-emption on the ground of co-parcenary. JOOBRAJ SINGH *v.* TOOKUN SINGH . . 14 W. R., 476

9. ———— Claim to mesne profits.—A claim to mesne profits due before the date on which a right to pre-emption arose cannot form the subject of pre-emption. EMAMOODDEEN SOWDAGUR *v.* ABDOOL SOOBHAN . . . . 7 W. R., 117

10. ———— Lease in perpetuity—*Transfer other than sale.*—Pre-emption applies only to sales. A lease in perpetuity, with a rent (however small) reserved, is not a sale, and cannot therefore be the subject of pre-emption. MOOROOLY RAM *v.* HUREE RAM . . . . 8 W. R., 106

11. ———— Transfer by lease—*Alienation or transfer of proprietary right.*—*Held* that a provision in the wajib-ul-urz securing a right of pre-emption to the sharers in cases of sale or mortgage was not applicable to transfer by lease, which was not such an alienation as was contemplated by the terms of the wajib-ul-urz, *viz.*, alienation or transfer of proprietary rights. MANICK CHAND *v.* BISHAISHUR BUKHSH SINGH . . . 2 Agra, 99

12. ———— Transfer to manager on trust—*Alienation giving right to pre-emption.*—Where shares in a mouzah were by arrangement between the parties made over to a manager upon trust to pay part of the profits to the debtors of the transferors, and the residue of the profits to the transferors, who bound themselves not to alienate until the debts were paid,—*Held* that it was not such alienation as would confer on the plaintiff a right of pre-emption under the wajib-ul-urz. OUTAR SINGH *v.* ABLAKHEE KOONWER . . . 2 Agra, 328

13. ———— Alienation of "chuck" tenure—*Right of sharer in zamindari.*—Where a resumed maafee "chuck" was aliened by the holder thereof, and a preferential right to take it was claimed by a sharer in the zamindari under the terms of the wajib-ul-urz agreed to by the co sharers at the time of settlement, and to which the holder of the "chuck" was no party,—*Held* that such alienation was not an alienation of a share within the meaning of the wajib-ul-urz; that the holder of the "chuck" could neither confer on its possessor a right of pre-emption, nor subject his estate to such right in the event of alienation. SHEO LALL SAHOO *v.* RUMZANEE . . . . . . 2 Agra, 35

14. ———— Exchange of property—*Transfer giving right of pre-emption—Consideration.*—A share in a mouzah, together with the dwelling-house of the proprietor, was exchanged for a share and dwelling-house in another mouzah. *Held* that the transaction, being an exchange of property, was a sale, and that the right to purchase the land, but not the house, was claimable by a co-sharer by right of pre-emption. The consideration payable by the pre-emptor is the estimated value of the property given in exchange, and not that of the property claimed. SEWA RAM *v.* RISAL CHOWDHRY [1 Agra, 144

15. ———— Sale and re-sale before confirmation—*Transfer raising right of pre-emption.*—Where the decree-holder purchased the rights of his judgment-debtors sold at auction in satisfaction of his own decree, but having received the amount of the decree re-sold the property to the judgment-debtors before the confirmation of the sale,—*Held* that the transaction did not amount to an alienation such as would give a right to the co-sharers of the debtors to exercise the right of pre-emption under the terms of the wajib-ul-urz. MAHOMED RAZA KHAN *v.* JAWAHIR SINGH . . . 2 Agra, 1

16. ————Transfer under compromise and decree thereon to person claiming pre-emption—*Wajib-ul-urz.*—An appeal having been preferred from a decree in a suit for pre-emption based on the wajib-ul-urz of a village, the parties to the suit entered into a compromise whereby the plaintiff-pre-emptor relinquished his claim to a part of the property in dispute in favour of the defendants-vendees, and the latter admitted his claim with respect of the remainder of the property. Upon this compromise a decree was passed. Subsequently a co-sharer in the village where the property was situate brought a suit for pre-emption, upon the contention that the compromise and the decree passed thereon amounted to a transfer to the plaintiff in

PRE-EMPTION—*continued*

1 SUBJECTS OF, AND TRANSFERS GIVING RISE TO PRE-EMPTION—*concluded.*

the former suit within the meaning of the wajib-ul urz *Held* that the suit was not maintainable HANUMAN RAI *v* UDIT NARAIN RAI

[I. L. R., 7 All., 917

17. ———— Transfer by compromise—*Wajib ul urz—"Transfer"—"Sale"*—On the 1st September 1881 *L* and *R* entered into an agreement (which was duly registered) with *B* that in consideration of their bringing a suit for recovery of a 12 anna share in a village which *B* claimed by right of inheritance against *G*, they should receive a moiety of the share *L* and *R* found funds for the prosecution of two suits in respect of the share, which on the 5th April 1882 were compromised *B* getting 1 anna and 3 pies out of the 12 annas originally claimed by her In that compromise *B* stated as follows "I make over 1 anna to *L* and *R*, my partners in lieu of the prosecution of the two cases I, the plaintiff, shall remain in possession of the remaining 3 pies" Meanwhile, on the 3rd September 1881 *G* had sold 3 annas out of the 12 annas share to *M* On the 3rd April 1883 *M* brought a suit against *L* and *R*, claiming the right of pre emption in respect of the 1 anna which they had acquired from *B* on the allegation that the transfer of the share had taken place on the 5th April 1882 This claim was based on the wajib ul

[illegible]

the interest in the share between *B* and *L* and *R* that the real transfer to *L* and *R* was given effect to on the 1st September 1881, and that this having been prior to the acquisition by *M* of any right in the village, he was not a co-sharer at the time of the transfer; and that he had consequently no right as against *L* and *R* by way of claim for pre emption LACHMI NARAIN *v* MANOO DAT

[I. L. R., 7 All., 291

2. RIGHT OF PRE-EMPTION

18 ———— Sale in execution of decree —*Act XXIII of 1861 s 14—Share sold in execution of decree*—A suit by a person claiming possession by right of pre-emption under the provisions of s. 14 of Act XXIII of 1861, of a share sold in the execution of a decree was held to be premature and unmaintainable The claimant should have sued to set aside the order of the Court confirming the sale in favour of the auction purchaser and to have himself declared entitled to the pre-emption of the property and to be substituted for the auction purchaser as its purchaser SHIB SAHAI *v* THIKA RAM

[7 N. W., 97

19 ———— Property subject to conditional sale—*Time for making claim*—A party alleging a right of pre-emption in respect of property which is the subject of a conditional sale is bound to make his claim immediately on the expiry of the year

PRE EMPTION—*continued*

2. RIGHT OF PRE EMPTION—*continued.*

of grace mentioned in the notice of foreclosure. AMEER ALI *v* BHABO SOONDUREE DEBIA

[6 W. R., 116

20 ———— Rights and interests of mortgagee—*Share of undivided immoveable property—Civil Procedure Code, 1877, s 310*—The provisions of s 310 of Act X of 1877 are not applicable in a case where the property sold is not a share of undivided immoveable property, but the rights and interests of a mortgagee in such a share JAIRAM DAS *v* BENI PRASAD I. L. R., 3 All., 15

21. ———— Co sharer—*Sale in execution of share in immoveable property—Stranger—Highest bidder—Civil Procedure Code 1877, s 310*—A co-sharer in undivided immoveable property of which a share is sold in the execution of a decree does not under s. 310 of Act X of 1877, acquire the right of pre emption as against a stranger to whom such share has been knocked down by merely asserting such right at the time of sale and fulfilling the conditions of sale required by ss 306 and 307 of that Act He must bid at the sale and as high as the stranger before he can acquire a right of pre-emption under that section TEJ SINGH *v* GOBIND SINGH I. L. R., 2 All., 850

22. ———— *Sale in execution of share in immoveable property—Manner of claiming pre emption—Highest bidder—Civil Procedure Code, 1877, s 310* The requirements of s 310 of Act X of 1877 are not satisfied by the

[illegible]

sharer in the ordinary manner of offering bids *Tej Singh v Gobind Singh I L R., 2 All., 850,* followed HIRA *v* UNAS ALI KHAN

[I. L. R., 3 All., 827

23 ———— *Holder of pattidar estate—Act XXIII of 1861, s 14*—A person holding a share in a pattidari estate as mortgagee was not in a position which gave him a right of pre-emption, under the provisions of s 14 of Act XXIII of 1861, in respect of a share in the estate sold in exe

[illegible]

24. ———— *Right against stranger—Act XXIII of 1861, s 14*—A share in

[illegible]

v SHEO DUTT 6 N. W., 243

25 ———— Pattidari estate—*Act XXIII of 1861, s 14—Sale of land for arrears of revenue—Act XVIII of 1873 s 177—Act XIX of 1873, s 158*—The provisions of s. 14 of Act XXIII of 1861 were not applicable where the land was sold in execution of a decree of a Revenue Court *Held*

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

on the assumption that, where land is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of s. 177 of Act XVIII of 1873 and s. 188 of Act XIX of 1873, that such claim can only be preferred where the land is a patti of a mehal, not where it is part only of a patti of a mehal. *Semble*—That, where land which is a patti of mehal is sold in execution of such a decree, a claim to the right of pre-emption can be preferred under the provisions of s. 177 of Act XVIII of 1873 and s. 188 of Act XIX of 1873. NARAIN SINGH *v.* MUHAMMAD FARUK

[I. L. R., 1 All., 277

26. ——— Requisite of valid claim—*Act XXIII of 1861, s. 14—Conditions required by Mahomedan law.*—If a person claiming pre-emption under the provisions of s. 14 of Act XXIII of 1861 fulfilled the conditions of sale respecting the deposit of the purchase-money, the sale could not be held void merely by the failure of the person to whose bid the property was knocked down also to complete the deposit. All that the claimant was bound to do was to establish that he was a pattidar within the meaning of the section in the estate of which the property sold formed part, and that he had fulfilled the conditions of sale. If he established this, the sale should be confirmed in his favour, unless some irregularity in publishing or conducting the sale was shown which would justify the setting aside of the sale. The conditions of pre-emption under the Mahomedan law did not apply to a claim brought under the section. DABEE PERSHAD *v.* BISHESHUR PERSHAD SINGH

[6 N. W., 289

27. ——— *Wajib-ul-urz, Claim under—Conditions required by Mahomedan law.*—*Held* that the person in whose favour a preferential right of purchase is stipulated for, by the terms of the wajib-ul-urz, is entitled to a decree if he comes forward and claims his right, without unreasonable delay, after he hears that a sale has been made without any tender to him, although he may not have proved specially that he has fulfilled all the conditions required in the case of a claim of pre-emption under the Mahomedan law of Shuffa. KOULA PUT *v.* MAHARAJ DOOBEY . . 1 Agra, 278

28. ——— *Act XXIII of 1861, s. 14—Sale of pattidari estate in execution of decree—Act I of 1841, s. 2—Right of co-sharer.*—It was incumbent on an officer conducting a sale in execution of decree, of land which was a share of a pattidari estate paying revenue to Government, as defined in s. 2 of Act I of 1841, to take notice of a claim made by a person under the provisions of s. 14 of Act XXIII of 1861, and to receive the purchase-money as a fulfilment of the conditions of the sale, subject to any question which might be raised by any party interested in the sale as to the claimant's title to advance the claim. When the whole of the purchase-money has been paid by the claimant within due time, the Court executing the decree, unless it is satisfied that he has no right to advance the claim, cannot treat the payment by him as a nullity, but must accept it as a fulfilment of the conditions of the sale respecting the purchase-money, and the sale is not defeasible by the failure of the bidder to complete the deposit of the purchase-money. The sale to the claimant cannot become absolute until it has been confirmed, and until it has become absolute, he cannot maintain a suit for possession. If the claimant has fulfilled the conditions of sale, and his right is clear, the Court executing the decree is bound to give effect to the right. TASUDUK ALI *v.* MUKSUD ALI . . . . 6 N. W., 272

29. ——— Sale in execution of decree.—During the minority of two out of four brothers an ikrarnama was entered into between them to the effect that no separation was to take place without the consent of all, and that, if one of them separated without such consent, he was to forfeit his share of the family property, and that, if any one wished to dispose of his share, he was to give his brothers the preference. One *F* purchased at a private sale the share of *M*, one of the brothers. On this two of the brothers, *A* and *I*, brought a suit against *F* to set aside the sale as contrary to the terms of the ikrarnama, and urged their claim to pre-emption. The suit was decreed with a stipulation that the purchase-money should be paid back. This not having been done, *F* sued *M*, got a decree, and in execution put up for sale *M*'s rights and interests in the family estate, bought them himself, and took possession. The present suit is by *A* and *I* to recover possession on the ground that *M* had no rights and interests left which could be sold in execution. *Held* that, as *M* had never separated, his share had not been forfeited, and that the only other privilege left to the plaintiffs under the ikrar, *viz.*, pre-emption, could not be exercised, inasmuch as *M* had not sold his share, the sale having been the act of the Court. FERASUT ALI *v.* ASHOOTOSH ROY SINGH . . . 15 W. R., 455

30. ——— *Right of auction-purchaser as against party whose claim to pre-emption is allowed.*—The auction-purchaser at a sale in execution of a decree of a share in a pattidari estate seeking to establish his right as against a person whose claim to the right of pre-emption under the provisions of s. 14, Act XXIII of 1861, has been allowed, and in whose favour the sale has been confirmed, cannot maintain a suit for possession of the share, but should sue for a declaration that the person claiming the right of pre-emption has no such right and to set aside the sale. FARZAND ALI *v.* ALIMULLAH . . . I. L. R., 1 All., 272

SANGAM RAM *v.* SHEOBART BHAGAT

[I. L. R., 3 All., 112

31. ——— Condition for assertion of right—*Wajib-ul-urz—Offer of property—Notification that property is for sale and offers will be received—Acquiescence.*—In order to entitle a co-sharer to assert a right of pre-emption based on the wajib-ul-urz, there must, as a condition precedent to such assertion, be a sale of a share already negotiated with a stranger, and a price fixed with the stranger by the co-sharer desiring to sell. The only mode in

PRE EMPTION—*continued.*

2. RIGHT OF PRE EMPTION—*continued.*

which a pre emptive claim can then be defeated is by proof of a distinct intimation to the co sharer seeking

[illegible]

of which the pre-emptive claim was raised was one made by the Collector as Manager of the Court of Wards [illegible] property, [illegible] noti- [illegible] was [illegible] chase [illegible] cation was not a sufficiently distinct and definite notice of [illegible]

32. ——— Association of strangers in purchase — *Specification of interest purchased by each person.* Where two co-sharers entitled to pre- [illegible]

note at the foot of the sale-deed mentioning the interest severally purchased by each of the vendees would not entitle them to retain the shares respectively purchased by them GUNESHEE LAL v ZARAUT ALI . . . . . . 2 N. W., 343

33. ——— *Joint purchase by co sharer and strangers — Specification of interests taken by purchasers* — A co sharer of an estate sold his share to *R*, who was also a co-sharer in such estate, and to two other persons, who were not co-sharers, but "strangers," selling it to all of them [illegible]

[illegible] SINGH v. RAMADHIN SINGH . I. L. R., 4 All, 252

34. ——— *Wajib-ul-urz— Co sharers—"Ek jaddi"*—The wajib-ul urz of a village gave a right of pre-emption, in cases of sale, to "brothers," and provided that, on refusal by a "brother," there should be a right of pre-emption in favour of co sharers in the thoke who were related to the vendor by descent from a common ancestor ("hissadaran ek jaddi thoke") It was also provided [illegible] transfer to a stranger *Held* that co-sharers who were not of common descent from the vendor were entitled to pre emption after own brothers and co sharers ek jaddi and to have preference over strangers *Guneshee Lal v Zaraut Ali*, 2 N. W., 343, followed SABIR ALI v YAD RAM . I. L. R., 9 All., 660

35. ——— Benami purchaser—*Purchaser not a co parcener—Act XXIII of 1861, s 14* —Where the rights of a judgment-debtor in a pattidari estate were sold at auction in execution of decree, and bid for by the son of the judgment debtor who gave the name of his father in law to whom the property was knocked down (and who was not a c [illegible]

property had been knocked down to a stranger, and that the right of pre emption attached in favour of the person entitled thereto on such sale, he having done all that was necessary to assert his claim GUNGA RAM v MOOLA . 2 N W., 200

36. ——— *Co-sharers— Recorded co-sharers—Benami purchase of shares —Sale by co-sharer—Claim for pre emption resisted by person claiming to be co-sharer by virtue of benami transaction — Equitable estoppel* — A secret purchase of benami shares in a village does not constitute the purchaser a co sharer for the purposes of pre-emption either under the Mahomedan law or under the provisions of a wajib-ul-urz, so as to enable [illegible]

first time, in his true character *Ramcoomar Koondoo v Macqueen, I R, I A, Sup. Vol., 49,* referred to BENI SHANKAR SHELHAT v. MAHPAL BAHADUR SINGH . . . . I. L. R., 9 All., 480

37. ——— Co-sharer—*"Proprietor"— Transferee of lands in a village who has not obtained mutation of names in his favour — Wajib ul-urz* [illegible]

were not merely sir of a co-sharer, and were not grove-lands held by a licensee from a zamindar, but lands belonging to a zamindar and in his occupation, notwithstanding the fact that he had not yet obtained mutation of names in respect thereof. DAKHNI DIN v RAHIMUNNISSA . I. L. R., 16 All., 412

38. ——— *Mortgagee of co-sharer* — A mortgagee of a co-sharer is not a "co-sharer" NAND LAL v. BANSI I. L. R., 20 All., 19

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

39. ———— *Wajib-ul-urz, Construction of—Purchaser of isolated plot of land in mehal—Purchaser of sir land.*—The wajib-ul-urz of a village gave a right of pre-emption to "co-sharers in the mehal." One of the co-sharers brought a suit for pre-emption which the vendee-defendant resisted on ground that he also was a co-sharer in the mehal, and the plaintiff had therefore no preferential right. This contention was based on a former purchase by the defendant under a deed of sale executed by a co-sharer: and comprising (i) an insolated plot of land in the mehal; (ii) sir lands in the mehal. *Held* by the Full Bench that, it being found that the vendee-defendant had already become a co-sharer in the mehal prior to the date of the purchase which was in question in the suit, the plaintiff had no preferential right of pre-emption. *Per* MAHMOOD, *J.*—The decisions of the Full Bench in *Naimat Ali* v. *Asmat Bibi, I. L. R., 7 All., 626,* have overruled *Hazari Lal* v. *Ugrah Rai, Weekly Notes (All.), 1884, p. 103,* and *Rup Ram* v. *Mungni, Weekly Notes (All.), 1886, p. 136.* SAFDAL ALI v. DOST MUHAMMAD . . . . I. L. R., 12 All., 426

40. ———— *Pre-emption among co-sharers under the Oudh Laws Act (XVIII of 1876), ss. 9 to 13—Pre-emptor's right, as such, dependent on the intending vendor's right to sell—Accounts between co-sharers—Contribution, Right to, for expenses of suit.*—Pre-emption, as declared in the Oudh Laws Act, 1876, is not applicable where the co-sharer claiming it denies the title of the co-sharer proposing to sell, alleges that the latter is not a sharer, and says that he himself is entitled to the property. One of two co-sharers, entitled to equal shares in an inheritance, having taken possession of the whole, was used by the other for her share, with mesne profits from the date of the suit. To provide costs, the latter had sold to her co-plaintiffs the right to claim half of her share. The defences were—(1) relinquishment of her claim in favour of the defendant; (2) that the defendant had a right of pre-emption as to part, in consequence of the above transaction; (3) that the share in dispute was subject to a proportion of the debts due from the estate of the deceased, chargeable on the whole inheritance; and that, if the plaintiffs should be held to be entitled to a decree, they should also be declared liable to pay, according to shares, their part of all the debts of the deceased liquidated by the defendant, as well as a proportion of money which he had expended, in good faith, in litigation for the protection of the inheritance. As to (1), the two Courts below concurred in the finding that no relinquishment had taken place. As to (2), it was pointed out that there had been no attempt to sell a share of the inheritance, but only to sell a share in a suit; and it was held that the position taken up by the defendant was inconsistent with his claiming to pre-empt, so that pre-emption was inapplicable. As to (3), it was *held* that, although the plaintiffs could not have a decree for mesne profits during the whole period of the defendant's possession, yet, if any account was to be taken of the defendant's payments, it must also be taken of his receipts; and it was held that the incidental benefit to the plaintiffs who had not authorized the litigation, in which expense had been incurred, did not give rise to any implied contract on their part, or render them liable in equity for any portion of that expense. ABDUL WAHID KHAN v. SHALUKA BIBI

[I. L. R., 21 Calc., 496
L. R., 21 I. A., 26

41. ———— Co-sharers in pattidari village—*Preferential claim.*—In a pattidari village the sharers in each patti have a preferential claim to the right of pre-emption in that patti. MAHARAJ SINGH v. BEECHOOK LALL . . 1 W. R., 233

42. ———— Co-sharers in pattidari estate—*Act XXIII of 1861, s. 14—Stranger—Purchaser at sale in execution of decree.*—A shareholder in one patti of a pattidari estate was not a "stranger" with reference to a shareholder in another patti of the estate within the meaning of that term in s. 14, Act XXIII of 1861. FARZAND ALI v. ALIMULLAH . . . . I. L. R., 1 All., 272

SANGAM RAM v. SHEOBART BHAGAT

[I. L. R., 3 All., 112

43. ———— *Strangers.*—Where a share in a certain patti was sold by the holder of the share to a stranger, and three persons, holding equal shares in the patti, were equally entitled under the village administration paper to the right of pre-emption of the share,—*Held* that such persons were each entitled to have the sale made to him to the extent of one-third of the share. MAHABIR PARSHAD v. DEBI DIAL . . I. L. R., 1 All., 291

44. ———— *Act XXIII of 1861, s. 14—Land held rent-free in zamindari.*—Where a plot of land formerly held rent-free situate in a pure zamindari estate is sold at auction,—*Held* that the claim of preferential purchase under s. 14, Act XXIII of 1861, would not lie, as the estate was not a pattidari estate within the meaning of s. 2, Act I of 1841. GHOOROO SINGH v. DABEE DYAL

[2 Agra, 280

45. ———— *Act I of 1841, s. 2—Preferential right.*—Where a resumed maafee estate comprising three pattis in an adaee-mehal was assessed with a lump sum of Government revenue payable through the lambardars of the adaee-mehal, who were empowered to proceed summarily against the sharers of the pattis in case of default, and to bring the share of the defaulter to public sale, and were held liable to Government for payment of the revenue assessed on the three pattis, and in case of default their rights in the mehal, not of the sharers of the defaulting putties, were liable to sale for satisfaction of Government demand on those pattis,—*Held* that the estate was not a pattidari estate as contemplated by s. 2, Act I of 1841, and the right of pre-emption given to co-sharers of the patti by that enactment could not attach to it. To constitute a pattidari estate as contemplated by the 2nd section of the Act, it was necessary not only that it should come within the express terms of that section, but also that it should

PRE EMPTION—*continued*

2 RIGHT OF PRE EMPTION—*continued*

be liable to the same incidents which attach to the estates described in the section by the other provisions of the same Act SALIG RAM v PURSIDH RAM [1 Agra, 186

46 ——— *Act I of 1841, ss 2 and 4—Act XXIII of 1861, s 14—Imperfect pattidari estate—Right of co-sharer to pre-emption against stranger* —It appeared from the settlement wajib ul urz that the lands in a certain mouzah were held in the following manner —that is to say, the co-sharers had divided them into pattis and each pattidar realized the rents or proceeds of his own separate holding and his share of the rent of the common lands and paid his own quota of revenue separately *Held*, the tenure came within the definition of a pattidari estate contained in s 2 of Act I of 1841 RAM AUTAR v SHEO DUTT . . 6 N W., 243

47 ——— *Wajib ul urz—Partition of mehal—Mode of division of property where there are several pre emptors equally entitled* —The wajib ul urz framed in 1856 of a village consisting of several pattis or thokes gave a right of pre emption to the owners of each thoke in respect of property situate in every other thoke, when such property was sold to any one having no share in the vil

[illegible]

the new mehal sold property in both to a stranger Thereupon a co sharer in the original mehal brought a suit for pre emption in respect of the property situate therein which had been sold, excluding the property situate in the new mehal *Held* that the effect of the partition was to exclude property situate in the new mehal from the operation of the wajib-ul urz framed in 1856, and to place it under

[illegible]

that portion only of the property sold which was situate in the original mehal was maintainable *Durga Prasad v Munsi, I L R 6 All, 423; Hulasi v Sheo Prasad I L R, 6 All 455; Kashi Nath v Mukhta Prasad, I L R 6 All, 370; Motee Shah v Gokli, N-W P, S D A, 1861 p 506; Ram Prasad v Buljeet Singh 2 Agra, 252; Oomar Khan v. Murad Khan N-W P S D A, 1865, p 173;* and *Salig Ram v Dabi Prasad 7 N W, 33* referred to *Per* MAHMOOD, *J* —The rule of the Mahomedan law that where more persons than one owning the property in virtue of which the pre-emptive right exists appear for the purpose of suing their rights are to be taken as equal *per capita* with reference to the number of pre-emptors and not with reference to the number of the shares of each pre-emptor in such property, is so consistent with justice, equity, and good conscience, that it must be followed in cases of rival suits for pre-emption under the wajib ul urz where there is nothing to show that the rival pre emptors are not equally entitled JAI RAM v MAHABIR RAI MAHABIR RAI v RAGHUNANDAN RAI RAGHUNANDAN RAI v MAHABIR RAI [I. L. R, 7 All, 720

48 ——— **Partition of village, originally one, into three separate mehals—** *New record of village customs framed on partition—Wajib ul-urz—Co-sharers—Rules of the Board of Revenue of the 13th November 1875—N-W. P Land Revenue Act (XIX of 1873), s 237* —Where at the settlement of a village constituting a single mehal a record-of rights was framed giving certain pre emptive rights to the co sharers in the village, but subsequently the village was divided by perfect partition into three separate mehals and in accordance with the rules of the Board of Revenue of the 13th November 1875 issued under s 237 of Act XIX of 1873 a new record of village customs was framed which did not give to the sharers in any one of the new mehals any right of pre-emption in respect of land situated in another mehal, it was held that the latter record of village customs was a valid and binding document, and no right of pre-emption existed in favour of the co-sharers in any one mehal in respect of land situated in another mehal *Per* AIKMAN, *J*—Where a village, originally one, is divided by perfect partition into two or more mehals [illegible] mption [illegible] spect of [illegible] ight of [illegible] mere [illegible] al the [illegible] other, [illegible] *1861), Vol 2, p 506,* and *Jai Ram v Mahabir Rai, I L R, 7 All 720,* referred to. Under the above circumstances the mere retention of a community of interest in certain property, such, *e g*, as roads etc. will not give the sharers in one mehal any right of pre emption over land situated in another *Nazir-ud-din v Kadir Baksh Weekly Notes, All (1894), 193,* referred to. *Gokal Singh v Mannu Lal, I L R, 7 All, 772,* dissented from GHUREE v MAN SINGH I. L. R, 17 All, 226

49 ——— **Effect on pre emptive rights of partition without new wajib ul urzes being framed**—*N-W. P Land Revenue Act (XIX of 1873), s 107* —When a mehal is divided by perfect partition into two or more separate mehals a separate record of rights should be framed for each of the new mehals Where under such circumstances no fresh records-of rights are framed for the new mehals, the co-sharers in any one of the new mehals cannot, unless under very exceptional circumstances, claim, under the terms of the old records of rights applicable to the original undivided mehal, pre-emption in respect of land situated in any of the other new mehals.

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

Ghure v. *Man Singh, I. L. R., 17 All., 422,* referred to. ABDUL HAI *v.* NAIN SINGH

[I. L. R., 20 All., 92

50. ——— Effect of partition on pre-emptive rights, no new wazib-ul-urz being framed—*Wajib-ul-urz—Partition—Cause of action—Extinction of cause of action before suit brought.*—In order that a suit for pre emption may be successfully maintained, it is necessary not only that a cause of action should arise in favour of the pre-emptor at the time of the sale on which the suit is based, but that such cause of action should subsist at the time when the suit is brought. *Dalganjam Singh* v. *Kalka Singh, Weekly Notes, All., 1899, 111.* JANKI PRASAD *v.* ISHAR DAS

[I. L. R., 21 All., 374

51. ——— Meaning of the terms "Patti" and "Patti of mehal"—*Co-sharers—N.-W. P. Land Revenue Act (XIX of 1873), ss. 166, 168, 188—N.-W. P. Rent Act (XII of 1881), s. 177—Interpretation of statutes.*—The expression "pati of a mehal" as used in s. 188 of the N.-W. P. Land Revenue Act (XIX of 1873) means a division of a mehal distinct from the share of an individual co-sharer. The right of pre-emption, therefore, which is given by the above-named section is not exerciseable on the sale merely of the share of an individual co-sharer not amounting to such a division of a mehal. Moreover, the provisions of s 188 of Act XIX of 1873 do not apply to a sale under s. 168 of the same Act of land other than that in respect of which the arrears which it is sold to satisfy accrued. Hence, where the share of a co-sharer in an imperfect pattidari village, not being the land in respect of which the arrears of rent, for the satisfaction of which the said share is sold, are due, is sold under the provisions of s. 177 of the N.-W. P. Rent Act (XII of 1881), no right of pre-emption can be claimed in respect of such sale. So held by EDGE, C.J., and YOUNG, J., MAHMOOD, J., *contra.* There being no statutory definition of the word patti, that word must be taken in its ordinary acceptation, and in that acceptation it means the share of a pattidar, whether such share amounts to a definite division of a mehal or not. The exigencies of the law of pre-emption require that in s. 188 of Act XIX of 1873, the word patti should be construed in its broader signification as equivalent to any share of a pattidar. The words of s. 168, which provide that land sold under that section is to be proceeded against "as if it were the land on account of which the revenue is due under the provisions of this Act," render the incidents of sales under s. 166, including pre-emption applicable to sales under s. 168, with the exception that in such case only the defaulter's interest in the land sold passes by the sale. Hence a right of pre-emption would accrue under s. 188 in respect of the compulsory sale of any share of a co-sharer, though such share did not amount to a patti in the sense of a definite division of a mehal. BAIJ NATH *v.* SITAL SINGH . I. L. R., 13 All., 224

52. ——— Partition of village into separate mehals.—Cases where, after the division of a village area into separate mehals for which no new wajib-ul-urz is drawn up, the old wajib-ul-urz for the whole area has been held to apply generally to the new mehals, and such division has been held not to affect covenants existing between the co-sharers under such wajib-ul-urz, distinguished from cases where a new wajib-ul-urz has after the division been drawn up for each mehal. *Gokal Singh* v. *Mannu Lal, I. L. R., 7 All., 772,* and *Jai Ram* v. *Mahabir Rai, I. L. R., 7 All., 720,* referred to. KUAR DAT PARSAD SINGH *v.* NAHAR SINGH

[I. L. R., 11 All., 257

53. ——— Effect of perfect partition—*Wajib-ul-urz—Co-sharers—Purchase of equity of redemption by mortgagee in possession—Acquiescence—Equitable estoppel.*—The wajib-ul urz of three villages which originally formed a single mehal gave a right of pre-emption to co-sharers in case of transfers of shares to strangers. Afterwards the shares in these villages were made the subject of a perfect partition and divided into separate mehals. Subsequently, by two deeds of sale executed on the 13th January 1884, and registered on the 17th January 1884, some of the original co-sharers sold to strangers their shares in all three villages. At the time of the sale, the shares in two of the villages were in possession of the vendees under a possessory mortgage, the amount due upon which was set off against the purchase money. The share in the third village was, at the time of the sale, in possession of another of the original co-sharers under a [illegible]. On the 17th January 1885 this [illegible] sharer brought a suit against the vendors and the vendees to enforce his right of pre-emption under the wajib-ul-urz in respect of the shares sold in the three villages. *Held* that, notwithstanding the partition of the village into separate mehals, the existing wajib-ul-urz at the time of partition must be presumed to subsist and govern the separate mehals until it was shown that a new one had been made. *Gokal Singh* v. *Mannu Lal, I. L. R., 7 All., 772,* referred to. *Held* also that the Court below was wrong in holding that the plaintiff, by reason of his having omitted in a suit previously brought against him for redemption of his mortgage, and dismissed for want of jurisdiction, to set up in defence any right of pre-emption or to express any desire to purchase, was equitably estopped by acquiescence in the sale from asserting his pre-emptive right. SHIAM SUNDER *v.* AMANAT BEGAM . . I. L. R., 9 All., 234

54. ——— Hindu widow in possession of property of her deceased husband, but not as his heir—*Stranger—Effect of joining a stranger as plaintiff in a suit for pre-emption.*—A Hindu widow in possession of the immoveable property of her deceased husband, but not as his heir, there being a son living, has no right of pre-emption as a co-sharer by virtue of such possession, even though she may be recorded as a co-sharer in the village papers. *Phopi Ram* v. *Rukmin Kuar, Weekly Notes, All. (1895), 84,* and *Imam-ud-din*

PRE EMPTION—*continued.*

2 RIGHT OF PRE-EMPTION—*continued.*

v. *Surjaiti, Weekly Notes, All* (1895), 85, followed BHUPAL SINGH v. MOHAN SINGH
[I. L. R., 19 All., 324

PHOPI RAM v. RUKMIN KUAR
[I. L. R., 19 All., 327 note

IMAM UD-DIN v. SURJAITI
[I. L. R., 19 All., 329 note

55. ———— **Hindu widow with estate of inheritance**—*Shareholder in village*—A Hindu widow holding by inheritance her deceased husband's share in a village fully represents his estate as regards such share, and is entitled to prefer a claim to pre-emption as a shareholder in such village PHULMAN RAI v. DANI KUARI I. L. R., 1 All., 452

56. ———— *Joinder of plaintiffs one of whom has no right to sue for pre-emption—Amendment of plaint*—The plaintiffs in a suit to enforce a right of pre-emption based on the wajib-ul urz of a village, which gave the right to "co-sharers," alleged themselves to be jointly interested in the village, and in their plaint claimed relief jointly One of the two plaintiffs was the [illegible]

was not a co-sharer in the village, and therefore had no right to claim pre-emption KARAN SINGH v. MUHAMMAD ISMAIL KHAN I. L. R., 7 All., 860

57. ———— *Possession of share of village in lieu of maintenance—Right of pre-emption*—Possession for life by a Hindu widow of a share of a village in lieu of maintenance under a decree of Court does not give her such an interest in the share as to entitle her to enforce the right of pre emption on the sale of another share of the village. DILA KUARI v. JAGAR NATH KUARI
[I. L. R., 6 All., 17

58. ———— **Purchaser of share subsequent to sale**—*Wajib-ul-urz—Purchaser's right of pre-emption*—Where there is a right of pre-emption under the wajib-ul urz, which a shareholder could claim and enforce in respect of a sale of property, a person purchasing the said shareholder's interest in the village subsequently to the sale cannot claim and enforce pre-emption as his vendor might have done SHEO NARAIN v. HIRA
[I. L. R., 7 All., 535

59. ———— **Reservation of interest by father on partition**—*Right of son to pre-emption.*—Where a Hindu father made a partition of his property among his sons reserving to himself an interest in one village, which upon his death was to be divided among his sons—*Held* that during the father's lifetime no son could claim a right of pre-emption in respect of the village so reserved by the father. RAM ADHEEN PANDEY v. GOORDIAL PANDEY . . . . . . 2 N. W., 434

60 ———— **Right of pre emption reserved in family partition-deed**—*Covenant by guardian of infant co-parcener—Notice of covenant—Constructive notice—Transfer of Property Act, s 3—Tender of purchase-money*—The plaintiff and his step-mother, as guardian of her son defendant No 1, then an infant, made a division of the family property under a deed of partition by which (*inter alia*) a house was divided the deed contained a covenant that if either co-parcener should desire to sell his share of the house, the other should have the right of pre- [illegible]

had constructive notice of the covenant in the deed of partition; (2) that the covenant was not invalid, and that it was unnecessary for the plaintiff to prove tender by him of the purchase money before suit RAJARAM v KRISHNASAMI
[I. L. R., 16 Mad., 301

61 ———— **Transfer to plaintiff pre-emptor after sale**—*Hindu widow in possession for widow's estate*—*Held* that the daughter of a Hindu widow to whom the widow had relinquished a share in a village, of which share she was in pos [illegible]

535, distinguished. MUHAMMAD YUSUF ALI KHAN v DAL KUAR . . I. L. R., 20 All., 148

62 ———— **Mortgage**—*Covenant to give mortgagee preferential right to pre emption.*—An [illegible]

63 ———— **Sale to a co-sharer and stranger**—*Specification of interest sold to stranger, and price—Right of pre emption of vendee co sharer*—The principle of denying the right of pre-emption, except as to the whole of the property sold, is that by breaking up the bargain the pre-emptor would be at liberty to take the best portion of the property and leave the worst part of it with the vendee The rule applies only to those transactions which, while contained in one deed, cannot be broken up or separated It should be limited to such transactions, and the reason of it does not exist where the shares sold are separately specified, and the sale to the stranger is distinct and divisible, though contained in the same deed as the sale to the co-sharers. The *ratio decidendi of Bharani Prasad v. Damru, I L R, 5 All, 197*, explained *Sheodyal Ram v Bhyro Ram, N.-W. P. S D A., 1860, p. 63*, distinguished *Guneshee Lal v. Zaraut Ali, 2 N. W., 343*, and *Manna Singh v. Ramadhin Singh, I L. R., 4 All, 252*, dissented from. A co-sharer in a village conveyed by deed of sale certain land to four persons, three of whom were co-sharers in

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued.*

the same patui as the vendor. The deed contained a specification of the interests purchased and the considerations paid by the co-sharers and the stranger vendees respectively. In a suit for pre-emption by certain co-sharers of the same patti as the vendor, the lower Appellate Court held that, although the co-sharers-vendees had a pre-emptive right of the same degree as the plaintiffs, nevertheless they, having joined a stranger with them in purchasing the property, had forfeited their right, and could not resist the claim even in respect of such portions as they had purchased under the sale-deed. *Held* that this view was erroneous, and that, inasmuch as the deed of sale contained an exact specification of the shares purchased by the co-sharers-vendees, who had an equal right of purchase to that of the plaintiffs in respect of such shares, and as the shares purchased and the consideration paid by the stranger vendee were also exactly specified, the lower Court should not have decreed the claim for pre-emption as to that portion of the property which had been purchased by the co-sharers. SHEOBHAROS RAI *v.* JIACH RAI

[I. L. R., 8 All., 462

64. ———— *Effect of co-sharer vendee joining with himself in his purchase a stranger.*—When, in the purchase of immoveable property in respect of which a right of pre-emption exists, a vendee, being a person entitled to purchase, joins with himself in the purchase a stranger, then, in the event of a suit for pre-emption being brought, if the interest of the co-sharer vendee can be separated from the interest of the stranger vendee, the plaintiff pre-emptor can succeed only as against the stranger, the rights of the co-sharer vendee being equal or preferential to those of the pre-emptor. If, however, the interest of the co-sharer vendee cannot be separated from the interest of the stranger vendee, the plaintiff pre-emptor can succeed as against both. *Sheobharos Rai* v. *Jiach Rai, I. L. R., 8 All., 462,* approved. *Sheo Dyal Ram* v. *Bhyroo Ram, S. D. A., N.-W. (1860), 53; Guneshee Lal* v. *Zaraut Ali, 2 N. W., 343;* and *Manna Singh* v. *Ramadhin Singh, I. L. R., 4 All., 252,* referred to. RAM NATH *v.* BADRI NARAIN . . I. L. R., 19 All., 148

See MUSHTAQ AHMAD *v.* AMJAD ALI

[I. L. R., 19 All., 311

BHUPAL SINGH *v.* MOHAN SINGH

[I. L. R., 19 All., 324

65. ———— Time from which right takes effect—*Profits of property accruing between purchase and transfer to pre-emptor.*—*B* purchased a share in a mehal on the 3rd January 1880 (Pous 1287 Fasli). *A* sued *B* and the vendor to enforce his right of pre-emption, and on the 24th March 1882 (Chait 1289 Fasli) obtained a final decree enforcing the right. Subsequently *B*, as a co-sharer in the mehal during 1288 Fasli, claimed from *A*, as lambardar of the mehal, the profits of the share for 1288 Fasli. *Held* that the pre-emptive right which was declared in the suit instituted by *A*, when it was once established, existed, and must be presumed to have taken effect on the date when the subsequently-awarded sale to *B* took place, and therefore there was no period of time during which *B* was properly in possession of the share and entitled to profits from *A* in his character of lambardar, but *A* must be presumed to have been in possession and entitled to the profits from the date of the sale to *B*. AJUDHIA *v.* BALDEO SINGH . . . I. L. R., 7 All., 674

66. ———— Rights as to period before transfer—*Interest.*—Although a successful pre-emptor becomes substituted for the original transferee, and thus becomes entitled to the benefits of the transfer, those benefits cannot be claimed by him for any period antecedent to such substitution itself, and a pre-emptor, before his pre-emption is actually enforced, possesses no such right in the subject of pre-emption as would entitle him to any benefits arising out of the property which he is entitled to take, but has not yet taken. The original vendee cannot, whilst he is in possession, be regarded as a trespasser, who would have no right to enjoy the usufruct of the property which he has purchased. *Uodan Singh* v. *Muneri Khan, 2 Sel. Rep., 85,* dissented from. *Manik Chand* v. *Rameshur Rae, N.-W. P. S. D. A., 1865, Vol. II, p. 171; Buldeo Persad* v. *Mohun, 1 Agra, Rev., 30;* and *Ajudhia* v. *Baldeo Singh, I. L. R., 7 All., 674,* followed. DEO DAT *v.* RAM AUTAR . . . . I. L. R., 8 All., 502

67. ———— Claim based upon custom—*Evidence afforded by obsolete wajib-ul-urz—Rules of the Board of Revenue for the settlement of the Gorakhpur and Basti districts (B. E. C., 8—1, s. 38).*—The plaintiffs brought their suit in 1890 to pre-empt certain property situated in the Gorakhpur district. Their claim was based upon two grounds: one, an alleged contract said to be recorded in and proved by a wajib-ul-urz of 1860 relating to the village in question; and the other, a custom of pre-emption alleged to be existing in the village. The period during which the wajib-ul-urz of 1860 was in force expired prior to the sale which gave rise to the right of pre-emption sought to be enforced. Subsequently to the expiration of that wajib-ul-urz, certain rules had been framed, with reference to the settlement of the Gorakhpur and Basti districts, the material portions of which, for the purposes of the present case, were as follows: "A memorandum of the village customs will be appended to each khewat by the Assistant Settlement Officer, when he verifies the jamabandi, and it will take the place of the document hitherto known as the wajib-ul-urz" * * * "In regard to any custom or constitution peculiar to the mehal, the following matters should be noticed [class (*d*), s. 25]: (*a*) Pre-emption (as regards mehals which belong to other than Mahomedan proprietors) when the proprietors expressly demand that it may be noted and proved conclusively that the custom exists." At the new settlement made in accordance with these rules, no mention of the right of pre-emption as obtaining in the mehal in question was recorded. Upon these facts it was held by EDGE, C.J., and BURKITT, J., that having regard to the rules above-mentioned framed by the Board of Revenue for the

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*continued*

settlement of the Gorakhpur and Basti districts, the mere absence of any mention of the right of pre emption in the new memorandum of village customs was in itself no evidence that the custom of pre-emption had ceased to exist, and that the wajib ul urz of 1860 might be used as evidence of the existence of such a custom *Per* AIKMAN, *J*—The absence from the new memorandum of village customs of any mention of the existence of a right of pre emption was a circumstance which the Court would be entitled to take into consideration in any conflict of evidence as to whether or not the custom of pre emption did exist SADHU SAHU *v* RAJA RAM

[I. L R, 16 All, 40

68 ———— Wajib ul urz—*Custom—Mahomedan Law—Immediate and confirmatory demands*—The wajib ul urz of a village gave a right of pre emption "according to the usage of the country" In a suit for pre emption, there was no evidence to show what in fact was the usage prevailing in the district in regard to pre emption There was no evidence that the plaintiff had satisfied the requirements of the Mahomedan law as to immediate and confirmatory demands or that there was any custom which absolved him from compliance with those requirements or that he was at any time willing to pay the actual contract price *Held* that, in the absence of evidence of any special custom different from or not co-extensive with the Mahomedan law of pre emption, that law must be applied [illegible]

[I. L. R, 9 All, 513

69 ———— *Pre emptor out of possession of his share—His own share lost by him pending appeal*—The plaintiff instituted this [illegible]

The Court of first instance dismissed her suit. On appeal, the District Judge in effect dismissed her claim as against the defendants who were the rival pre emptors but gave the plaintiff a right to obtain the share if the other pre emptors did not avail themselves of the decree which they had obtained [illegible] On the 1 t [illegible] appeal was a [illegible] tiff's share [illegible] to pre-emption in respect of the share sold arose was sold in execution of a decree in another suit Respondent contended that as since the appeal the share out of which plaintiff alleged that her right arose was sold, she could not get any decree now in her favour *Held* that this Court as a Court of appeal has only got to see what was the decree which the Court of first instance should have passed, and if the Court of first instance had wrongly dismissed the claim, the plaintiff cannot be prejudiced by her share having been subsequently sold in execution in another suit, such a sale could not have affected her right to maintain the decree if she had obtained a decree in her favour in the Court of first instance either on review or on appeal, nor could it have been made the ground of appeal Further plaintiff being out of possession of her share at the time she instituted the suit for pre emption was immaterial the Court should have ascertained whether the plaintiff was at the date of suit entitled in law to the share out of which her right of pre-emption was alleged to have arisen *Held* by MAHMOOD, *J*, that the passage from *Hamilton's Hedaya by Grady, p 562*, means that in the pre emptive tenement the pre-emptor should have a vested ownership and not a mere expectancy of inheritance or a reversionary or any kind of contingent right, or any interest falling short of full ownership. SAKINA BIBI *v* AMIRAN I. L. R., 10 All., 472

70 ———— *Plaintiff's title to sue for pre emption lost after suit, but before decree—Dismissal of suit*—Where a plaintiff who had filed a suit for pre-emption based on the provisions of [illegible]

that the suit for pre emption should be dismissed *Sakina Bibi* v *Amiran I L R 10 All, 472* distinguished RAM GOPAL *v* PIARI LAL

[I. L. R., 21 All, 441

71. ———— Mortgagee by conditional sale—*Foreclosure—Reg XVII of 1806—Suit by mortgagee for possession—Compromise and decree thereon—Mortgagee accepting part of the property in suit—Suit for pre-emption—Pre emptor not asserting or proving validity of foreclosure proceedings—Pre emptor's title referred to date of compromise and decree—Purchase money*—The [illegible]

September 1882 declaring the mortgage to have been foreclosed In August 1885 the mortgagee instituted a suit for possession of the mortgaged property On the 19th September 1885 the suit was compromised the mortgagee accepting a part of the mort- [illegible] the remainder [illegible] the compromise [illegible] was brought [illegible] to enforce pre- [illegible] The plaintiff claimed to pre-empt the whole of the property to which the deed of 1878 related including the portion relinquished by the conditional vendee under the compromise and decree of the 19th September 1885 *Held* that, although upon the expiration of the year of grace, the ownership of mortgaged property vested

PRE-EMPTION—*continued.*

2. RIGHT OF PRE-EMPTION—*concluded.*

in a conditional vendee, even though he might not have obtained a decree establishing or declaring his right, and the right of pre-emption accrued on the date when the conditional sale thus became absolute, yet foreclosure proceedings under the Regulation, being of a purely ministerial character, were not conclusive or even *primâ facie* evidence in a subsequent litigation against the conditional vendor that a valid foreclosure had been duly effected; that strict observance of the requirements of the Regulation were conditions precedent to the right of foreclosure; and that, in the present case, as the plaintiff had not asserted or attempted to prove that all those requirements had been fulfilled so as to result in an actual foreclosure and consequent accrual of pre-emption at the end of the year of grace, no foreclosure was shown to have taken place prior to the compromise of the 19th September 1885, and the plaintiff's right of pre-emption accrued on and must be referred to that date, and consequently extended only to the property to which the compromise related, and the price payable by the plaintiff was the amount specified in the compromise. *Bhadu Mahomed* v. *Radha Churn Bolia, 4 B. L. R., A. C., 219; Sheodeen* v. *Sookit, S. D. A., N. W., 1864, p 624;* and *Tawakkul Rai* v. *Lachman Rai, I. L. R., 6 All., 344,* distinguished. *Norender Narain Singh* v. *Dwarka Lal Mundur, L. R., 5 I. A., 18; Madho Prashad* v. *Gajadhar, L. R., 11 I. A., 186; Sitla Bakhsh* v. *Lalta Prasad, I. L. R., 8 All., 388;* and *Jagat Singh* v. *Ram Bakhsh, Weekly Notes, All., 1887, p. 233,* referred to AJAIB NATH *v* MATHURA PRASAD . . . **I. L. R., 11 All., 164**

3. CONSTRUCTION OF WAJIB-UL-URZ.

72. ———— **Presumption of compliance with conditions of law**—*Intention of parties.*—*Held* that, where a pre emptive claim is based on the wajib-ul-urz, it is not to be assumed that the claimant of pre-emption complied with the peculiar conditions which, under the Mahomedan law, are essential to give validity to such a claim, unless expressly provided by the wajib-ul-urz, and the Court construing such contracts ought to consider the intention of the parties as expressed in those contracts, and to give effect to them without alteration or addition. CHOWDHRY BRIJ LALL *v* GOOR SUHAI **[Agra, F. B., 128: Ed. 1874, 95**

73. ———— **Custom**—*Mahomedan law.*—In a suit for pre-emption based on a wajib-ul-urz the material words of the wajib-ul-urz under the heading of "Custom for pre emption" were as follows: "At the time a proprietary share is transferred a right of purchase will vest, first, in a co-sharer of the same family, and then in the other co-sharers of the village in preference to a stranger, provided that the same price is paid by the co-sharer as is offered by the stranger. *Held* that these words were intended to define a special custom of pre-emption, and did not merely mean that the custom of pre-emption according to the Mahomedan law was to be followed. *Ram Prasad* v. *Abdul Karim, I. L. R., 9 All., 513,* distinguished. JASODA NAND *v.* KANDHAIYA LALL . **I. L. R., 13 All., 373**

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ—*continued.*

74. ———— **Wajib-ul-urz not signed by lambardar or co-sharers.**—Where a wajib-ul-urz was not signed by the lambardar or by any of the co-sharers of the village for which it was framed, but was found to have been in existence without having been questioned by any of the parties who might have been affected thereby for a period of some thirteen years,—*Held* that the wajib-ul-urz might be taken as *primâ facie* evidence of the custom of the village for which it was framed. The said wajib-ul-urz contained a clause relative to pre-emptive rights to the following effect: "When any muafidar in the patti desires to transfer his share, then first a shareholder in the patti takes it, and if he does not take it, then another man who desires to take it takes it." *Held* that this clause was declaratory of the village custom, and that it was not intended thereby to adopt the Mahomedan law of pre emption. RUSTOM ALI KHAN *v* ABBASI BEGAM . . . **I. L. R., 13 All., 407**

75. ———— **"Brethren"**—*Sharers in patti—Preferential right.*—Where the wajib-ul-urz provided that alienation should be first made to brethren of common ancestor, and then to the other sharers of the patti,—*Held* that the brethren in whose favour the first right of pre-emption was secured must be construed to be brethren who were sharers in the patti. HUR SAHAI *v.* JAWALA **[2 Agra, 31**

76. ———— **Bhai-band**—*Suit to enforce the right of pre-emption—Non-joinder of vendor—Mortgage.*—In a suit for pre-emption it was objected by the vendee in second appeal that the vendor had not been made a party. *Held* that, whether the omission to make the vendor a party in a suit to enforce the right of pre-emption renders the suit unmaintainable or not, as the vendee had not been prejudiced by such omission in this case, the objection taken at such a late stage of the case could not be allowed *Held* also that the word "bhai-band" in the wajib-ul-urz in this case meant the brotherhood of the village, and not merely those persons who were related by blood. *S. A. No. 1054 of 1881* decided the 1st April 1882 referred to. HIRA LAL *v.* RAMJAS . . **I. L. R., 6 All., 57**

77. ———— **Shikmi showkayan**—*Preference to sharers in thoke—Sharers in village.*—*Held* by a Full Bench, in concurrence with the lower Court, that the proper construction of the words "shikmi showkayan" used in a clause of the administration paper was that they gave a preference to sharers in the thoke over those who were merely sharers in the village. JEY MULL *v.* KESREE **[Agra, F. B., 171: Ed. 1874, 128**

78. ———— **Intiqual**—*Absolute transfer—Conditional sales and usufructuary mortgages—*

PRE EMPTION—*continued*

3 CONSTRUCTION OF WAJIB UL URZ —*continued*

Alienation —*Held* on the construction of a wajib-ul urz that the word "intiqual" not only signifies an absolute transfer but also applies to conditional sales and usufructuary mortgages CHUTTUR MULL *v* CHUTTUR KISHORE LALL 3 Agra, 396

79 ———— Co-sharers—*Members of joint Hindu family* —The members of a joint and undivided Hindu family other than that member who is recorded in the Collector's book as a sharer in the mehal, are "co-sharers" for the purposes of pre emption in the sense of the wajib ul urz GANDHARP SINGH *v* SAHIB SINGH I L R, 7 All, 184

80 ———— *Ek jaddi*' — The wajib-ul urz of a village gave a right of pre-emption in cases of sale to "brothers" and provided that, on refusal by a "brother" there should be a right of pre-emption in favour of co-sharers in the thoke who were related to the vendor by descent from a common ancestor (hissadaran ek jaddi thoke") It was also provided that in the event of ...

... emption after own brothers and co-sharers *ek jaddi* and to have preference over strangers *Guneshee Lal v Zarant Ali, 2 N W, 343* followed SABIR ALI *v* YAD RAM I L R, 9 All, 660

81. ———— "Pattidars"— *Chakdars*" ...

82 ———— "Karibi," Meaning of.— The word "karibi" used by itself in the pre emptive clause of a wajib ul urz to indicate shareholders ... -dequate ... The ... village ... sale by ... others) next to "karibi" (near), and next to co-sharers in the same thoke as the vendor *Held* that although ...

... log" so as to include all near relatives both male and female *Held* also that a vendor's father's brother's widow, holding a share in the village absolutely and as heir of her deceased husband, was entitled to pre-emption in preference to the vendees, who were only sharers in the same thoke as the vendor KHUMAN SINGH *v* HARDAI [I. L. R., 11 All., 41

83 Express limitation of operation of wajib ul urz—*Time limited by agreement for pre-emption* —When by the express terms of a wajib ul urz its operation is limited to the period of the settlement a right of pre emption created by it cannot be enforced after the expiry of that period, unless a provision has been made for that purpose, or the operation of the wajib ul-urz has been extended by the agreement of the parties RUTTUN SINGH *v* OOMRAO SINGH 4 N. W., 13

84. ———— Right of alienation—*Express conditions* —*Held* that the conditions of the wajib ul urz co in no way confer on any person under disability a right of alienation which he does not otherwise enjoy RADHEY PANDEY *v* MUNSARAM 2 Agra, 85

85 ———— *Condition that sharer's consent shall be obtained* —*Held*, on the construction of the wajib-ul urz, that the condition ...

RUMZANEE 2 Agra, 31

GAYADEEN *v* RAMSAHAI 2 Agra, Pt II, 181

BUBBOO DOOBEY *v* ISHREE 3 Agra, 74

86 ———— Right of pre-emption of co-sharer—*Holder of resumed muafi*—*N.-W. P Land Revenue Act (XIX of 1873) s 62*—*Rules of the Board of Revenue 1870, Department I, Rules 50 and 51* —The plaintiff, a co-sharer in the village of Deobarampur, sued for pre emption of certain land being "resumed revenue free land" in the village, which had been sold to a stranger The clause of the wajib ul urz under which pre-emption was claimed was as follows "When any co-sharer (hissadar) is bent upon selling or mortgaging his right (haqqiyat) then first that co sharer who is nearest to the sharer bent on transfer can take it; after that any other person who is interested (sharik) in the village rank by rank can take it If no person interested in the village takes it, then a stranger may take it *Held* that, under the circumstances of the case the plaintiff had no right of pre emption in respect of the land claimed by him, the vendor not being, within the meaning of the wajib-ul urz a co-sharer in the village by virtue of his possession of a portion of the resumed muafi KALLIAN MAL *v* MADAN MOHAN I. L. R., 17 All., 447

87. ———— Procedure of co sharer who wishes to sell share —By the clause in a wajib-ul urz which related to pre emption it was provided as follows When any co-sharer wishes to make a sale ...

(i e, any co sharer who wishes to sell or mortgage) fail to act as above directed another co sharer has the right of enforcing pre-emption in respect of the

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ —*continued.*

property. If the term of the mortgaged share of any co-sharer is about to expire and notice of foreclosure has been issued, and the co-sharer mortgagor has not the means to redeem, then another co-sharer, after paying up the money, may take back the share, and when the original mortgagor has the means, he, after paying the money, may take possession of the share. *Held* that, in the case of a conditional sale of property to which this wajib-ul-urz applied, there were only two stages contemplated by the wajib-ul-urz, and not three. The first stage was at or about the time of the execution of the deed of conditional sale, and at that time pre-emption might be had by a co-sharer at the rate indicated in the wajib-ul-urz. The second stage was when the conditional vendee had brought his suit for foreclosure, and at that time the pre-emptor would have to pay the amount found to be due under the deed of conditional sale. When once, however, the order for foreclosure had been made absolute, the co-sharer's right of pre-emption was gone and extinguished. GYA BHARTHI *v.* LAKHNATH RAI . . . . I. L. R., 20 All., 103

88. ———— Wajib-ul-urz—*Co-sharers in the Khailsa Mahal distinguished from owners of separate plots of muafi lands in the mahal.*—The co-sharers in a mahal and the owners of separate plots of muafi land included in the area of the mahal have, as a rule, no connection with one another, and it by no means follows that the custom adopted by or existing among the members of the khalisa co-parcenary body would be applicable to the owners of the muafi plots. Strict evidence is always necessary to prove that the same custom is applicable to each. *Kalyan Mal* v. *Madan Mohan, I. L. R., 17 All., 447,* referred to. NARAIN DAS *v.* RAM SARAN DAS

[I. L. R., 20 All., 419

89. ———— Agreement to offer property to co-sharers—*Mode of offer.*—Where the terms of a wajib-ul-urz are that the property before sale to a stranger must be offered to the co-sharers, such offer must be made to each and every one of such co-sharers. DOWLUT *v.* NETRAM . 3 N. W., 42

90. ———— Preferential right of co-sharers—*Right of refusal.*—Where the terms of wajib-ul-urz recognize the right of each sharer to sell without the consent of the others, but limit that right so far as to give preference or right of refusal to the co-sharers, the sale to a stranger can only be good and valid on proof of offer being made and refused by the co-sharers. PERMESHREE DOSS *v.* RAIKOONDUN SINGH . . . 3 Agra, 3

91. ———— *Usufructuary lease, Construction of.*—Where the wajib-ul-urz provided that, in cases of transfer by "sale, etc.," the co-sharers would have a preferential right to the same,—*Held* that the co-sharers were entitled to claim by right of pre-emption to take over an usufructuary lease which was made for the term of eight years. AHMED ALI KHAN *v.* AHMED

[1 Agra, 101

92. ———— *Shareholders, Right of—Relatives, Right of—Strangers.*—One of the provisions in the wajib-ul-urz of a village was that, when a shareholder was desirous of selling his share, the right of purchase should lie, first, with the real brother of the shareholder; secondly, with the nearest relatives; thirdly, with the shareholders in the thoke; and lastly, with the shareholders in other thokes. *Held* that, if a person was a near relative, he fulfilled all the conditions required, and there was no necessity that he should belong to the same thoke as the vendor. *Held*, also, where the parties were Mahomedans, that the wife of the vendor must be regarded as a near relative within the meaning of the wajib-ul-urz, and that, though she was not a shareholder, she could not be considered a stranger, that is, a person who had no interest whatever in the family. MAHOMED TUKEE *v.* HUJJEE *alias* KHUJJAI . . . 5 N. W., 142

93. ———— Partition, Effect of—*Co-sharers—"Village"—Effect of perfect partition on covenants contained in the wajib-ul-urz.*—The wajib-ul-urz of a village contained a covenant among the co-sharers that, in the event of any one of them selling his share, a right of pre-emption should be enforceable, first, by a "near shareholder"; next, by a partner in the thoke; and thirdly, by a partner in the village. The village was subsequently divided into three separate mehals by means of a perfect partition under the N.-W. P. Land Revenue Act (XIX of 1873). *Held* that the agreement regarding pre-emption remained in force after the partition. The term "village," as used in the wajib-ul-urz, means a definite area of land with houses upon it, and does not necessarily imply a joint ownership of such land, inasmuch as after partition there may remain some community of interest, and things held and used in common by all the inhabitants. Every one who lives in that area has a share in it, and may therefore be regarded as a "shareholder" within the meaning of the wajib-ul-urz. GOKAL SINGH *v.* MANNU LAL

[I. L. R., 7 All., 772

94. ———— Perfect partition of mehal —*N.-W. P. Land Revenue Act (XIX of 1873), s. 191—No new wajib-ul-urz framed on partition—Pre-emption claimed under wajib-ul-urz of undivided mehal—Custom—Co-sharers—Hissadar deh.* —Where, on the perfect partition of a mehal under the N.-W. P. Land Revenue Act, 1873, no new wajib-ul-urz has been framed for any of the new mehals, the question whether or how far a contract or a custom of pre-emption recorded in the wajib-ul-urz of the undivided mehal is still in force, or who is entitled to claim the benefit of it, is not capable of any absolute or invariable answer. It depends in each case upon the proper construction of the terms of the particular contract or the proper interpretation of the particular custom recorded, assuming that there is no evidence of any intention on the part of the co-sharers at the time of partition to put an end to the contract or the custom. But there is a strong presumption against

PRE-EMPTION—*continued*

3 CONSTRUCTION OF WAJIB UL-URZ —*continued*

such claims for pre-emption when made after perfect partition by persons who are no longer co-sharers [illegible]

[illegible]

quent sale to a stranger of land in one of the new mehals, a person who, prior to the partition, was a co-sharer of the vendor in the undivided mehal, but who, since the partition, owned a share only in another of the new mehals, claimed pre-emption under the old wajib-ul urz as a "hissadar deh" *Held* by the Full Bench upon the construction of the wajib-ul urz, that he was not entitled to pre emption DALGANJAN SINGH v. KALKA SINGH [I. L. R., 22 All., 1

[illegible]

sharer [illegible] right and share, but first of all the transfer should be effected by him in favour of his own brothers and nephews who may be sharers and, in case of their refusal in favour of the other owners of the thoke" *Held* in a suit by a sharer in one thoke to enforce a right of pre emption under the wajib-ul urz in respect of a share in another thoke, that the fact that the plaintiff in common with all the sharers of the different thokes was a sharer in the common lands did not make her a sharer in the vendor's thoke, and she had therefore no right of pre-emption under the wajib ul urz MAYA RAM v. LACHHO [I. L. R., 2 All., 631

Affirmed on appeal to the Privy Council. LACHHO v. MAYA RAM . I. L. R., 5 All., 158 [L. R., 10 I. A., 1

96 ——— Nearer co sharer—*Mortgage by conditional sale—Limitation—Acquiescence—Equitable estoppel* —The two joint owners of a 2 annas 8 pies share in a village jointly executed two deeds of mortgage by conditional sale, each for a share of 1 anna 4 pies, in favour, respectively, of *P* and *A*, co-sharers in the village and related to the vendors In 1875 the conditional sale in favour of *P* became absolute, and he was recorded as proprietor of half the share of the vendors and obtained possession thereof In 1882 *A* foreclosed his mortgage and obtained possession of the other half share *R* thereupon claimed the right to purchase the half share so acquired by *A* on the allegation that he had [illegible] ferring a claim to pre-emption on the ground that he had acquiesced in the conditional sale in favour of the defendant, and also that he had no right to pre-emption under the wajib ul urz. *Held* that inasmuch as from 1875 to 1882 the only owners of the [illegible]

[illegible]

vendors than the defendant within the meaning of the wajib ul urz and that as such he was entitled to claim pre-emption *Held* also that the right of pre emption which arose upon the sale was a new [illegible]

[illegible]

97 ——— "Stranger" — *Effect of joining stranger as co vendee* —Under the terms of a wajib ul urz, successive pre emptive rights were given, first, to "own brothers"; secondly to "near cousins"; thirdly, to "sharel olders" *Held* (BURKITT, *J*) the parties being Mahomedans that in regard to a sale of land to which this wajib-ul urz applied a nephew (brother's son) of the vendee was a "stranger," and his joinder as co-vendee would vitiate the sale and let in other persons having a right of pre emption *Bhurey Mal* v *Nawal Singh, I L R., 4 All., 259*, distinguished. AMJAD ALI v. MUSHTAQ AHMAD . I. L. R., 17 All., 454

In the same case, on appeal under the Letters Patent, this decision was upheld by EDGE, *C J.*, and KNOX, *J* MUSHTAQ AHMED v. AMJAD ALI [I. L. R., 18 All., 311

98 ——— Stipulated price—"*Rights and interest*"—"*Qimat*"—"*Sale*"—*Exchange* — The wajib-ul urz of a village gave a right of pre-emption by a clause providing that in case of transfer by any co-sharer of his rights and interests (haqiyat) his partners should have a right to purchase at the same price (qimat) as the vendee had given. One of the co-sharers transferred to a stranger 1 biswa and 6 dhurs of a grove or garden in exchange for another piece of land. *Held* by the

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ —*continued.*

Full Bench that this transaction was a transfer of haqiyat within the terms of the wajib-ul-urz. *Held* also that the plot of land which was given in exchange for the 1 biswa and 6 dhurs must be considered as a price (qimat) within the terms of the wajib-ul-urz. *Per* MAHMOOD, *J.*, that the word "qimat" must be interpreted in the sense given to it by the Mahomedan law, including not only money, but other kinds of property capable of being valued at a definite sum of money, and covering the consideration of "sale" as well of exchange as defined in ss. 54 and 118 of the Transfer of Property Act (IV of 1882), respectively. NIAMAT ALI *v.* ASMAT BIBI . . . . **I. L. R., 7 All., 626**

99. ——— **Simple mortgage**—*"Transfer"—Mortgage—Charge—Act IV of 1882 (Transfer of Property Act), s. 58.*—The wajib-ul-urz of a village gave a right of pre-emption to co-sharers on a transfer (intikal) by sale or mortgage (rahn) by a co-sharer of "rights and interests" (hakkiyat). *Per* PETHERAM, *C.J.*—That as a simple mortgage, as defined in s. 58 of the Transfer of Property Act, 1882, by giving a right to sell, transfers an interest in the property mortgaged, a simple mortgage of his share by a co-sharer created a right of pre-emption under the terms of the wajib-ul-urz *Per* MAHMOOD, *J.*—The circumstance that possession had not been transferred to the mortgagee was one which had no bearing on the question whether a right of pre-emption arose under the terms of the wajib-ul-urz in the case of a simple mortgage. The word "intikal," as used in Hindustani, has the broadest meaning in connection with "alienation," "conveyance," "assignment," or "transfer" of rights in immoveable property. The word "hakkiyat" means rights and interests in the legal sense of the phrase. The word "rahn" is a generic word indicating all that is included in the English word "mortgage," and is not limited to usufructuary mortgages, but includes simple mortgages also. When general words are used in a document, they must be understood in a general sense, unless they are accompanied by any expression limiting or restricting their ordinary meaning, or unless such limitation or restriction arises from necessary implication. The words "intikal," "hakkiyat," and "rahn" in the wajib-ul-urz could be understood only in the most general sense. "Mortgage," as understood in Indian law, includes simple mortgage as well as usufructuary, and one is as much a "transfer of an interest in specific immoveable property" as the other. A simple mortgage is a "transfer," being the transfer of the right of sale. *Held*, therefore, by MAHMOOD, *J.*, that a right of pre-emption accrued under the terms of the wajib-ul-urz in the case of a simple mortgage by a co-sharer of his share to a "stranger." *Per* BRODHURST, *J.*, that one of the entries in a statement showing the transfers which had taken place in the village at or about the time the wajib-ul-urz was framed, which statement was connected with the wajib-ul-urz, related to a simple mortgage, from which it appeared that it was the intention that the co-sharers should have the right of pre-emption in all cases of mortgage, whether usufructuary or otherwise, and therefore a right of pre-emption accrued under the terms of the wajib-ul urz in the case of a simple mortgage. *Per* DUTHOIT, *J.*, that a pre-emptive right was raised by the terms of the wajib-ul urz only upon the occurrence of a transfer of a share in the property of the mehal, and a simple mortgage was not a transfer of property. OLDFIELD, *J.*—The word "transfer" used in the wajib-ul-urz was not intended to refer to a simple mortgage, but to mortgages where possession of the property passes to the mortgagee. SHEORATAN KUAR *v.* MAHIPAL KUAR . . **I. L. R., 7 All., 258**

100. ——— **Mortgage by conditional sale**—*"Transfer"—Transfer of Property Act (IV of 1882), s. 58.*—A clause in the wajib-ul-urz of a [illegible] of pre-emption in respect of "trans- [illegible] rs of their rights and interests by sale and mortgage. *Held* that a deed of conditional sale of a share in the village, which did not transfer possession, was a transfer of an interest in the village. and was sufficient to let in the right of pre-emption, *Sheoratan Kuar* v. *Mahipal Kuar, I. L. R., 7 All., 258,* followed. AZIMAN BIBI *v.* AMIR ALI [**I. L. R., 7 All., 343**

101. ——— **Conditional sale.**—The pre-emptional rights of the parties to a deed of conditional sale cannot be affected by a wajib-ul-urz prepared subsequently to the execution of the deed of conditional sale, but prior to the sale becoming absolute, they not being parties to the wajib-ul-urz, and the wajib-ul-urz not apparently indicating any pre-existing custom of pre-emption in the village. *Raghubir Singh* v. *Nandu Singh, Weekly Notes, All., 1891, p. 134,* distinguished. BECHAN RAI *v.* NAND KISHORE RAI . **I. L. R., 14 All., 341**

102. ——— **Sale without registration of transfer**—*Transfer of Property Act (IV of 1882), s. 54—Fraudulent omission to transfer by registered instrument.*—The wajib-ul-urz of a village gave the co sharers a right of pre-emption in cases where any one of them should wish to "transfer his share wholly or partly by sale or mortgage." One of the co-sharers entered into a transaction by which he transferred the possession of his share to a stranger for R300 and had mutation of names effected in the Revenue Department, but, in order to avoid the right of pre-emption, the parties omitted to execute or register a deed of sale in respect of the transfer. *Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that the transaction gave rise to the right of pre-emption within the meaning of the wajib-ul-urz. *Per* PETHERAM, *C.J.*, that the terms of the wajib-ul-urz meant that, if any co-sharer transferred his right wholly or partly, the right of pre-emption should arise; that although the legal interest in the share was never transferred, the effect of the transaction in question was to transfer absolutely the whole right of possession from the vendor to the vendee, and that it was therefore such a transfer as let in the

PRE-EMPTION—*continued.*

3. CONSTRUCTION OF WAJIB-UL-URZ —*concluded.*

right of pre-emption. *Per* STRAIGHT, *J.*, that, inasmuch as the defendants deliberately omitted to observe the necessary legal formality of a registered instrument with the object of defeating the pre-

mutation of names not having been registered, the provisions of s. 54 of the Transfer of Property Act prevented it from taking effect as a sale, or passing the ownership from the vendor to the vendee; and that therefore, under the wajib ul-urz, the right of pre-emption could not arise. JANKI *v* GIRJADAT

[I. L. R., 7 All, 482

103.———— Calculation of price, Mode of—*Proportionate share of purchase-money.*—The wajib-ul urz of a village contained this clause regarding the transfer of shares by sale or mortgage, *viz*, "Whenever a shareholder intends to transfer his

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4. PURCHASE MONEY.

104. ———— Apportionment of purchase-money, Illegality of.—A person claiming to exercise his right of pre-emption must take the bargain as it was made. Any apportionment of the purchase-money is altogether illegal. MADHUB CHUNDER NATH BISWAS *v.* TOMEE BEWAH . 7 W. R., 210

105.———— Dispute as to price—*Arrangement between vendor and vendee.*—In a suit to establish a right of pre emption to property which had been sold, in which the plaintiff alleged that the actual value was different from that which was recited in the deed of sale between the defendants, the vendor and vendee,—*Held* that plaintiff was entitled to have the property at the price agreed upon between the vendor and the vendee, but not to the benefit of an

106. ———— Rights of pre-emptor—*Sale contract—Deduction of amount recovered by vendee* —A pre-emptor is entitled to all the benefit which the vendee takes under the contract of sale. *Held* therefore, where a certain sum was fixed as the price of the property, and such sum was paid by the vendee, but it was subsequently agreed between him and the vendor, as part of the sale-contract, that the vendee should recover for his own benefit certain moneys due to the vendor at the time of the sale, and the vendee recovered such moneys, that the pre-emptor was entitled to a deduction of the amount of such moneys from the sum originally fixed as the price of the property. TAJAMMUL HUSAIN *v.* UDA

[I. L. R., 3 All, 688

107. ———— Bad title of vendor as to part of property—*Pre emptor and preferential pre emptor.*—Certain persons sold an 8 anna share of a village. *G* sued the vendors and purchasers of the share to enforce his right of pre-emption in respect of the sale, and obtained a decree. *M*, claiming 1 anna 4 pies of the share as his property, sued the vendors and purchasers of the share and *G* for such 1 anna 4 pies and obtained a decree. He then sued the same parties to enforce his right of pre-emption in respect of the remainder of the share, that is, 6 annas 8 pies, claiming to pay only a proportionate amount of the price paid for the whole share. *Held* that *M* was not bound to pay the price paid for the whole share but only the proportionate amount of such price. MUHAMMAD LATIF *v.* GOBIND SINGH

[I. L. R., 5 All, 382

108. ———— Amount of purchase-money —*Mortgage by conditional sale—Reg. XVII of 1806, s. 8—Foreclosure.*—*Held* that a proceeding under Regulation XVII of 1806 foreclosing a mortgage by conditional sale was not conclusive as to the amount of the mortgage-money against persons subsequently

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4 PURCHASE MONEY.

101.———— Apportionment of purchase money, Illegality of.—A pers n claiming to exercise his right of pre-emption must take the bargain as it was made Any apportionment of the purchase-money is altogether illegal MADHUB CHUNDER NATH BISWAS *v* TOMEE BEWAH 7 W. R., 210

PRE-EMPTION—*continued.*

4 PURCHASE MONEY—*continued.*

105 ———— Dispute as to price—*Arrangement between vendor and vendee* —In a suit to establish a right of pre emption to property which

the property at the price agreed upon between the vendor and the vendee, but not to the benefit of an arrangement by which a portion of the price had been allowed to remain in the hands of the vendee that he might pay off a mortgage-debt GOLAM AYHYA *v.* JOY MUNGUL SINGH 13 W. R., 435

therefore, where a certain sum was fixed as the price of the property, and such sum was paid by the vendee, but it was subsequently agreed between him and the vendor, *as part of the sale contract, that the vendee* should recover for his own benefit certain moneys due to the vendor at the time of the sale, and the vendee recovered such moneys, that the pre-emptor was entitled to a deduction of the amount of such moneys from the sum originally fixed as the price of the property TAJAMMUL HUSAIN *v* UDA [I. L. R., 3 All., 668

107. ———— Bad title of vendor as to part of property—*Pre emptor and preferential pre emptor* —Certain persons sold an 8 anna share of a village. *G* sued the vendors and purchasers of the share to enforce his right of pre-emption in respect of the sale, and obtained a decree. *M*, claiming 1 anna 4 pies of the share as his property, sued the vendors and purchasers of the share and *G* for such 1 anna 4 pies and obtained a decree. He then sued

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108. ———— Amount of purchase-money —*Mortgage by conditional sale—Reg. XVII of 1806, s 8—Foreclosure —Held* that a proceeding under Regulation XVII of 180 foreclosing a mortgage by conditional sale was not conclusive as to the amount of the mortgage money against persons subsequently

a decree in a suit to foreclose a mortgage by conditional sale cannot bind a pers n not a party to the suit claiming to enforce a right of pre-emption and raising

PRE-EMPTION—*continued.*

4. PURCHASE-MONEY—*continued.*

a similar question. *Held* also that a person claiming a right of pre-emption in respect of a mortgage by conditional sale was bound to pay as the price of the property the entire amount due on such mortgage at the time it became absolute. *Ashik Ali* v. *Mathura Kandu, I. L. R., 5 All., 187,* followed. TAWAKHUL RAI v. LACHMAN RAI. TAWAKHUL RAI v. SHEO GHULAM . . . I. L. R., 6 All., 341

109. ——— **Arrangement between vendor and vendee as to payment of purchase-money**—*Right of pre-emptor to stand in the position of the purchaser.*—A co-sharer of a village sold part of his share to a stranger. This sale was subject to a right of pre-emption created by the wajib-ul-urz in favour of the partners of the vendor. Only a part of the purchase-money was paid in cash, it being agreed that the balance should remain on credit, and be secured by two deeds in which the property was hypothecated by the purchaser to the vendor. *Held* that it could not be said that the partners of the vendor had not only the right of pre-emption, but also the right to be put in the same position with reference to all the peculiar incidents of the payment of the purchase-money as that arranged between the vendor and purchaser. NIHAL SINGH v. KOKALE SINGH

[I. L. R., 8 All., 29

110. ——— **Concealment by vendor and vendee of actual price**—*Evidence—Market value.*—In suits for pre-emption, where the Court has come to the conclusion that the price alleged in the deed of sale is not the true contract price, and where it cannot ascertain the true price by reason either that the vendor and vendee refuse to disclose the same by their own evidence or their evidence cannot be believed, the Court should ascertain, if posible, what was the market price of the property in dispute at the time of the sale, and accept that market price as the probable price agreed upon between the parties. It is for the plaintiff either to show what was the actual contract price or to give substantial evidence on which the Court can act, showing what was the market value at the time of the sale. AGAR SINGH v. RAGHURAJ SINGH

[I. L. R., 9 All., 471

111. ——— **Clause in wajib-ul-urz fixing price in case of sale to a co-sharer**—*Vendor and purchaser—Sale to a stranger for higher price—Agreement running with land—Pre-emptor entitled to take property on payment of price fixed in wajib-ul-urz—Purchaser entitled to recover purchase-money.*—The wajib-ul-urz of a village contained a provision that any co-sharer desiring to sell his share should offer it to the other co-sharers before selling it to a stranger, and further that, in case of sale to a co-sharer, the price to be paid should be calculated in proportion to the price for which a particular share had been sold in 1860. One of the co-sharers, without first offering his share to the other co-sharers, sold it to a stranger, for a price higher than that which would be payable according to the above-mentioned provision. A suit for pre-emption was brought by a co-sharer against the vendor and the purchaser, and the plaintiff claimed the benefit of the sale upon payment of a sum calculated according to the condition of the wajib-ul-urz relating to sales between co-sharers. *Held* by the Full Bench that the condition of the wajib-ul-urz regarding the price to be paid for the share was still binding on the land, notwithstanding the sale; that a co-sharer was entitled to purchase the share at the price agreed before it could be sold to anyone else, and in case of sale to a stranger could call on the vendor and the purchaser to hand it over on payment of such price; and that, if the stranger vendee had paid more than was payable according to the wajib-ul-urz, he was entitled to recover it from the vendor. *Akbar Singh* v. *Juala Singh, Weekly Notes, All., 1885, p. 216,* distinguished by TYRRELL, J. KARIM BUKHSH KHAN v. PHULA BIBI

[I. L. R., 8 All., 102

112. ——— *Agreement running with the land—Pre-emptor entitled to take property on payment of price fixed in wajib-ul-urz.*—The pre-emptive clause in the wajib-ul urz of a village contained a provision that the right of pre-emption could be enforced on payment of such sum as would represent the "kimat i-murav vajah," that is according to current rates. A suit for pre-emption was brought against the vendor and vendee of a certain fractional share in the village, and the plaintiff claiming the benefit of the above provision disputed the price entered in the sale-deed as the proper price for the share according to current rates. *Held,* following *Karim Baksh Khan* v. *Phula Bibi, I. L. R., 8 All., 102,* that a co-sharer was entitled to purchase the share sold at a price to be ascertained according to the rule in that behalf contained in the wajib-ul-urz, and the condition in the wajib-ul-urz regarding the price to be paid for the share sold was binding on the land and therefore binding on the stranger vendee. UPMANI KUAR v. RAM DIN

[I. L. R., 10 All., 621

113. ——— **Application for refund of money paid into Court by a successful plaintiff in a suit for pre-emption, the decree having been set aside on appeal**—*Civil Procedure Code (1882), s. 583—Interest.*—A plaintiff in a pre-emption suit obtained a decree and paid into Court the pre-emptive price as stated in that decree, and the money was drawn out of Court by the vendor. Subsequently the decree was reversed on appeal, and the plaintiff then applied under s. 583 of the Code of Civil Procedure, for a refund of the money paid into Court as above described with interest. *Held* that the pre-emptor was entitled to a refund of the money together with interest up to date of repayment. *Rogers* v. *Comptoir D' Escompte de Paris, L. R., 3 P. C., 475,* followed. *Jaswant Singh* v. *Dip Singh, I. L. R., 7 All., 432,* referred to. *Hatti Prasad* v. *Chattarpal Dubey, Weekly Notes, All. (1888), 287,* dissented from. BHAGWAN SINGH v. UMMAT-UL-HASNAIN

[I. L. R., 18 All., 262

114. ——— **Decreed pre-emptive price paid into Court by pre-emptor**—*Subsequent partial withdrawal by a creditor of the decree-holder of the money so paid in.*—The holder of a

PRE-EMPTION—*continued*

4 PURCHASE MONEY—*continued*

decree for pre emption paid the decreed pre-emptive

115 ——— Calculation of price—*Covenant for pre emption Breach of—Suit to enforce covenant*—Four brothers, on making a partition of their joint property, covenated with each other that if any one of them or their heirs had to sell his share he should offer to sell the same to one of the co sharers One of the brothers having died, his widow sold his share which she had inherited without such an offer to the surviving brothers, who thereupon sued her and her vendee for possession upon payment of what they alleged to be the value of the property (*viz* R27) The Munsif found the value to be greater (*viz*, R95) and set aside the sale without giving possession The lower Appellate Court made an order that, if plaintiffs deposited R95 in Court, their appeal would be decreed

an election after the value had been ascertained whether they would purchase at that price or not *Quære*—Can a perpetual covenant as to the disposition of land be enforced? TRIPOORA SOONDUREE *v* JUGGERNATH DUTT . . . 24 W R., 321

116 ——— Conditional decree—*Appeal—Costs—Civil Procedure Code, ss 214, 553*—A Court of first instance decreed a claim for

decree for costs by drawing out therefrom the R30 9 0 After this, the decree was modified on appeal the Appellate Court raising the R175 payable as the condition of pre-emption to R200 and reversing the first Court's order as to costs. Within the period specified in the Appellate Court's decree the pre-emptor paid into Court the further sum of R75. Subsequently the vendee defendant applied to the Court under s 583 of the Code of Civil Procedure to have the property in suit restored to him contending that the pre-emptor had failed to pay the full R200 within the prescribed period. *Held* by STRAIGHT J affirming the judgment of MAHMOOD J, that this contention must fail, that

PRE-EMPTION—*continued.*

4. PURCHASE MONEY—*concluded*

the payment of R125 due under the first Court's decree could not be said to have been reduced by the pre-emptor subsequently executing against the amount so paid the order of that Court in his favour for costs and that the subsequent payment of R75 within the period prescribed by the Appellate Court satisfied the requirements of that Court's decree, subject to the judgment debtor's right to recover the costs realized in execution of the first Court's decree *Held* by TYRRELL, J, *contra*, that although the pre emptor had once made a payment which for a few days was a compliance with the first Court's decree, such compliance became immaterial when that decree was modified on appeal and as he had never had in any Court a credit for R200 as required by the Appellate Court's decree which alone was the decree in the cause, he had failed to fulfil the condition essential to pre-emption and therefore the defendant's application should be allowed BALMUKAND *v* PANCHAM

[I L R, 10 All., 400

5 PROFITS OF LAND

117 ——— Lambardar collecting rents for co-sharer—*Right of suit by pre emptor to recover profits accruing between the date of his decree and the time when he obtained mutation of names—Principal and agent*—*Held* that a pre emptor who had obtained a decree for pre emption in respect of a share in a pure zemindari village could not successfully maintain a suit against the judgment debtor co-sharer for the profits of the pre-empted share accruing between the date of the original decree and the date of his obtaining mutation of names such profits having been collected by the lambardar, but not paid over to the judgment-debtor inasmuch as neither could the lambardar be considered as an agent of the co-sharer whose possession of the profits was the possession of his principal

6. LOSS OR WAIVER OF RIGHT

118 ——— Refusal to purchase—*Conditional decree*—*Held* that the plaintiff having ... uld ... ree, ... han ... nl ... e

KHUMAN SINGH . . . 1 Agra, 265

119. ——— *Bonâ fide belief that price stated is in excess of real price*—A person having a right of pre-emption does not lose it by refusing to purchase the property at the price at which it is offered to him because he believes that such price is in excess of the real price where such belief is entertained and expressed in good faith LAIJA PRASAD *v* DEBI PRASAD

[I. L. R., 3 All., 230

PRE-EMPTION—*continued.*

6. LOSS OR WAIVER OF RIGHT—*continued.*

120. ———— Effect of imperfect partition on right of pre-emption.—Where there is imperfect partition,—*viz.*, where the land is divided, but the joint liability to the Government remains, and the property is not made into separate mehals,—the right of pre-emption is not lost. RAM PERSHAD *v.* BULJEET SINGH . . . 2 Agra, 252

121. ———— Pre-emptor opposing mutation of names—*Effect of such opposition on right of pre-emption*—*Held* that a pre-emptor is not precluded from claiming the property by right of pre-emption because he opposed the mutation of names only on the ground that the vendor was not in possession. PEERA *v.* SHIMBHOO . 2 Agra, 348

122. ———— Insertion of names of purchaser's sons in deed of sale, Effect of—*Absence of intention to defraud.*—*Held* that a preferential right to purchase is not lost merely by the inclusion of the names of the sons of the purchaser in the sale-deed, if it be proved that the actual purchaser was the father, and the names of the sons were included in accordance with the prevailing usage, without any intention to defraud the other co-sharers. DOWLUT SINGH *v.* KEDAR SINGH [3 Agra, 25

123. ———— Re-sale—*Effect of re-sale on right of pre-emption.*—A re-sale cannot destroy the right of pre-emption in a property the sale of which is admitted by the vendor. PUTOOARAM *v.* SHAM LALL SAHOO . . . . 7 W. R., 206

124. ———— Acquiescence in mortgage by conditional sale—*Relinquishment.*—Acquiescence in a mortgage by conditional sale does not involve relinquishment of the right of pre-emption upon the conditional sale eventually becoming absolute. AJAIB NATH *v.* MATHURA PRASAD [I. L. R., 11 All., 164

125. ———— Relinquishment of right—*Partition of property sold on application of vendee—Silence of pre-emptor—Waiver—Estoppel.*—Subsequently to the sale of a one-third share in a village, the vendee applied for partition of the share. A co-sharer, who had a right of pre emption in respect of the sale, made no objection to this application, and the partition was effected. The co-sharer afterwards set up a claim to pre-emption. *Held* that there was nothing in the conduct of the pre-emptor which could amount to estoppel, or to a waiver of his right of pre-emption. *Motee Sah* v. *Goklee, N.-W. P. S. D. A.*, 1861, *p.* 506, distinguished and dissented from; and *Bhairon Singh* v. *Lalman, Weekly Notes, All.*, 1884, *p.* 216, referred to by MAHMOOD, J. THAMMAN SINGH *v.* JAMAL-UD-DIN . . . . I. L. R., 7 All., 442

126. ———— *Transfer of property to "stranger"—Right of decree-holder to possession.*—The holder of a decree enforcing a right of pre emption, who subsequently to the date of the decree sells the property to a "stranger," and permits the latter to pay the purchase-money decreed into Court, does not by such conduct debar himself from obtaining possession of the property in execution of the decree. *Rajjo* v. *Lalman, I. L. R.*, 5 *All.*, 180, and *Sarju Prasad* v. *Jamna Prasad*, unreported, distinguished. RAM SAHAI *v.* GAYA [I. L. R., 7 All., 107

127. ———— *Co-sharer joining relatives with him in claiming right—Effect on co-sharer's right—Stranger.*—A co-sharer of an estate, who has a right of pre-emption, does not, merely by joining with himself members of his family who are not co-sharers in such estate in a suit to enforce such right, defeat such right. *Manna Singh* v. *Ramadhin Singh, I. L. R.*, 4 *All.*, 252, distinguished. BHUREY MAL *v.* NAWAL SINGH [I. L. R., 4 All., 259

128. ———— Forfeiture of right—*Suit by pre-emptor and "stranger" to enforce right—Effects on pre-emptor's right—"Justice, equity, and good conscience"—Mahomedan law.*—*Held*, applying the doctrine of the Mahomedan law of pre-emption, such doctrine being in accordance with justice, equity, and good conscience, that a co-sharer in a village who had under the wajib-ul-urz a right of pre-emption in respect of the sale of a share who joined a "stranger" (that is, a person who has not such right) with himself in suing to enforce such right, thereby forfeited such right. *Sheodyal Ram* v. *Bhyro Ram, N.-W. P. S. D. A.*, 1860, *p.* 53; *Guneshee Lal* v. *Zaraut Ali*, 2 *N. W.*, 343; and *Fakir Rawot* v. *Emambaksh, B. L. R., Sup. Vol.*, 35, referred to. BHAWANI PRASAD *v.* DAMRU [I. L. R., 5 All., 197

RAJJO *v.* LALMAN . . I. L. R., 5 All., 180

129. ———— Effect on right of pre-emption of breach on a former occasion of the provisions of the wajib-ul-urz relating to pre-emption.—*Semble*—That a claimant for pre-emption under a wajib-ul-urz would not forfeit his right to pre-emption if upon a former occasion he had violated the provisions of the wajib-ul-urz by mortgaging his share to a stranger. *Gokul Chand* v. *Ram Prasad, Weekly Notes, All.* (1889), 127, followed. *Rajjo* v. *Lalman, I. L. R.*, 5 *All.*, 180, referred to. UJAGAR LAL *v.* JIA LAL [I. L. R., 18 All., 382

130. ———— Effect on right of pre-emption of joining a stranger in suit for pre-emption—*Amendment of plaint—Striking out name of party.*—Where a plaintiff having a right to pre-empt joins with himself in a suit for pre-emption a stranger, *i.e.*, a person who has no such right, he thereby forfeits his right to pre-empt, and this disability cannot be overcome by amending the plaint by striking out the name of the stranger. *Bhawani Prasad* v. *Damru, I. L. R.*, 5 *All.*, 147; *Ram Nath* v. *Badri Narain, I. L. R.*, 19 *All.* 148; and *Fida Ali* v. *Muzaffar Ali, I. L. R., All.*, 65, referred to. BHUPAL SINGH *v.* MOHAN SINGH [I. L. R., 19 All., 324

131. ———— Sale to a stranger—*Wajib-ul-urz—Re-sale before suit to a co-sharer—Effect*

PRE-EMPTION—*concluded*

6 LOSS OR WAIVER OF RIGHT—*concluded.*

of such re sale —In cases of pre-emption based upon a wajib-ul urz the right of pre emption does not

having equal rights with those seeking the ... SEBH MAL *v* HUKAM SINGH
[I. L R., 20 All., 100

132. ———— Non payment of price fixed by decree within the time limited

plaintiff paid in a portion only of the pre empt... price within the time limited by the decree The defendant appealed Long after the time prescribed for payment by the original decree had expired, the defendant's appeal was dismissed, but the time for

allowing the payment was without jurisdiction, the decree having, on the expiration of the time limited without payment by the plaintiff, become a decree

7 MISCELLANEOUS CASES.

133 ———— Suit for pre emption—*Custom and contract—Practice* —It is the practice of the Courts to allow claims to pre-emption to be asserted on the grounds both of contract and custom in one and the same plaint NEKCHUL *v* THAN SINGH . . . . 2 N W, 222

134 — Pleading right of pre-emption—*Right pleaded in defence to suit for possession by purchaser of co-sharer's rights and interests* —A co-sharer of a village, who is in possession, cannot plead the existence of a right of pre-emption in defence to a suit for possession by the purchaser of the rights and interests of another co-sharer AJUDHIA BAKHSH SINGH *v*. ARAB ALI KHAN . . . I L. R., 7 All., 892

135 ———— Want of opportunity to exercise right—*Conditions essential before alienation* —*Held* that the plaintiff who had a preferential right to purchase, and had no opportunity offered him had a right to enforce those conditions, a compliance with which was essential before alienation to others. ABDOOLLAH KHAN *v* AMEERUN
[1 Agra, 274

PRELIMINARY INQUIRY.

See CRIMINAL PROCEDURE CODES, s 351 (1872, s 104, 1861-69, s 206)
[14 W. R., Cr., 20

See CRIMINAL PROCEEDINGS
[9 W. R., Cr, 54

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT
[8 W R., Cr, 61
3 B L. R, A. Cr., 47

See PRESIDENCY MAGISTRATE
[I. L R, 16 Bom, 159

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES
[I. L. R., 20 Calc, 349

See SANCTION TO PROSECUTION NATURE, FORM, AND SUFFICIENCY OF, SANCTION . I. L. R., 6 All., 98, 101
[I. L R, 20 Calc., 474
I. L R., 15 All, 392

See SANCTION TO PROSECUTION -POWER TO GRANT SANCTION
[I L R., 19 Calc, 345
I L. R, 23 Calc, 582

PREROGATIVE OF THE CROWN

———— Statute limiting—

See SUPREME COURT, BOMBAY
[3 Moore's I. A, 466, 488

PRESCRIPTION

See CASES UNDER LIMITATION ACT, 1877, s 26 (1871, s 27)

1. CLAIM TO PRESCRIPTION.

1. ———— Assertion of right, Form of—*Election in alternative case* —The right asserted in a claim founded on prescription should be strictly and clearly defined and cannot be based on rights which are inconsistent When a party is called upon by the Court to elect which branch of a double

PRESCRIPTION—*continued.*

1. CLAIM TO PRESCRIPTION—*concluded.*

case he will proceed with, the election must be distinct and clear, and such as will bind him and will show accurately on the face of the record the claim (if any) which is abandoned. BIJOY KESHUB ROY v. OBHOY CHURN GHOSE . . 16 W. R., 198

See DHUNPUT SINGH BAHADOOR v. NARAIN PERSHAD SINGH . . . . . 20 W. R., 94

2. EASEMENTS.

(a) GENERALLY.

2. ———— **Prescription Act**—*Law of mofussil of India.*—The English Prescription Act does not apply to the mofussil of India. BIJOY PROKASH SINGH v. AMEER ALLY . . 9 W. R., 91

3. ———— **Easements, Law of, Applicability of, to British subjects in India**—*Civil Law.*—The law of easements in England, being derived from the civil law, has no peculiarities to debar its being applied to British subjects in India. CULLIANDOSS KIRPARAM v. CLEVELAND [2 Ind. Jur., O. S., 15

4. ———— **Foundation of prescriptive rights**—*Presumption of grant.*—Prescriptive rights are founded on the presumption of a grant from long-continued uninterrupted user and enjoyment as of right. CHUNDER JALEAH v. RAMCHURN MOOKERJEE . . . . 15 W. R., 212

5. ———— **Easements how created**—*User—Easement creating damage to servient tenement.*—A grant, either express or implied, in prescription, is necessary to establish an easement. Conclusive evidence is required to prove an easement the result of which is great damage to the servient tenement. Without an uninterrupted user, there can be no claim to an easement. ZUMEER ALI v. DOORGABUN . . . . 1 W. R., 230

6. ———— **Long possession**—*User—Presumption of title.*—Long and undisturbed user or possession confers title by prescription, because it is presumed to be founded on title. GOOROO PERSHAD ROY v. BYKUNTO CHUNDER ROY [6 W. R., 82

7. ———— *Permissive possession.*—To constitute a right by prescription, the possession must have been as of right. Mere permissive possession cannot be the basis of right by prescription. ASKAR v. RAM MANICK ROY [5 B. L. R., Ap., 12 : 13 W. R., 344

8. ———— **Right of user**—*Ancient and uninterrupted right.*—A party claiming the right of user by prescription over the property of another must show not only that the right has existed from ancient days, but also that it has been exercised as of right, and has not been interrupted. MALLIK JAWAD-UL-HUQ v. RAM PRASAD DAS [3 B. L. R., A. C., 281

9. ———— **Period creating right**—*User as creating prescriptive title.*—It was formerly held that no fixed period had been laid down to create a right by prescription. KRISHNA MOHAN MOOKERJEE v. JAGANNATH ROY JUGI . 2 B. L. R., A. C., 323

RUPCHANDRA GHOSE v. RUPMANJARI DASI [3 B. L. R., A. C., 325 : 12 W. R., 274

DOORGA CHURN PAUL v. PEAREE MOHUN [9 W. R., 283

BIJOY KESHUB ROY v. OBHOY CHURN GHOSE [16 W. R., 198

10. ———— *Uninterrupted enjoyment—Bom. Reg. V of 1827, s. 1, cl. 1.*—*Held* that uninterrupted enjoyment for a period of more than thirty years was necessary in order to acquire a title by prescription to an easement in the mofussil of the Bombay Presidency; the law applicable to such cases being Regulation V of 1827, s. 1, cl. 1, and that Act XIV of 1859 had made no alteration in this respect. ANAJI DATTUSHET v. MORUSHET BAPUSHET . . 2 Bom., 354 : 2nd Ed., 334

RAMBHAU BAPUSHET v. BHAI BAPUSHET [2 Bom., 352 : 2nd Ed., 333

11. ———— *User—Cases prior to Limitation Act, 1871.*—Prior to the passing of the Limitation Act, 1871, in order to give rise to an easement by prescription over immoveable property in the island of Bombay, it was necessary for a plaintiff claiming such an easement to prove twenty years' uninterrupted user of it. NAROTAM BAPU v. GANPATRAV PANDURANG . . 8 Bom., O. C., 69

The period was fixed by the Limitation Act, 1871, s. 27, at twenty years, and that provision has been continued in the present Limitation Act, s. 26.

12. ———— **Alterations in property**—*Severance of tenements—Continuance of easement without grant.*—If the alterations which a man makes in his property before alienation of any part of it are palpable and manifest, and in their nature permanent changes in the disposition of the property, so that one part thereof becomes dependent on another, the purchaser of either part must take the land either burdened or benefited, as the case may be, by the qualities thus attached thereto. On a severance of tenements, an easement in its nature continuous would pass by implication of law without any words of grant. AMUTOOL RUSSOOL v. JHOOMUCK SINGH [24 W. R., 345

(b) HOUSES AND OTHER BUILDINGS.

13. ———— **Loss of easements**—*Discontinuance of user—Pulling down house.*—Where the house, the right of easement to which was claimed, was not and had not been in existence for several years, nor was the intention shown of rebuilding it within a reasonable time,—*Held* that the right of easement which is acquired by prescription and enjoyment, and continues so long as the person enjoying it continues the enjoyment and shows an intention to continue it, had thus been lost by discontinuance; and that by the destruction of the tenement the servitude had been extinguished, and the plaintiff

PRESCRIPTION—*continued*

2 EASEMENTS—*continued*

had no right to maintain the suit for the right of *easement* TEEKA RAM v DOORGA PERSHAD [1 Agra, 196

KALEE DASS BANERJEE v BHOOBUN MOHUN DOSS . . . 20 W. R., 185

14. ——— Long continued user of house as house of prayer—*Public right*—A thatched house, which has been used by the proprietor of the land whereon it stood as a house of prayer for himself family, neighbours and the public, hav-

[illegible]

his heirs claimed the right and title to [illegible]

Held that the consent of the proprietor, added to the long use of the house by the public, entitled the public by way of implied grant to the occupation of the same as a house for prayer, and the plaintiffs could not succeed SUFROO SHAIKH DURJEE v FUTTEH SHAIKH DURJEE . . 15 W. R., 505

15 ——— Wall—*Adjoining building—Side wall.*—*A* built a house in the rear of *B's* house There was a passage between the houses Over the passage *A* built a room connecting the two houses This room corresponded with *B's* first floor, and had an open terrace on the top of it. The structure by which *A* connected the two houses was quite independent of *B's* house It was supported throughout by wooden pillars adjoining *B's* wall which the cross beams did not penetrate or touch But the structure was built so close to *B's* wall that the latter served as a side wall to the room This state of things had existed for upwards of twenty years *Held* that *A* did not acquire any [illegible] building on his own [illegible] *A* had built [illegible] sted to *B's* keeping up his wall to suc[illegible] house on that side GORDHAN DALPATRAM v CHOTALAL HARGOVAN . . I. L. R., 13 Bom., 70

(c) LAND

16 ——— Title by prescription—*Adverse possession*—*Quære*—Whether a title to land can be gained by prescription without adverse possession RAJ NARAIN DUTT v GOURMONEE DOSSEE . 6 W. R., 215

[illegible] of land

[illegible]

exclusive possession by the zamindar which interferes with that use MOHUN LALL v NOOR AHMED [1 N. W., Ed. 1873, 203

18 ——— Right to land for stall in market.—In a suit to recover possession of a piece of land on which defendant had erected a stall for the sale of commodities on market days it was held that defendant's right of resort to the market as a member of the public did not warrant his having a

PRESCRIPTION—*continued*

2 EASEMENTS—*continued*

stall located in a particular spot and that the latter right could only be acquired either by grant or by prescription. RAM MANICK ROY v ASOUR [11 W R., 113

19 ——— Intervention of owner after title lost by lapse of time—Where a proprietor of certain land lost all title to it through the operation of the statute of limitations, but subsequently intervened and held it for a year or two twenty-eight years before action brought, while Regulation V of

[illegible]

[1 Bom., 6[illegible]

20 ——— Right to watan—*Bom Reg V of 1827, s 1, cl 1*—*Uninterrupted possession*—The plaintiff in 1861 sued to recover his share in a watan. The defendants had been in actual possession of it from 1811 to 1830 when the Government attached the watan and enjoyed its revenues till 1845. In 1846 it was restored to the defendants. *Held* that the defendants had uninterrupted possession for more than thirty years under cl 1 of s 1 of Regulation V of 1827 LADO LAKSHUMAN v KRISHNAJI SADASHIV 6 Bom, A. C., 41

21 ——— Right to place tazias on certain plot of land during Moharram—*Easements Act (V of 1882), ss 4 and 18*—*Customary right*—*Facts necessary to establish the existence of a customary right*—The plaintiff sued for possession of a piece of land which he alleged, formed part of the court yard of his kothi and for demolition of a chabutra thereon The defendants denied the plaintiff's title, and alleged that they always used the chabutra as a sitting place and that during the Moharram the tazias and alums were [illegible] was placed [illegible] and that the [illegible] the manner [illegible] er Appellate [illegible] right to use [illegible] them found [illegible] se connexion [illegible] are within a period of twenty years or so placed tazias upon the land and sung there" *Held per* AIKMAN, J—A right to place tazias on a certain plot of land during the Moharram is a right of the nature of the customary easements referred to in s 18 of Act V of 1882, and may be acquired as such by prescription *Ashraf Ali v Jagan Nath I L R, 6 All, 497* referred to *Held* on appeal by EDGE C.J., and BANERJI, [illegible]

[illegible] defendants was acquired Where a local custom excluding or limiting the general rules of law is set up, a Court should not decide that it exists unless such Court is satisfied of its reasonableness and its

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

certainty as to extent and application, and is further satisfied by the evidence that the enjoyment of the right was not by leave granted, or by stealth, or by force, and that it had been openly enjoyed for such a length of time as suggests that originally by agreement or otherwise the usage had become a customary law of the place in respect of the persons and things which it concerned. KUAR SEN *v.* MAMMAN [I. L. R., 17 All., 87

reversing on appeal under the Letters Patent MAMMAN *v.* KUAR SEN . I. L. R., 16 All., 178

(*d*) MONEY ALLOWANCE.

22. ——— **Allowance attached to hereditary office**—*Bom. Reg. V of 1827—Immoveable property.*—An annual allowance for palki haq to the holder of the hereditary office of desai paid by Government out of the land revenue of a particular pergunnah to successive desais for upwards of thirty years was held not to create a prescriptive title, as such money payment was not "immoveable property" within the meaning of Bombay Regulation V of 1827, s. 1, cl. 1. GOVERNMENT OF BOMBAY *v.* DESAI KULLIANRAI HAKOOMUTRAI [14 Moore's I. A., 551

23. ——— **Annual allowance**—*Presumed grant*—For upwards of a century the holders of an inam had paid an annual allowance to the parties represented by the appellants, plaintiffs below. *Held* (TUCKER, *J.*, *dissentiente*) that the recipients had acquired a good title to allowance by prescription, and that an original grant for a sufficient consideration must be presumed. BHAVANI *v.* HASAN MIYA . . . . . . 1 Bom., 45

24.——— **Continued voluntary payment**—*Bom. Reg. V of 1827, s. 1—Chirda haqs—Acquisitive prescription.*—A prescriptive right to have a yearly payment made by Government to a private individual cannot be acquired by reason of a continued series of voluntary payments made to him by Government extending over a period of more than thirty years. Thus where Government paid a yearly sum of R32-4-6 to a chirda haqdar, by whom no services in return were rendered, from the year 1818 to 1860, and then discontinued such payment to the heir of the last holder, it was held that such yearly payments gave the haqdar no prescriptive rights against Government. COLLECTOR OF SURAT *v.* DAJI JOGI . . . 8 Bom., A. C., 166

25. ——— **Allowance not incidental to hereditary office**—*Bom. Reg. V of 1827, s. 1, cl. 1.*—In considering, with reference to prescription, whether an allowance (not being incidental to an hereditary office) is or is not immoveable property, the High Court has generally followed the test—"Is or is not the allowance a charge upon land or other immoveable property?" Where an allowance by Government was neither incidental to an hereditary office nor a charge upon immoveable property, and was not supported by a grant from Government, the enjoyment of it for thirty years did not create a prescriptive title to its continuance under Regulation V of 1827, s. 1, cl. 1. GOVERNMENT OF BOMBAY *v.* GASVAMI SHRI GIRDHARLALJI . 9 Bom., 222

26. ——— **Fixed permanent allowance**—*Grant—Immoveable property—Nibandha—Hindu law.*—The right to receive annually a fixed permanent allowance payable out of the revenues of a temple is "nibandha," and must be regarded as immoveable property under the Hindu law; but this rule could not enable the right to be acquired by prescription. LAKSHMANDAS BHAGATRAMJI *v.* MANOHAR GANESH TAMBEKAR [I. L. R., 10 Bom., 149

(*e*) OFFICE.

27. ——— **Religious office held by successive appointees**—*Bom. Reg. V of 1827, s. 1, cl. 1.*—When a religious office with lands attached thereto was held by several gurus in succession, each holding such office by virtue of an appointment made on his succession, it was held that no proprietary right could be acquired by such gurus in the office or lands against the patron or owner by prescription, as such a case did not come within the meaning of cl. 1 of s. 1 of Regulation V of 1827. TVATAT SVAMI *v.* ANDNYA CHARANTI [6 Bom., A. C., 132

(*f*) COLLECTION OF REVENUE.

28. ——— **Joint kabuliatdars**—*Exclusive collection by one kabuliatdar for more than thirty years.*—Where a kabuliatdar collected Government revenue for more than thirty years, the kabuliat being signed each year by his co-kabuliatdar as well as by himself, it was held that by so doing he had not, under the circumstances, acquired a prescriptive right to collect the revenue to the exclusion of his co-kabuliatdar. BAPU RAM PARBHU *v.* VISAJI CHANDO SAKTANEKAR . 8 Bom., A. C., 182

(*g*) PRIVACY.

29. ——— **Customary easement**—*Right to have windows closed—Custom.*—Case in which it was found that the plaintiff was by local custom entitled to an easement of privacy, and in which the Court granted a mandatory order compelling the defendant to permanently close the door or window complained of. LACHMAN PRASAD *v.* JAMNA PRASAD . . . . I. L. R., 10 All., 162

30.——— *Custom—Right of suit.*—A customary right of privacy under certain conditions exists in India and in the North-Western Provinces, and is not unreasonable, but merely an application of the maxims *sic utero tuo ut alienum non laedas* and *aedificare in tuo proprio solo non licet quod alteri noceat.* A substantial interference with such a right, where it exists, if without the consent or acquiescence of the owner of the dominant

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

tenement, affords such owner a good cause of action. Each case in which such a right is in dispute must be decided upon its own facts, the primary question in all cases being whether the privacy in fact and substantially exists, and has been and in fact enjoyed. If this is answered in the negative, no further question arises. If in the affirmative, the next question is whether the privacy has been substantially inter- [illegible]

[illegible] I. L. R., 10 All., [illegible]

31. ——— *Custom—Right of privacy.*—The customary right of privacy which prevails in various parts of the North-Western Provinces is a right which attaches to property, and is not dependent on the religion of the owner of such property. ABDUL RAHMAN *v.* EMILE. EMILE *v.* ABDUL RAHMAN . . I. L. R., 16 All., 69

(h) LIGHT AND AIR.

32. ——— Light and air, Right to—*Easements to dwelling house—Use as a dwelling-house.*—To acquire by prescription a right to the uninterrupted access of light and air through the windows of a dwelling-house, it is sufficient that the building in respect of which the right is claimed has assumed the appearance and outward aspect of a [illegible] before the [illegible] though not [illegible] or the full [illegible] When a building is so far completed as to show an intention to use it as a dwelling-house, with certain windows or openings for light and air, from that time it becomes the duty of those who are concerned in preventing a prescriptive right to the access of light and air from arising in respect of such windows, to take steps to challenge and hinder the acquisition of such right. PRANJIVAN DAS HARJIVAN DAS *v.* MAYARAM SAMAL DAS . . . . 1 Bom., 148

[illegible] whether the party has or has not other windows on another side of his premises is immaterial. PURAN MUDDUCK *v.* OODAY CHAND MULLICK . . . . 3 W. R., 20

MAHOMED HOSSEIN *v.* JAFUR ALI 4 W. R., 23

34. ——— *Right to have building removed—Sufficient light, Right to access of.*—An easement of light to a window only gives a right to have buildings that obstruct it removed so as to allow the access of sufficient light to the window. BALA *v.* MAHARU . I. L. R., 20 Bom., 788

35. ——— *Right to have windows closed—Invasion of privacy, comfort, and ventilation.*—If the plaintiff's privacy was invaded, and the defendant could not establish his right by long usage, the former was entitled to have the windows closed, and the latter could not be allowed to open new windows merely because the comfort and ventilation of his own building would be increased. GOOR DASS *v.* MANOHUR DASS . 2 Agra, 269

36. ——— *Presumption of lost grant—Positive and negative servitudes—Obstructions—2 & 3 Will. IV, c. 71.*—In a suit to [illegible] and [illegible] in [illegible] of prescription is thus claimed in England prior to the passing of the Prescription Act. Although the enjoyment of light and air as of right for upwards of thirty years is evidence from which an enjoyment from time immemorial may be presumed, yet, inasmuch as the period of legal memory is about 700 years, the claim by prescription in this country is defeated by the fact that English law has only been introduced here for about 100 years. Where an easement has been enjoyed for upwards of twenty years, the presumption of a grant is a question of fact, and not of law. Distinction drawn between positive and negative servitudes. *Held* by PEACOCK, C.J.—A right to air may be acquired by express grant, but it cannot be acquired merely by presumption arising from user, whether the presumption is a presumption of prescription or not. The only amount of light which can be claimed by prescription or by length of enjoyment, without an actual grant, is such an amount as is reasonably necessary for the convenient and comfortable habitation of the house. The uninterrupted enjoyment of light for twenty years acquiesced in by the owner of the servient tenement raises a presumption of right which, in the absence of any evi- [illegible]

Mahomedan law. A right to the unobstructed access of light is not a property or interest in the light itself, nor a right to be enjoyed in or over the soil of the adjacent owner. By analogy to the law of limitation, an adverse and uninterrupted use of an easement for twenty years confers a right to it; therefore, where the access of light and air through the windows of a house has been enjoyed for twenty years, and there is nothing to rebut the presumption [illegible]

[illegible]AGRAM *v.* KHETTRANATH KARFORMAH [3 B. L. R., O. C., 18

37. ——— *Knowledge and acquiescence—2 & 3 Will. IV, c. 71.*—In a suit for enforcing the removal of an obstruction to the alleged right of the plaintiffs to the light and air through certain windows in a room of a house contiguous to the house of the defendants, it was proved that the plaintiffs had purchased the premises in 1847, and that the building of the room in which the windows in question were had been subsequently commenced in 1849; and the Judge of the Court

PRESCRIPTION—*continued*

2. EASEMENTS—*continued*

the new or enlarged opening, if he can do so without obstructing the old, but if he cannot obstruct the new without obstructing the old he must submit to the burden A plaintiff entitled as of right to light and air through a certain window, subsequently enlarged it and on the light thereto being interfered

[illegible]

entitled to a mandatory injunction requiring the defendant to remove it PROVABUTTY DABEE *v.* MOHENDRO LALL BOSE I L R., 7 Calc., 453

40 —————— *Obstruction—Substantial injury—Injunction—Damages—Acquiescence* —Any act by which the control of light and air are taken off the hands of the person entitled to them or by which the access of light and air to the window of a dwelling house is interfered with is *primâ facie* an injury of a serious character Where the defendant without leave or license, took possession of the plaintiff's window as completely as if he had blocked it up altogether,—*Held* that no [illegible] an inj[illegible] will [illegible] access [illegible] began in May, and the plaintiff instituted his suit in July. *Held* that *primâ facie*, the plaintiff was entitled to the removal of the obstruction and that it was for the defendant to show that the right had been lost by acquiescence NANDKISHOR BALGOVAN *v.* BHAGUBHAI PRANVALABDHAS

[I L R, 8 Bom, [illegible]5

41 [illegible]

frame in an aperture in an upward extension of his part of the wall which he had erected eight years before suit and the latter thereupon raised the wall on her side so as to cut off the supply of light and air which the plaintiff used to receive before and after the placing of the window frame *Held* that there had been no appropriation of the light and air by the plaintiff for the statutory period (twenty years) creating in him a right of easement and entitling him to relief against the inconvenience sustained by him SAKUBAI *v.* BAPU NAKHAR

[I L R, 2 Bom, 660

42 —————— *Injunction—Damages—Specific Relief Act (I of 1877) s 54 cl. (c)—Limitation Act (XV of 1877), s 26—Mandatory injunction* —The plaintiff complained that the defendants intended to build so as to obstruct the passage of light and air through an ancient [illegible]

the injunction as prayed The defendants appealed to the Joint Judge, who amended the lower Court's decree by ordering the removal of the injunction and directing, in its stead a new window to be opened in the plaintiff's house to the east of the window in question On appeal by the plaintiff to the High Court —*Held*, reversing the decree of the lower Appellate Court that the plaintiff had an absolute and indefeasible right to the easement he had acquired, and the only possible question was whether injunction or damages was the appropriate remedy under the circumstances of the particular case *Held* also that as the evidence established that, after defendant's wall was built, plaintiff's room would not remain substantially as useful to him as before the plaintiff was entitled to an injunction *Holland v Worley, L R, 26 Ch D, 578* distinguished. The High Court also directed a mandatory injunction to issue to the defendants to remove the wall they had raised after the lower Appellate Court had passed the decree in their favour and pending the plaintiff's appeal to the High Court KADARBHAI *v.* RAHIMBHAI I L R, 13 Bom, 674

43 —————— *New house erected on the site of old house* —The mere fact of a house having been taken down or having fallen down, and a new house being erected on its site would not by itself be sufficient to extinguish any right to light and air which the owner of the house may possess The question whether the right is or is not extinguished would depend on whether the new doors and windows are in the same position and are of the same dimensions as the old doors and windows; in other words, the question for consideration would be whether the easement claimed as appertaining to the newly constructed house imposes a different and a greater burden on the servient tenement *Fowlers v Walker, L J, 49 Ch 598 L J 51 Ch 443* and *Pendarves v Monro L R 1 Ch, 61*, followed A CASTERSZ *v.* RAJ KUMAR SARKAR

3 C W N, 28

44 —————— *Obstruction of right to light and air—Suit for injunction or damages—Specific Relief Act (I of 1877), s 54* —The plaintiff was the owner of a house in Jambulwadi Street in Bombay The defendant owned a house to the east of it and between the two houses was a gully three feet seven inches wide the part of which next the defendant's house was a gutter On the ground floor of the plaintiff's house were four windows and on the first floor two windows, all looking out into the gully and all of them ancient windows. The defendant's house originally was a little higher than the plaintiff's house, and consisted of a groundfloor a first floor and a loft. Shortly before suit, the defendant pulled down this house and on the same site began to build a new four storied house with a loft The plaintiff sued for an injunction, alleging that this new house which would be of much greater height than the old one, would completely block up his ancient windows and cause him material damage there being no other window in his house on the side next

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

the defendant. The defendant in his written statement denied that his new house would cause material damage to the plaintiff. He alleged that his old house, which was higher than the plaintiff's, had a projecting cornice, so that hardly any direct light came to the plaintiff's windows, which were almost, if not entirely, lighted by the light that came from each end of the gully. He further stated that his new house would have no cornice, and that he had widened the gully, so that light to the plaintiff's windows would not be appreciably diminished, but that, even if the passage had not been widened, there would have been little diminution of light. He also alleged that the plaintiff had other windows and sources of light than the said six windows. While denying all damage, the defendant, however, to avoid litigation and without prejudice, paid into Court R200, which, he said, was more than sufficient to compensate the plaintiff. After filing the suit, the plaintiff obtained a rule for an injunction at the date of which the walls of the defendant's house had been built up as far as the second floor. The rule was subsequently discharged, the defendant consenting that the cause should be argued at the hearing as if the new house was then in the same condition. The defendant, however, subsequently continued to build, and at the date of hearing it was practically complete. The lower Court (STARLING, *J.*) found that prior to the building of the new house direct light came to the plaintiff's windows to the extent at all events of 5 inches, and in addition to this a considerable amount of lateral light came to the windows over the defendant's roof. The Court held that, as the plaintiff had a right to this light by prescription, he was absolutely entitled to the whole of it; that the defendant had by his new building cut off all the direct light, and that practically all the light left to the plaintiff was reflected light, the amount of which depended on the condition in which the defendant might choose to keep the walls of his house. Under these circumstances, the lower Court, looking at the house as if it was still in the condition in which it was at the time the injunction was discharged, held that the plaintiff was entitled to a mandatory injunction, and directed the defendant to remove the upper portion of the house, which had been built since that time. On appeal,—*Held* that, although the plaintiff's light had been sensibly diminished by the defendant's new building, there had not been such a large, material, and substantial damage as to require interference by injunction, or that the plaintiff's room had been rendered unfit for the purpose for which it might reasonably be expected to be used. The Appeal Court therefore varied the decree of STARLING, *J.*, and refused an injunction, but ordered the defendant to pay the plaintiff R500 as damages. GHANASHAM NILKANT NADKARNI *v.* MOROBA RAMCHANDRA PAI

[I. L. R., 18 Bom., 474

45. ———————— *Access of light and air windtoows—Agreement preventing the acquirement of an easement—Easements Act (V of 1882), s. 15, expl.—Specific Relief Act (I of 1877) s. 54.*—A promise was made regarding the access of light and air, by the plaintiff's predecessor in title, to windows placed by him in the upper part of his house which was separated by a narrow space from a building opposite belonging then to the defendant's predecessor. This promise was that the owner of the house would make no objection to the blocking up of the windows in question when the owner of the building opposite should rebuild it and raise it to a higher elevation. The owner of the windows accepted this promise. After the lapse of twenty years, the defendant, having given notice that he would act on the agreement, proceeded to rebuild; and he raised his building higher than the old one, causing the obstruction of which the plaintiff now complained. The High Court (FARRAN, *J.*) in its Original Jurisdiction decided that the case was not one for an injunction, but for damages, and gave the plaintiff a decree for a sum as compensation. On appeal, the Appellate Bench of the High Court (PARSONS and STRACHEY, *JJ.*) held that the plaintiff had made out no prescriptive right to light and air, and the cases of *Dhanjibhoy* v. *Lisboa, I. L. R., 13 Bom., 252,* and *Ghanasham Nilkant Nadkarni* v. *Moroba Ramchandra Pai, I. L. R., 18 Bom., 474,* followed and approved as to the circumstances in which the Court will grant an injunction where a right to light and air is infringed. SULTAN NAWAZ JUNG *v.* RUSTOMJI NANABHOY I. L. R., 20 Bom., 704

Held, on appeal to the Privy Council, that there having been a continuing agreement between the parties within the meaning of expl. 1 of the Easement Act, 1882, the acquirement by the plaintiff of an easement by prescription had been prevented. From the agreement it was apparent that the enjoyment of light and air had not been granted as an easement. SULTAN NAWAZ JUNG *v* RUSTOMJI NANABHOY BYRAMJI JIJIBHOY I. L. R., 24 Bom., 156

[L. R., 26 I. A., 184

46. ———————— Air, Right to—*Right to uninterrupted passage of air.*—The owner of a house cannot by prescription claim to be entitled to the free and uninterrupted passage of a current of wind. He can claim no more air than what is sufficient for sanitary purposes. BARROW *v.* ARCHER . . . . 2 Hyde, 125

47. ———————— *South breeze—Limitation Acts (IX of 1871), s. 27; (XV of 1877) s. 26—English Prescription Act (2 & 3 Will. IV), c. 71—Limitation Act, Effect of, on the pre-existing law as to nature and extent of the right to light or air.*—The Indian Limitation Act, unlike the English Prescription Act, places light and air on the same footing; and the object of the Prescription Act and of the provisions of the Indian Limitation Act is not to enlarge the extent and operation of the easement, but to provide another and more convenient way of acquiring such easements—a mode independent of legal fiction and capable of easy proof in a Court of law; these Acts do not therefore alter in any way the pre-existing law as to the nature and extent of the right. The

PRESCRIPTION—*continued*

2 EASEMENTS—*continued*

only amount of light for a dwelling house which can be claimed by prescription or by length of time (whether prior or subsequently to the Limitation Act of 1871) without an actual grant is such an amount as is reasonably necessary for the convenient and comfortable habitation of the house Rule laid down in *Bagram v Khettranath Karformah, 3 B L R, O C, 41 followed* The right of air is co-extensive with the right to light To give a right of action, either prior or subsequently to the Limitation Act of 1871, in a case (where there is no express contract on the subject) for an interference with the access of air to dwelling houses by building on adjoining land the obstruction must be such as to cause what is technically called a nuisance to the house, in other words to render the house unfit for the ordinary purposes of habitation or business There is no such right as a right to the uninterrupted flow of south breeze as such The "45 degree rule" is not a positive rule of law, but is a circumstance which the Court may take into consideration and is especially valuable when the proof of the obscuration is not definite or satisfactory DELHI AND LONDON BANK v HEM LAL DUTT . I L R, 14 Calc, 839

48 ———— *Partition of a joint family house—Effect of partition by a consent decree where the decree does not reserve any right to the use of light and air—Implied grant of easement upon severance of tenement*—

such right was expressly reserved in the decree The defence was that the principle of an implied grant of easement upon severance of the tenement should not be applied to the case, but that the rights of the parties should be determined solely with reference to the decree made in the partition suit *Held* that the principles of justice, equity, and good conscience should be applied to the case, and that the plaintiff was entitled to the right claimed even in the absence of any express pro ... ree— ... case- ... in a ... decree of the Court in a contested suit, and not by a consent of parties KADAMBINI DEBI v KALI KUMAR HALDAR . I. L. R., 26 Calc, 516 [3 C W. N, 409

49 ———— *Partition, decree for, of family dwelling house—Implied grant of easement—Easements Act (V of 1882)*—In a partition suit between brothers with respect to a family dwelling house the plaintiff was given certain rooms with windows. No easements were claimed in respect of the windows in that suit and the decree made no mention of it The windows enjoyed ancient lights, it was held that the partition decree must be taken to have made an implied grant of such easements. DWARKA NATH PAUL v SUNDER LALL SEAL [3 C W. N, 407

(i) RIGHT OF WAY

50 ———— Path across land—*Implied grant—Modes of acquiring easements—Limitation Act (XV of 1877), s 26*—In a suit for an in

dant had obtained their respective tenements more than twenty years previously The path had been admittedly made by the original owner, but the

treating the case as if it fell under s 26 of the Limitation Act and being of opinion that the defendant had not proved twenty years' peaceable, open, and uninterrupted exercise of the right of way, gave the plaintiff a decree *Held* that the mode of acquiring an easement provided by s 26 of the Limitation Act is not the only way in which an easement may be acquired, but an easement may also be acquired by implied grant In the present case the use of the path might be absolutely necessary to the enjoyment of the defendant's tenement in which case there would be an easement of necessity, or the use of the path, though not absolutely necessary to the enjoyment of the defendant's tenement might be necessary for its enjoyment in the state in which it was at the time of severance; and in this case, if the easement were apparent and continuous there would be a presumption that it passed with the defendant's tenement CHARU SURNOKAR v DOKOURI CHUNDER THAKOOR [I. L. R, 8 Calc., 956, 10 C L. R., 577

51. ———— Right of way—*Implied grant—Easement upon the severance of a heritage by its owner into two or more parts—Continuous and apparent easement Limitation Act (XV of 1877), s 26*—Implication of a grant of easement upon the severance of a tenement may extend to a "way" but that is so only where there has been some permanence in the adaptation of the tenement from which continuity could be inferred. *Charu Surnokur v Dokouri Chunder Thakoor, I L R, 8 Calc, 956,* distinguished RAM NARAIN SHAHA v KAMALA KANTA SHAHA . I. L. R., 26 Calc, 311

52. ———— Lane from public road to house—*User—Limitation Act (XV of 1871), s 27*—In a suit for declaration of the plaintiff's right of way over a lane leading from a public road to a door in the plaintiff's house which lane the defendant who resided at the end of the lane, had obstructed so as to prevent access to the plaintiff's house it appeared that the house in respect of which the easement was claimed belonged in 1835 to one *H C*, during the time of whose occupation there was

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

user of the right of way over the lane to the door, until he had the door bricked up. In April 1865 the house was sold by *H C*, and in June 1867 was conveyed by the purchaser to the plaintiff. From the blocking up of the door until the plaintiff's purchase no user was proved. The suit was brought in June 1875, about a month after the erection by the defendant of the obstruction complained of. *Held*, both in the Court below and on appeal, that the owner of the dominant tenement having, with the intention of preventing the use of the way, created an obstruction of a permanent nature which rendered such use impossible, the way could not be said, during the continuance of such obstruction, to have "been openly enjoyed" within the meaning of s. 27 of Act IX of 1871, and that accordingly, though there had been no interruption within the meaning of that section, a right to the way had not been established under the Act. SHAM CHURN AUDDY *v.* TARINEY CHURN BANERJEE

[I. L. R., 1 Calc., 422 : 25 W. R., 228

53. ———— Right of passage—*Unity of possession—Severance—Nuisance arising from acts of several persons.*—The words "appurtenant" or "belonging" will ordinarily carry only actual existing easement, and therefore will carry no right of way over the land of the grantor, though, under certain circumstances, even these words will have a wider construction. Where further words are used, such as "therewith held or used," such words will carry a way formerly enjoyed as an easement, but as to which the right has been suspended by unity of possession. But such words will not carry a way made by the owner of both properties during the unity of possession for his own greater convenience in the use of the two properties jointly. But where, during the unity of possession, a way, which has never existed as an easement, is in fact used for the convenience of one of the tenements afterwards severed, the authorities show that the words in question are large enough to carry it. One who has a right of passage over any place must not, any more than the owner of the soil might, use it in an excessive or improper manner so as to obstruct the exercise by others of their rights. The acts of several persons may together constitute a nuisance, though the damage occasioned by the acts of any one, if taken alone, would not be appreciable. CHUNDER KOOMAR MOOKERJI *v.* KOYLASH CHUNDER SETT

[I. L. R., 7 Calc., 665

Substantially confirmed on appeal; *see* SHAMA CHURN DEY *v.* CHUNDER COOMAR MOOKERJEE. CHUNDER COOMAR MOOKERJEE *v.* KOYLASH CHUNDER SETT . . I. L. R., 8 Calc., 677

54. *Change of use—Easements Act (V of 1882), s. 23—Increase of servitude.*—Under s. 23 of the Indian Easements Act (V of 1882), a right of way enjoyed for agricultural purposes may be used for the purposes of a factory, provided no additional burden is thereby imposed on the servient heritage. JESANG *v.* WHITTLE . . . I. L. R., 23 Bom., 595

55. ———— Right of passage for boats in the rainy season—*Water.*—A right of passage for boats in the rainy season over a channel wholly in another man's land is, in respect of extent, analogous to an ordinary right of way; and the dominant owner cannot complain of the servient owner's narrowing the channel, so long as the latter, by so doing does not prevent the former from passing and re-passing as conveniently as he has always been accustomed to do. A right of passage for boats in the rainy season over another person's tank must be claimed in a particular direction in order to be valid. DOORGA CHURN DHUR *v.* KALLY COOMAR SEN . I. L. R., 7 Calc., 145 : 8 C. L. R., 375

56. ———— Right of private ferry—*User for twenty years—Per* GARTH, *C.J.*, and WHITE, *J.*—Twenty years is the shortest period within which such a right of ferry can be established by user. *Per* MITTER, *J.*—Where the existence of a private right of ferry plying between the lands of *A* and *B* is admitted by *B*, no question of user arises; the issue that is raised between the parties is not whether a private ferry exists, but whether the recognized private ferry which is in existence is the property of *A* or *B*; but *semble*—supposing such question of user to arise, a right of private ferry cannot be established as an indefeasible right by long user. PARMESHARI PROSAD NARAIN SINGH *v.* MAHOMED SYUD

[I. L. R., 6 Calc., 608 : 7 C. L. R., 504

57. ———— Landlord and tenant—*Act V of 1882 (Easements Act)—Act VIII of 1891—Application of Act—Suit before Act VIII of 1891 came into force.*—There is nothing in Act VIII of 1891, which extended the Easements Act to the North-Western Provinces, to compel the Court to apply the Easements Act (V of 1882) to a suit commenced before Act VIII of 1891 came into force. A tenant cannot as against his landlord acquire by prescription an easement of way in favour of the land occupied by him as tenant over other land belonging to his landlord. So held by the Full Bench, *Gayford v. Moffatt, L. R., 4 Ch. App., 133,* referred to UDIT SINGH *v.* KASHI RAM . I. L. R., 14 All., 185

58. ———— Prescriptive right of the defendant to have branches of his trees overhanging the plaintiff's land—*Right of the defendant to go on to the plaintiff's land to collect the fruit of the trees distinct from, and not accessory to, the right to have the branches overhanging.*—The defendant having acquired a prescriptive right to have the branches of his trees overhanging the plaintiff's land, the lower Courts held that he had a right to go on to the plaintiff's land for the purpose of gathering the fruit of trees, on the ground that the prescriptive right to have the branches of his trees overhanging the plaintiff's land carried with it an "accessory" right to enjoy the profits of the branches in the best way possible. *Held* (reversing the lower Court's decree) that the right to go on the plaintiff's land to pick the fruit off the branches was perfectly distinct from the prescriptive right to

PRESCRIPTION—*continued*

2. EASEMENTS—*continued*

have the branches overhanging the land, and could not be said to be accessory to the latter right in the sense of being within the limits of that right PARSOTAM GHELA *v* GANDRAP FATELAL GOKULDAS

[I. L. R., 17 Bom., 745

59. ———— Landlord and tenant—*Easement of necessity*—A tenant cannot, as against his landlord, acquire by prescription an easement of way, in favour of the land occupied by him as tenant over other land belonging to his landlord But a tenant is entitled to a way of necessity over the adjoining land of his landlord *Udit Singh* v *Kashi Ram*, *I L R 14 All*, 185 approved. *Gayford* v *Moffat*, 81 *L J, Ch*, 610, followed *Quære*—Whether one tenant can acquire a prescriptive right of easement against other tenant under the same landlord JEENAB ALI *v* ALLABUDDIN

[1 C W N, 151

(*f*) RIGHT CONCERNING WATER

60 ———— Right to flow of water—*Obstruction to flow of water—Continual user*—The plaintiff brought a suit to establish his right to an uninterrupted flow of water through a channel which ran into a tank in a village which was the plaintiff's property, and to compel the removal of sluices erected across the said channel by the first defendant's predecessor in office, and used for the purpose of diverting the flow of the water *Held* that acquiescence in the sense of mere submission to the interruption of the enjoyment does not destroy or impair an easement To be effectual for that purpose, it must be attributable to an intention on the part of the owner to abandon the benefit before enjoyed *Held* also that the diversion of the water was a continuing injury down to the time of the institution of the suit and that the plaintiff's suit was not barred *Held* also that it must appear from the circumstances in evidence in such case that the interference or obstruction complained of is not a trivial but a substantial injury in order to warrant relief by way of injunction *Held* also that the right to an easement in the flow of water through an artificial water course is as valid against the Government as it is against a private owner of land. *Held per* SCOTLAND, *C J*—That the grant of an easement may be presumed from mere continued user of the privilege openly enjoyed by the occupiers of the dominant tenement as of right throughout any long period of time without interruption on the part of the proprietor of the servient tenement but with this qualification that the user should be for at least the period of adverse possession which is prescribed by s. 1, cl 12 of the Act of Limitations as a bar to the enforcing of title to corporeal property. *Per* INNES *J*—That no precise period of uninterrupted enjoyment can be fixed as sufficient of itself to establish a right to an easement PONNUSAWMI TEVAR *v* COLLECTOR OF MADURA . . 5 Mad., 6

61 ———— *Presumption from long user—Limitation Act, 1877, s 27*—A right to the uninterrupted flow of water along a defined channel over the lands of others may exist independently of the provisions of s 27 of the [illegible]

be sufficient to justify the Court in presuming a grant of the easement and a Court is not justified in dismissing the suit on the ground that there had been no user by the plaintiff within two years prior to suit SRINIVASA RAU SAHEB (JAGIRDAR OF ARNI) *v* SECRETARY OF STATE FOR INDIA

[I. L. R., 5 Mad., 226

62 ———— *Permission to erect dam—Grant—Relief against injury done by permissive act*—When a tenant by his lessor's permission erected a dam upon his holding and thereby obstructed the natural flow of the water to other lands of the lessor,—*Held* that the mere permission did not amount to a grant *Held* also that there was no implied grant of the right to use water so as to derogate from the rights of those through whose lands the stream would otherwise flow *Held* also that the right under the permission might be terminated by revocation of the latter, but that such revocation would only be permitted on the terms of the landlord paying to the tenant the expenses which that permission had led him to incur Even when the dominant and servient tenements are the property of different persons a man may license an act in its inception, and yet be entitled to relief when the act is found to have injurious consequences which he could not have contemplated at the time of the license KESAVA PILLAI *v* PEDDU REDDI

[1 Mad., 258

63 ———— *Exclusive right* [illegible]

for very many years supplied the plaintiff's village with water The village of Partical of which the first defendant was mirasidar, up to the date of the opening of the new channel had received its supply from the Mallattar channel The supply from this [illegible]

the deficiency of the Mallattar The water of the Kadurai was diverted into the new channel at a point above the point of divergence of the branch channel from the Kadurai to the plaintiff's village The relief was prayed for in the Court of first instance on the ground that the supply by the Kadurai had never been sufficient for the wants of the village, and that the new channel must necessarily cause a still further deficiency The Civil Judge found that the plaintiffs had sustained no loss by the opening of the new channel and dismissed the suit. On appeal it was contended first that plaintiffs had an absolute right to the uninterrupted flow of all the water

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

in the Kaduvai channel without subtraction or diminution by the defendants or by the Government, represented by the second defendant, and that any diminution, though not causing loss, was an invasion of their rights; second, that if they had not such absolute right, they had a right to a supply of water for the necessary purposes of irrigation and otherwise for their village, and that the possibility of loss at some future time, arising from a possible wrongful diminution of the water to their detriment through the new sluice and channel, entitled them to the relief claimed. Upon the first point,—*Held* that the plaintiffs had not the extensive and exclusive right to the water contended for by them, but that their right was limited to the beneficial enjoyment of the water for the irrigation and other necessary purpose of their tenancies as heretofore enjoyed. Also that the Government, as proprietor of the Kaduvai channel and water in it, had, subject to the above limited use by the plaintiffs and other villages in the same position as the plaintiffs, a right to distribute the water of the Kaduvai channel for the benefit of the public. *Ponusami Tevar* v. *Collector of Madura,* 5 *Mad.,* 6, distinguished. KRISTNA AYYAN *v.* VENKATACHELLA MUDALI . 7 Mad., 60

64. ———————— *Suit to restrain interference with water rights—Damages—Right of Government to distribute water.*—The plaintiffs, who were raiyats under the Government, brought a suit to restrain the defendants, the agents of the Government, and others, from so altering a calingula as to diminish the quantity of water which the plaintiffs were entitled to receive for the irrigation of their lands, and the plaintiffs alleged that the supply of water had been materially diminished by reason of the acts of the defendants. The only ground upon which the plaintiffs' claim was put was that they had received the water for a long time. The District Court held that the Government were authorized to regulate the distribution of water in such cases. *Held,* on regular appeal, *per* HOLLOWAY, *J.,* that no legal right was shown by the plaintiffs which could have been violated by the defendants, and that, if such right were established, there was nothing to show that a decree for damages would not have been the proper remedy. *Per* INNES, *J.*—That the evidence did not show any diminution of the supply of water below the quantity to which the plaintiffs were entitled. VENKATA REDDY *v.* LISTER . . 7 Mad., 342

65. ———————— *Interruption —Abandonment.*—The plaintiff claimed a prescriptive right to the flow of the surface drainage water from the land of the defendant on to his land. *Held* that such an easement can be acquired only where the water flows in a definite channel. In a suit for interrupting the flow of water from the land of the defendant to the land of the plaintiff it appeared that eight years before suit, the defendant had diverted the water, and that it had been diverted ever since. *Held* that the right, if acquired, would not necessarily be lost by the interruption, but that, if the plaintiff acquiesced during that time in the interruption, it might be some evidence of an abandonment of the right. KENA MAHOMED *v.* BOHATOO SIRCAR

[Marsh., 506

LUCHMEE PERSHAD *v.* FUZEELUTCONISSA BIBEE

[7 W.R., 367

66. ———————— Right to passage of water—*Limitation Act (XV of 1877), ss. 23 and 26—Continuing nuisance—Easement.*—From time immemorial and certainly for more than twenty years prior to the date of the obstruction by the defendants, the plaintiff enjoyed the right of having an egress for his rain-water through a drain in the defendants' land. The plaintiff, more than two years after the date of the obstruction, sued the defendants for the removal of the obstruction. *Held* that though, under the circumstances, the plaintiff had failed to prove a title acquired under s. 26 of Act XV of 1877, yet the plaintiff, having a title evidenced by immemorial user, did not require the aid of that Act; and inasmuch as the obstruction complained of constituted a continuing nuisance, as to which the cause of action was renewed *de die in diem,* the plaintiff's claim was not barred by any provision of the Act, but, on the contrary, was saved by the express provision of s. 23. PUNJA KUVARJI *v.* BAI KUVAR

[I. L. R., 6 Bom., 20

SOOJAN BIBI *v.* SHAMED ALI . 1 C. W. N., 96

67. ———————— *Easements apparent and continuous—Easements of necessity—Implied grant.*—*A* and *B* were originally in joint possession of certain land. They divided this land in 18C5, and, ten years later, built at their joint expense a partition wall between their respective portions, leaving a drain in the wall for the passage of water from *A*'s to *B*'s land. In 1885 *B* stopped the flow of water by this drain. *A* thereupon sued for an injunction to restrain *B* from causing the obstruction. The Court of first instance decreed the claim. The Appellate Court rejected the claim, on the ground that there was no express agreement between the parties that the water should be carried off by the drain in the wall. *Held* on second appeal to the High Cout that *A* would be entitled to the easement claimed by him if he could show either that it was necessary for the enjoyment of his share of the property, or that it was apparent and continuous and necessary for enjoying the share as it was enjoyed when the partition took effect. PURSHOTAM SAKHARAM *v.* DURGOJI TUKARAM

[I. L. R., 14 Bom., 452

68. ———————— *Water in defined channel.*—From time immemorial a certain "al" formed the boundary of two pieces of land belonging to the plaintiffs and the defendants respectively. The plaintiffs' land was on a higher level than that of the defendants, and from time immemorial the surplus water used to flow from the plaintiffs' land through certain passages in the "al" and across the defendants' land. The defendants closed up the passages and increased the height of the "al." *Held* that, it having been established that for a long series of years the waters from the plaintiffs' lands had been

PRESCRIPTION—*continued*

2 EASEMENTS—*continued*

[illegible]

IMAM ALI *v.* PORESH MUNDUL

[I. L. R., 8 Calc., 468 ; 10 C. L. R., 396

69. ——— Right to use of water—*Irrigation—License creating right of easement—Revocation of agreement to use water*.—In a suit to establish a right of water and for damages for interruption of the same, the facts were as follow Plaintiff and defendant by agreement between them constructed a dam across a main channel, and from thence a smaller channel was made through the land [illegible] ns of [illegible] be at [illegible] was acted upon for a long course of years *Held* that the agreement was not a mere parol license revocable at the pleasure of the defendant but an agreement which created a right of easement unlimited in point of time to the use of the water by the plaintiff, and imposed upon the defendant the corresponding duty of allowing the accustomed supply to flow A mere license differs in its effects from a license coupled with the creation of an interest The former is revocable, but the latter is subject to the same incidents and is as binding and irrevocable as any other contract, gift, or grant KRISHNA *v.* RAYAPPA SHANBHAGA . 4 Mad., 98

70 ——— *Artificial water-course*.—The right to water flowing to a man's land [illegible] presumed from the time, manner, and circumstances under which the easement has been enjoyed RAMESSUR PERSAD NARAIN SINGH *v.* KOONJ BEHARI PATTUK I. L. R., 4 Calc., 633 : L. R., 6 I. A., 33

71. ——— *User—Artificial water-course*.—In 1850 *R*, whom the plaintiff in this suit represented agreed with Government for the lease of a plot of ground called the D estate and got possession In 1865 *R* took a lease of the estate from Government for 999 years to enure as a lease from 1850, the time at which he entered upon possession The defendant's estate adjoined plaintiff's. Defendant's title, also derived from Government, dated from 18[illegible] A formal lease was granted to his predecessor in 1874 in similar terms to that to plaintiff In 1864 *R* opened an artificial channel for the conveyance of water for the use of his estate. This channel was taken off from a main [illegible] [illegible] under which the defendant claimed, was made in 1874 the flow of water through the channel was enjoyed by the plaintiff The plaintiff sued to restrain the defendant from interfering with and diverting the flow of water in this channel and for damages. *Held* that the flow of water in the channel having existed as an apparent and continuous easement in [illegible] right was not entitled to interrupt the flow but that he might use the water in a reasonable manner, as it flowed through his land. MORGAN *v.* KIRBEY

[I. L. R., 2 Mad., 46

72. ——— *Obstructing water-course—Presumption of title founded on user—Limitation Act 1871, s 27, and art 31—Continuing act of wrong*.—More than twenty years and possibly fifty or sixty, before suit, the plaintiff's ancestors and predecessors in estate had constructed and used a páin, or artificial water-course, on the defendants' land, making compensation to them. The páin, by a channel at one part of its course, contributed to the water in a *tál* or reservoir belonging to the defendants; and by a channel at another part took the water which overflowed from the tál after the defendants had used as much of the water therein as they required Less than twenty years before, the suit, the defendants without authority obstructed the flow of water along the páin in several places The Courts below differed as to whether some of these obstructions had not been made more than two years before the suit, the rest having been made within that period *Held* that the provisions of Act IX of 1871—a remedial Act and neither prohibitory nor exhaustive—did not exclude or interfere with, the acquirement of rights otherwise than under them. A title might be acquired under that Act by a person having no other right at all but it did not exclude, or interfere with other titles and modes of acquiring easements. And s. 27 by allowing a user of twenty years if exercised until within two years of suit, under the conditions prescribed, to give, without more, a title, did not prevent proof of an easement founded on another title independently of the Act. Such a long enjoyment as the plaintiff had proved should be referred to a legal origin, and the long user of the páin and of the superfluous water of the tál afforded evidence giving rise to a presumption that a grant or an agreement, had been made creating an easement. Although, on the assumption that some of the obstructions in question had existed for more than two years before the suit, the plaintiff might not have shown a right under Act IX of 1871, s 27, yet he did not require its aid. *Held* also that such obstructions being continuous acts, as to which the cause of action accrued *de die in diem*, Act IX of 1871, sch. II, part V, cl 31, fixing two years from the date of the obstruction as the period of limitation "for obstructing a water-course," did not preclude a suit complaining of obstructions, though made more than two years preceding the date of the commencement of the suit. RAJROOP KOER *v.* ABUL HOSSEIN

[I. L. R., 6 Calc., 394 : L. R., 7 I. A., 240
7 C. L. R., 529

PRESCRIPTION—*continued.*

2. EASEMENTS—*continued.*

73. ——— **Right to discharge surplus water on another's land**—*Servitudes—Servient and dominant owners.*—Where *A* has a right to discharge the surplus rainfall from his land on to the land of *B*, no length of time will give *B* a right to compel *A* to send the water on; provided that *A* does not interfere with any portion of the water which flows from his land to that of *B* in a natural and defined channel. The servient owner cannot prevent the dominant owner from putting an end to the servitude at any time he may think proper. KHOORSHED HOSSEIN *v.* TEKNARAIN SING

[2 C. L. R., 141

74. ——— **Right to have water carried off over neighbour's land**—*How far it interferes with right of erecting buildings.*—A right to have water carried away over the adjoining land does not give its owner any power to prevent the erection of buildings on the adjoining ground so long as the arrangements necessary to the preservation of his right are made. BALA *v.* MAHARU

[I. L. R., 20 Bom., 788

75. ——— **Right to use of water drain**—*Proof of enjoyment of easement for term sufficient to give right to it.*—In a suit for the recovery of a right of easement in a drain that had been closed up, in which suit the Munsif found that a drain had existed which had recently been closed, and that there was no other way whereby water could escape from plaintiff's land, and accordingly gave the plaintiff a decree which was upheld by the Judge,—*Held* that the real issue to be tried was whether the plaintiff had enjoyed the easement for the time (twenty years) and in the manner laid down in the law. RAMESSUR MISSER *v.* BROJO BHOOKUN MISSER

[25 W. R., 271

76. ——— **Right to divert flow of water**—*Presumption of grant—User.*—A right to divert the flow of water into a particular channel by erecting a dam across a stream was held to be established in a suit brought in 1878 by proof of exercise of the right for eighteen years prior to 1871. ZAMINDAR OF HURUPAM *v.* ZAMINDAR OF MERANJI. VERICHERLA SURYA NARAYANA RAJU *v.* SATRACHERLA JAGANADA RAJU . I. L. R., 5 Mad., 253

77. ——— **Right to water of river**—*Relative rights of riparian proprietors and occupiers to the water of river—Diversion—User—Rights of the Government—Khalsa or raiyatvadi land.*—A dam had been in existence across a river for upwards of 280 years, and during all that time the villages of D and P had received an equal supply of water from separate sluices in the dam. The Government authorities, being of opinion that D required less water than P, reduced the size of the D sluice, and consequently the amount of water flowing to the D village. The village of D was khalsa or raiyatvadi, *i.e.*, was held immediately of Government. The inhabitants of D appealed against the action of Government. *Held* that the Government had no such right of interference, neither (1) as riparian proprietors (supposing them to be such), since the right to the enjoyment of the water of a river belongs to the occupant of the river-bank, whatever the nature of his tenancy; nor (2) by any other imaginable rights existing in the Government as such, since, if any such rights ever existed, the long user for upwards of 280 years of the water from the dam by the village of D would be amply sufficient to justify a presumption of an original *animus dedicandi* in the Government. COLLECTOR OF NASIK *v.* SHAMJI DASRATH PATIL

[I. L. R., 7 Bom., 209

78. ——— **Natural streams**—*Easement Act (V of 1882), ss. 6, 7, 17—Surface water—Rights of riparian owners.*—The owners of a tank fed by natural streams which depended for their supply on natural rainfall and surface water sued for an injunction to restrain superior riparian owners from damming the streams or interfering with the supply of water, over which the plaintiffs claimed a right of easement. The issue as to the ownership of the land on which the streams rose was undecided. *Held* (1) The Easement Act only declared the existing law as to easements over water; (2) An easement can therefore be acquired in regard to the water of the rainfall. But surface water not flowing in a stream, and not permanently collected in a pool, tank, or otherwise, is not a subject of easement by prescription, though it may be the subject of an express grant or contract; (3) It is the natural right of every owner of land to collect or dispose of all water on the surface which does not pass in a defined channel; (4) Riparian owners are entitled to use and consume the water of the stream for drinking and household purposes, for watering their cattle, for irrigating their land, and for purposes of manufacture, subject to the conditions (i) that the use is reasonable, (ii that it is required for their purposes as owners of the land, and (iii) that it does not destroy or render useless or materially diminish or affect the application of the water by inferior riparian owners in the exercise either of their natural right or their right of easement if any; (5) It was therefore necessary to ascertain where the streams rose, and the course, source, and length of their tributaries. PERUMAL *v.* RAMASAMI . I. L. R., 11 Mad., 16

79. ——— **Easement over a well**—*Easements Act (V of 1882), s. 2 (b)—Customary right to use the well.*—No fixed period of enjoyment is laid down by law as necessary to establish a customary right, and a customary right to use a well may exist apart from a dominant heritage. PALANIANDI TEVAN *v.* PUTHIRANGONDA NADAN

[I. L. R., 20 Mad., 389

80. ——— **Water-course**—*Riparian owners, Rights of—Mamlatdar, Jurisdiction of—Easements Act (V of 1882), s. 7.* The law as to riparian owners is the same in India as in England, and is stated in illustration (*h*) of s. 7 of the Easements Act (V of 1882). Each proprietor has a right to a reasonable use of the water as it passes his land, but, in the absence of some special custom, he has no right to dam it back, or exhaust it, so as to deprive other riparian owners of like use. What would constitute an unreasonable diversion of water such as to

PRESCRIPTION—*continued*

2 EASEMENTS—*continued.*

disturb the use of the lower riparian owners, is a question of fact which the Legislature has given a Mamlatdar jurisdiction to decide. NARAYAN HARI DEVAL v. KESHAV SHIVRAM DEVAL

[I. L. R., 23 Bom., 506

81. ———— Right to throw back water [illegible]

flowing into the tank on to the lands of defendants, where it remained till gradually drawn off into the [illegible]

A channel was also constructed for conducting a supply of water to the plaintiffs' tank. Plaintiffs, however, claimed to have the former state of things [illegible]

ARCOT) v. AYYA KRISHNAMA CHARIYAR. MANIYAM NARASIMMA GAUNDAN v. AYYA KRISHNAMA CHARIYAR . . . 7 Mad., 37

82. ———— Right to discharge water [illegible]

the owner of the easement of procuring some new mode of discharge SHEO NAUTH SINGH v. BISHONATH SINGH . 2 Agra, Pt. II, 101

83. ———————— *Suit for removal of wall* —In a suit for the removal of a wall on which plaintiff had been allowed by defendants for a number of years to rest the thatch of a hut, and which wall and thatch, after having been thrown down by a cyclone, had been rebuilt by plaintiff, though the thatched roof had been again blown down, and there was no thatch at the time of the suit —*Held* that under these circumstances, the plaintiff could [illegible]

84. ———— Right to discharge water [illegible] *tion*— [illegible] wners, [illegible] space [illegible] roof of [illegible] years previously, projected over a part of this space The plaintiff built a new storey to his house, with a roof overhanging the roof of the defendant's house, and

PRESCRIPTION—*concluded.*

2 EASEMENTS—*concluded*

[illegible]

plaintiff *Held*, with regard to the former claim that if the enjoyment by the defendant were considered as possession, by him, of the space occupied by his [illegible]

rupted user of more than thirty years vested in the defendant a proprietary right to the same *Held* further, with regard to the plaintiff's claim to an easement, that the plaintiff could only have acquired such easement either by contract or prescription on neither of which did he rely No custom can be admitted to override the provisions of the Limitation Act MOHANLAL JECHAND v. AMRATLAL BECHERDAS . I. L. R., 3 Bom., 174

85 ———— Rights accessory to an easement—*Easements Act (V of 1882) s 24* —The [illegible]

to go upon the defendants' land for the purpose of repairing the roof *Held* that the plaintiff was entitled to the right claimed as being accessory to the easement already established but that it should be exercised only once a year and after notice to the defendants HAYAGREEVA v. SAMI

[I. L. R., 15 Mad., 286

(*k*) TREES

86. ———— Trees overhanging neighbour's land—*Right to have branches of trees cut —Nuisance—Easement Act (V of 1882)* —Plaintiff [illegible]

land for forty years and contended he had therefore acquired a prescriptive right of the nature of an easement over plaintiff's land *Held* that the plaintiff was entitled to cut away the branches which overhang his land, though they had done so for more than forty years HARI KRISHNA JOSHI v. SHANKAR VITHAL I. L. R., 19 Bom., 420

PRESIDENCY BANKS ACT (XI OF 1876)

———— s. 4—*Certificate of administration —Act XXVII of 1860—Registration of guardian as proprietor of shares—Power to negotiate* —*A*, the mother and guardian of a minor, obtained a certificate under Act XXVII of 1860 Part of the property of the minor consisted of shares in the

PRESIDENCY BANKS ACT (XI OF 1876)—*concluded.*

Bank of Bengal. *A* obtained power under her certificate to draw the dividends due upon the shares. After the passing of the Presidency Banks Act, 1876, *A* applied under s. 4 of that Act to be registered as proprietor of the shares. The Bank refused to register her name as proprietor, and *A* then applied to have her certificate amended by empowering her to negotiate the shares. *Held* that she was not entitled to have such a power inserted in the certificate. IN THE MATTER OF THE PETITION OF RADHABULLUBH SIL

[I. L. R., 8 Calc., 300 : 11 C. L. R., 274

———— ss. 20, 22, 23—*Bank of Bombay—Registration and transfer of shares—Rights of surviving* [illegible] *of probate or letters of* [illegible] shares of the Bank of Bombay stood in the name of one Sarabhai, who died in March 1895. The plaintiff, who was the minor son of Sarabhai and joint and undivided with him, applied to the Bank to have the shares transferred to his name as the sole surviving co-parcener of Sarabhai. The Bank contended they were not bound to do so without production of the probate of the will of Sarabhai or letters of administration to his estate. *Held* (reversing RUSSELL, J.) that, having regard to the terms of the Presidency Banks Act (XI of 1876), the Bank were right in their contention. For a share in the Bank, for the purposes of devolution or survivorship, must be deemed, as far as the Bank was concerned, the exclusive property of its registered holder, and that therefore the sole surviving co-parcener of a deceased Hindu cannot demand that the Bank of Bombay should, by reason of his survivorship, register him as a shareholder in respect of shares in the Bank which stand in the name of his deceased co-parcener. BANK OF BOMBAY *v.* AMBALAL SARABHAI . I. L. R., 24 Bom., 350

PRESIDENCY MAGISTRATE.

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL.

[I. L. R., 26 Calc., 746

———— Duty of—

See COMMISSION—CRIMINAL CASES.

[I. L. R., 24 Calc., 551

See REVISION—CRIMINAL CASES—COMMITMENTS . I. L. R., 16 Bom., 580

———— Proceedings of—

See COMPLAINT—REVIVAL OF COMPLAINT.

[I. L. R., 24 Calc., 528
1 C. W. N., 49
4 C. W. N., 26, 46

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R., 26 Calc., 6, 746

———— Reference to High Court by—

See RIGHT TO BEGIN.

[I. L. R., 19 Calc., 380

PRESIDENCY MAGISTRATE—*continued.*

———— Statement made to—

See CONFESSION—CONFESSIONS TO MAGISTRATE . I. L. R., 15 Calc., 595
[I. L. R., 21 Bom., 495

1. ———— Jurisdiction—*Coroners' Act (IV of 1871), s. 25—Committal to the High Court by a Coroner—Presidency Magistrate's power to inquire into a case committed by the Coroner.*—A Presidency Magistrate is competent to hold a preliminary inquiry into the case of an accused person who has been committed to the High Court by the Coroner under s. 25 of Act IV of 1871. QUEEN-EMPRESS *v.* MAHOMED RAJUDIN

[I. L. R., 16 Bom., 159

2. ———— *Criminal Procedure Code (Act X of 1882), s. 195—Penal Code (Act XLV of 1860), ss. 116, 193—Abetment—Instigating person to give false evidence.*—*B*, without having obtained sanction under s. 195 of the Criminal Procedure Code, charged *C* before the Chief Presidency Magistrate with instigating her to give false evidence in a certain divorce suit in which *C* was co-respondent. *Held* that the Chief Presidency Magistrate had no jurisdiction to try the case without the sanction of the Court before which the divorce proceedings were pending, as the offence charged was alleged to have been committed in relation to those proceedings. CHANDRA MOHAN BANERJEE *v.* BALFOUR . I. L. R., 26 Calc., 359

3. ———— *"Magistrate of Police"—Act XIII of 1859, ss. 1, 4—Criminal breach of contract—Criminal Procedure Code (Act X of 1882), s. 3.*—A Presidency Magistrate of Calcutta may lawfully take cognizance, under s. 1 of Act XIII of 1859, of a complaint in respect of a contract made in Calcutta, the breach of which has been committed beyond the local jurisdiction of his Court. The expression "Magistrate of Police" in s. 1, Act XIII of 1859, means "Presidency Magistrate." LAL MOHAN CHOWBEY *v.* HARI CHARAN DAS BAIRAGI . . I. L. R., 25 Calc., 637

4. ———— *Summary trial—Conviction in non-appealable case—Code of Criminal Procedure, s. 370.*—In every case which is not appealable to the High Court, a Presidency Magistrate should state his reasons for convicting the prisoner, so that the High Court may judge as to whether there were sufficient materials before the Magistrate to support the conviction. IN THE MATTER OF THE PETITION OF YACOOB. YACOOB *v.* ADAMSON . . . I. L. R., 13 Calc., 272

5. ———— *Criminal Procedure Code, 1898, s. 370.*—In the trial of a case under Act XIII of 1859 the record need not be framed in accordance with s. 370 of the Code of Criminal Procedure. AVERAM DAS MOCHI *v.* ABDUL RAHIM . . . I. L. R., 27 Calc., 131
[4 C. W. N., 201

6. ———— *Sentence of imprisonment—Reasons for conviction to be recorded—Code of Criminal Procedure (Act V of 1898), s. 370, cl. (i)—Penal Code (Act XLV of 1860),*

PRESIDENCY MAGISTRATE—*concluded.*

s. 408.—S 370 of the Code of Criminal Procedure requires that in a case in which the accused is sentenced to imprisonment a Presidency Magistrate shall record a brief statement of the reasons for the conviction It is not sufficient for him to record [illegible]

7. ——————— *Criminal Procedure Code (Act V of 1898), s. 557—Appointment of a pleader to act as Presidency Magistrate.*—The appointment of a pleader to act as a Magistrate is not forbidden by s. 557 or any other provision of the Code of Criminal Procedure (Act V of 1898). After the Criminal Procedure Code of 1898 had come [illegible]

PRESIDENCY MAGISTRATES ACT (IV OF 1877)

———— **s. 30 (Criminal Procedure Code, 1882, s. 197).**

See Sanction to Prosecution—Where Sanction is necessary or otherwise
[I. L. R., 3 Calc., 758 : 2 C. L. R., 520

———— **s. 41 (Criminal Procedure Code, 1882, s. 195).**

See Appeal in Criminal Cases—Acts—Presidency Magistrates Act.
[I. L. R., 2 Calc., 460

— **s. 87 (Criminal Procedure Code, 1882, s. 209).**

See Malicious Prosecution.
[I. L. R., 6 Bom., 376

See Witness—Criminal Cases—Examination of Witnesses—Generally.
[I. L. R., 5 Calc., 121 : 4 C. L. R., 305

———— **s. 124 (Criminal Procedure Code, 1882, ss. 92, 344).**

See Complaint—Dismissal of Complaint—Effect of Dismissal.
[I. L. R., 6 Calc., 523

PRESIDENCY MAGISTRATES ACT (IV OF 1877)—*concluded.*

———— **s. 129 (Criminal Procedure Code, 1882, s. 495)**

See Counsel.
[I. L. R., 6 Calc., 59 : 6 C. L. R., 374

———— **s. 167 (Criminal Procedure Code, 1882, ss. 411, 412).**

See Appeal in Criminal Cases—Acts—Presidency Magistrates Act
[I. L. R., 5 Bom., 85

See Sentence—Imprisonment—Imprisonment in Default of Fine.
[I. L. R., 2 Mad., 30

———— **s. 168 (Criminal Procedure Code, 1882, ss 417, 427).**

See Superintendence of High Court—Charter Act, s. 15—Criminal Cases.
[I. L. R., 7 Calc., 447

———— **s. 170.**

See Criminal Procedure Codes, s 548.
[I. L. R., 8 Calc., 168
10 C. L. R., 190

———— **s. 181 (Criminal Procedure Code, s. 526).**

See Transfer of Criminal Case—General Cases . I. L. R., 2 Calc., 290

This Act was repealed, and its provisions were incorporated into the Criminal Procedure Codes (Act X of 1882 and Act V of 1898)

PRESIDENCY TOWNS SMALL CAUSE COURT ACT (XV OF 1882).

See Cases under Small Cause Court, Presidency Towns.

———— **s. 22.**

See Costs—Special Cases—Small Cause Court Suits I. L. R., 24 Calc., 399
[I. L. R., 21 Bom., 779

———— **s. 23.**

See Claim to Attached Property.
[I. L. R., 18 Calc., 296

———— **s. 37.**

See Civil Procedure Code, s 108.
[I. L. R., 21 Calc, 269
I. L. R., 20 Bom., 380

See Claim to Attached Property.
[I. L. R., 18 Calc, 290
I. L. R., 26 Calc., 778

See Limitation Act, 1877, art 164.
[I. L. R., 17 Bom., 507

PRESIDENCY TOWNS SMALL CAUSE COURT ACT (I OF 1895).

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS.

——— s. 11.

See COSTS—SPECIAL CASES—SMALL CAUSE COURT SUITS . I. L. R., 24 Calc., 399
[I. L. R., 21 Bom., 779

PRESUMPTION.

See CASES UNDER ENHANCEMENT OF RENT —EXEMPTION FROM ENHANCEMENT BY UNIFORM PAYMENT OF RENT AND PRESUMPTION.

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

See HINDU LAW—PRESUMPTION OF DEATH.

See CASES UNDER LANDLORD AND TENANT —NATURE OF TENANCY.

See MAHOMEDAN LAW—PRESUMPTION OF DEATH.

See CASES UNDER OWNERSHIP, PRESUMPTION OF.

——— of lost grant.

See PRESCRIPTION—EASEMENTS—GENERALLY . . . 15 W. R., 212

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR . . 3 B. L. R., O. C., 18
[6 B. L. R., 85

S. C. on appeal . . 12 B. L. R., 406
[L. R., I. A., Sup. Vol., 175

——— Rebuttal of—

See SUCCESSION ACT, s. 128.
[I. L. R., 15 Calc., 83

PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890).

——— ss. 2 and 3—*Crabs—Animals—Cruelty to animals.*—The provisions of Act XI of 1890 apply to cruelty exercised towards any animal which is either "domestic" or which being *feræ naturæ* has been "captured" and is in captivity. Crabs are "animals" within the definition of s. 2 of Act XI of 1890. If a person exposes them for sale at a public place with their legs broken and with their shells crushed in so as necessarily to cause them pain, he incurs the penalty prescribed by s. 3 of the Act. TULSI BEWAH *v.* SWEENEY I. L. R., 24 Calc., 881

IN THE MATTER OF TULSI BEWA
[1 C. W. N., 642

——— s. 6 (1)—*Meaning of the word "permit."*—*Held* that the word "permits," as used in s. 6, cl. (1), of Act XI of 1890, implies knowledge of that which is permitted. QUEEN-EMPRESS *v.* LALTA PRASAD . . . I. L. R., 20 All., 186

PREVIOUS CONVICTION.

See CHARGE—FORM OF CHARGE—GENERAL CASES . . . 19 W. R., Cr., 41
[21 W. R., Cr., 40
22 W. R., Cr., 39
4 Mad., Ap., 11

See CRIMINAL PROCEDURE CODES, s. 310.
[12 C. L. R., 555

See CASES UNDER EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS.

See CASES UNDER SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION.

PRIEST, APPOINTMENT OF—

See CHURCH . I. L. R., 17 Mad., 447

PRIMOGENITURE.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—WAJIB-UL-URZ.
[I. L. R., 15 All., 147

See HINDU LAW—CUSTOM—IMPARTIBILITY.
[I. L. R., 19 All., 1
L. R., 23 I. A., 147

See CASES UNDER HINDU LAW—CUSTOM—PRIMOGENITURE.

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT.
[I. L. R., 17 Calc., 3
L. R., 16 I. A., 137

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY . 5 Bom., A. C., 161
[6 Mad., 93
I. L. R., 5 All., 542
I. L. R., 2 Mad., 288
I. L. R., 4 Mad., 250
I. L. R., 13 Mad., 406
L. R., 17 I. A., 134
I. L. R., 19 All., 1
L. R., 23 I. A., 147

See MAHOMEDAN LAW—ENDOWMENT.
[I. L. R., 13 Bom., 555

See OUDE ESTATES ACT, s. 8.
[I. L. R., 10 Calc., 515, 792
L. R., 11 I. A., 51, 135
I. L. R., 20 Calc., 649
L. R., 20 I. A., 77

See OUDE ESTATES ACT, s. 22.
[I. L. R., 21 Calc., 997
L. R., 21 I. A., 163

See SALSETTE, LAW APPLICABLE IN.
[I. L. R., 19 Bom., 680

PRINCIPAL AND AGENT.

See Account, Suit for.
[I. L. R., 6 Calc , 754
I. L. R., 7 Calc , 654
2 Ind. Jur , N. S , 333
15 W. R., 260
22 W. R., 191
I. L. R., 14 Calc , 147
L. R , 13 I. A., 123

See Cases under Bengal Rent Act, 1869, s. 30.

See Charter Party . 8 B L R., 544
[I. L. R., 7 Bom , 51

See Company—Powers, Duties, and Liabilities of Directors
[5 B. L. R., 195
I. L. R., 6 Bom., 326

See Interest—Miscellaneous Cases—Principal and Agent . 23 W. R , 325

See Jurisdiction—Causes of Jurisdiction—Dwelling, Carrying on Business, or Working for Gain.
[I. L. R., 12 Bom., 502
I. L. R., 17 Bom , 662
I. L. R , 23 Mad., 458

See Limitation Act, 1877, art 36.
[I L R., 22 Mad., 342

See Cases under Limitation Act, 1877, art. 89

See Onus of Proof—Principal and Agent . I L R., 20 Calc., 347
[L. R , 20 I. A., 95

See Cases under Parties—Parties to Suits—Agents.

See Parties—Parties to Suits—Principal and Agent . 3 Agra, 131
[I. L. R., 5 Bom., 208

See Cases under Power of Attorney.

See Right of Suit Misrepresentation.
[I. L. R., 24 Bom., 166

See Tazi Mandi Chittis.
[8 B. L R., 412, 415 note

1. AUTHORITY OF AGENTS.

1. ——— **Proof of authority**—*Agent acting out of scope of authority.*—To hold a person bound by the acts of his agent, it must be shown that

the agent acted within the scope of his authority. Munohur Dass *v.* Deen Dyal . 3 N. W., 179

Beer Kishore Sahoy *v.* Government of Bengal
[17 W. R., 497

2. ——— **Effect of act done without authority**—*Signing document by unauthorized agent.*—The signature by an agent of a wajib-ul-urz from which the record of an important interest in property was omitted cannot be considered as a waiver of the right or claim unless he was properly authorized to sign it. Imambundee *v.* Bhowani-dass . . . 1 N. W., 41: Ed. 1873, 38

3. ——— *Suit against agent for account—Payments or advances to third parties—Proof of authority of agent.*—As a general rule, an agent or collector cannot discharge himself of moneys for which he is liable to account, by proving payments or advances to third parties, unless he can show that such payments or advances were made by the express authority of the principal, or with his knowledge and consent. Fagan *v.* Chunder Kant Banerjee . . . . . 7 W. R., 452

4. ——— **Implied authority of agent**—*Liability of Principal.*—When a person takes ad- [illegible] affairs by another [illegible]

Robinso[illegible]

5. **Holding out, by the principal, of the agent's authority.**—The right of a third party against the principal on the contract of his agent, though made in excess of the agent's actual authority, was nevertheless enforced where the evidence showed that the contracting party had been led into an honest belief in the existence of the authority to the extent apparent to him. Ram Pertab *v.* Marshall . I. L. R , 26 Calc., 701
[3 C. W. N., 313

6. ——— **Evidence of authority**—*Policy of insurance*—To prove the authority of an agent who underwrites a policy of insurance, it is [illegible]

Sundarji Naranji . . 7 Bom., O. C., [illegible]

7. ——— *General or special power of agent—Evidence of agency.*—Where the evidence goes to show that a particular person said to be the agent of the defendant was really his general agent, and did transact business of various kinds for his principal, it is unnecessary to prove any special power enabling him to enter into a particular contract of bargain and sale. *Per* Macpherson, *J*—The extent and nature of the powers

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

vested in an agent are not so much matter of law as matter of fact. If it be proved that a person acted ordinarily as an agent for the defendant in buying and selling articles of merchandise, the fact of his not being proved to have previously purchased a particular kind of article would not necessarily operate against the plaintiff's case. The Court, in deciding the question of agency, must look to the general evidence on the record. RAM BAKS LAL *v.* KISHORI MOHAN SHAHA

[3 B. L. R., A. C., 273: 12 W. R., 130

8. ——————— *Factors, Shipments by — Consignees — Custom of Calcutta.* — Factors having an interest, by reason of their advances in their principal's goods, are justified in shipping those goods for sale, either "on account of those concerned," or "on account of themselves," unless their general authority was controlled by instructions from their principal or by contract. The evidence failing to show that any particular usage or custom qualifying the law of England as between principal and factor prevails in Calcutta. *Held* that the powers and duties of the factors in making consignments of their principal's goods must be determined by the general mercantile law. Factors entrusted with possession of their principal's goods, and having advanced upon them, shipped the goods to London, drawing bills against them in their own names, and selling the bills with the shipping documents in the market. The acceptance of the factors' bills by the consignees, and the delivery of the shipping documents to them, made them the pledgees, but did not alter the character of the transaction, which was one whereby the factors had pledged the goods for the payment of bills on which they (and not the principal) were liable as drawers for an amount exceeding the value of the goods. In such a case no privity exists between the consignees and the undisclosed principal. *Held* therefore that, a loss having occurred on the shipments, the principal was liable to the factors' estate for the full amount of re-drafts representing that loss, although the factors had become insolvents, and had in fact paid only a small dividend on the re-drafts. MIRTUNJOY CHUCKERBUTTY *v.* COCHRANE

[4 W. R., P. C., 1: 10 Moore's I. A., 229

9. ——————— Pledge by agent without authority—*Stat. 5 & 6 Vict., c. 39, ss. 1 and 3 —Factors Act (XX of 1844)—Notice of agents' malâ fides.*—Where an agent entrusted with a document of title to goods pledged it *malâ fide*, or without authority, it was necessary, in order to deprive the transaction of the protection given by the 1st section of the 5 & 6 Vict, c. 39, and to bring it within the proviso of the 3rd section, that the jury should find categorically that the lender had notice of the agent's *malâ fides* or want of authority. To prove such notice, it was sufficient to show that the circumstances attending the transaction were such as that a reasonable man, and a man of business, applying his understanding to them, would certainly infer that the agent had not authority to make the pledge or that he was acting *malâ fide* in respect thereof against his principals. GOBIND CHUNDER SEN *v.* ADMINISTRATOR GENERAL OF BENGAL

[1 Ind. Jur., O. S., 17
1 W. R., P. C., 43: 9 Moore's I. A., 140

10. ——————— Banian—*Del credere agent—Dealings betwe-n Native and European firm.*—*G S & Co.* employed *R* to make purchases for them in the bazar, upon orders which were in force for two days, and they imposed restrictions on *R*'s authority to pledge their credit, which were not made known to those with whom he dealt. His remuneration was to be certain dustooree on the purchases, and he paid and gave receipts for the jute, as agents for *G S & Co.* He furnished accounts specifying the price of the goods and the expenses incurred by him upon them, and upon being paid he affixed his receipts to them. The purchases were unusually large, and in *R*'s books *G S & Co.* were debited with the amount paid for the goods, *R* retaining no interest in, or profit out of, it. *J S*, one of the vendors to *R*, sued *G S & Co.* for the price of some of the goods so purchased by *R*. *Held* that a general authority implies all powers necessary, or usual, or proper, as means to effectuate the purposes for which it was created. A banian is a *del credere* agent with regard to his employer in making purchases, and is a principal with reference to third persons. *Held* also that a person who has been allowed to represent himself as agent of a merchant under a general authority is not as such a banian; that when a native dealer makes purchases for a European house, the presumption is that the vendor gave credit to the native dealer; and that goods having been purchased for an employer and entered to his debit, and receipts given for them in his name, raises no presumption that the buyer was a banian. GRANT, SMITH & CO. *v.* JUGGOBUNDOO SHAW . Bourke, A. O. C., 17: 2 Hyde, 301

Held in the same case in the Court below—In the absence of a specific contract, a European firm in Calcutta is not bound by a contract made by third parties with their banian. JUGGOBUNDOO SHAW *v.* GRANT, SMITH & CO. . 2 Hyde, 129: Cor., 47

11. ——————— Agent exceeding authority —*Variation in time for delivery.*—Where a principal instructed his agent to enter into a contract for the delivery of cotton at the end of Kartik, but the agent entered into a contract for the delivery thereof by the middle of that month, it was held that the agent exceeded his authority in such a manner as to exempt the principal from liability upon the contract. Though the objection assigned by a principal for repudiating a contract at the time of such repudiation be unfounded, he is not precluded from subsequently availing himself of other valid objections. ARLAPA NAYAK *v.* NARSI KESHAVJI & CO.

[8 Bom., A. C., 19

12. ——————— *Taking advances.* —A native lady, possessing an estate in a district in which she did not reside, opened an account with a banker, through her son, as agent, to provide for the punctual payment of Government revenue, and to meet current expenses. *Held* that such a

PRINCIPAL AND AGENT—*continued.*

1 AUTHORITY OF AGENTS—*continued*

course of dealing did not of itself warrant the banker in advancing to the son as the accredited agent of his mother, large sums of money on bonds. MISRAIN v GOPAL LALL DOSS . 10 W R, 376

13 ———— General agent, Power of—*Universal agents*—A general agent has not ordinarily powers co-extensive with those possessed by a universal agent A general agent therefore employed to carry on a trading business has no authority to deal with immoveable property by sale DOORGA CHURN v KOONJBEHAREE PANDEY . 3 Agra, 23

14 ———— *Power of agent to borrow—Evidence of authority*—Although a general agent may not have power to borrow money for his principal yet the authority to borrow in a particular case may be shown by a previous authority, either express or implied or by subsequent ratification BUNWAREELALL SAHOO v MOHESHUR SINGH Marsh., 544 : 2 Hay, 644

15 ———— General agent—*Power to purchase—Authority to sell*—An authority granted to an agent to purchase does not imply authority to sell; and the mere fact of the principal not questioning his agent's right to sell is no proof that he consents to the latter's exercising such right GOLUCK CHUNDER CHOWDRY v KANTO PERSHAD HAZAREE [15 W R., 317

16 ———— Government officers—*Officers acting as agents of Government*—Question of authority of Government officers acting as agents of Government discussed RUNDLE v SECRETARY OF STATE . 2 Hyde, 25, 36

JOHNSON v SECRETARY OF STATE 2 Hyde, 153

17 ———— Master and servant—*Buying goods on credit*—*Semble*—If a master usually instructed his servant to buy goods upon credit, he will be bound by his acts even when he has prohibited him specially from buying upon credit. NARAINEE KOONWAREE v JOOGUL KISHORE ROY [6 W R., 309

18 Agent employed to make wagering contract—*Money paid on account of wagering contract, Liability for—Act XXI of 1848*—An agent employed to effect a wagering contract is entitled to recover from his principal money paid on his account in respect thereof his authority not having been revoked The claim is not affected by Act XXI of 1848. TRIBHUVANDAS JAGJIVANDAS v MOTILALL RAMDAS 1 Bom., 34

19 Agent sent to bid at auction—*Contract Act, s. 237*—The sending a man to bid at an auction cannot be considered as conduct calculated (in the language of the Contract Act s. 237) to induce third persons to believe he had general authority to buy MACKENZIE, LYALL & Co. v MOSES 22 W. R., 156

20 ———— *Agreement by agent with third party*—When a principal merely authorizes an agent to bid at an auction he is not liable for an agreement entered into by the agent with a third party pledging him to pay to such party a certain sum in consideration that he should abstain from bidding ESHAN CHUNDER SINGH v SHAMA CHURN BHUTTO

[2 Ind Jur, N S., 87 : 6 W. R., P C, 57
11 Moore's I A, 7

21 ———— Husband and wife—*Mortgage by wife*—When a man allowed his wife to have control over certain property and to mortgage it—*Held* that she acted as his agent and that he was bound by her act MOORADEE BEBEE v SYEFOOLLAH W. R., 1864, 318

22 ———— *Suit for goods* [illegible]

23 ———— *Right of agent to sue—Suit by wife's constituted attorney—Lunatic—Act XXXV of 1858*—*D* sued in the Mamlatdar's Court, as *A*'s constituted attorney for an injunction restraining the defendants from causing any obstruction to his possession of certain lands. The land belonged to *A*'s husband who was alleged to be a lunatic, but there was no adjudication of his lunacy, nor was *A* appointed a manager of his estate under Act XXXV of 1858 *Held* that *D* had no right to sue *A*, not having been appointed a manager of her husband's estate had herself no right to sue in respect of a disturbance of her husband's possession She could not therefore authorize her agent to sue on her behalf NEMAVA v DEVANDRAPPA

[I L R., 15 Bom., 177

24 ———— Gomashta, Power of—*Contract through broker*—N sued *J S & Co* for damages occasioned by the inferiority of certain goods, which he alleged that he bought of them on a verbal contract made by his gomashta *M* through his broker *F* The defendants' case was that the contract was a written one and contained a stipulation exempting them from liability on certain conditions [illegible]

N's gomashta, but could not as such depute a third party to sign a contract for N, and judgment was given for the plaintiffs On appeal—*Held* that a gomashta has a general authority to manage his employer's business, not as a mere agent, but with power to do all acts necessary for carrying it on and to authorize brokers to make contracts. A broker authorized to sign a particular contract is not authorized to sign it if it contain a stipulation unknown to his employer, and *vice versâ* JARDINE SKINNER & Co v NATHORAM Bourke, A O C., 43

25 ———— — *Gomashta employed to collect rents—Power to distrain—Ratification*—A gomashta employed to collect rents is not

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

authorized to distrain unless he has been expressly authorized by power-of-attorney. Therefore if a gomashta, without such express authority, distrain for rent due, or pretended to be due, to his principal, his principal is not bound by his acts, unless he ratify them, as, for example, by receiving the proceeds of the distress, knowing they had been obtained by distress. RAMJOY MUNDUL *v.* KALLYMOHUN ROY CHOWDHRY . . . . Marsh., 282

S. C. KALLYMOHUN ROY CHOWDHRY *v.* RAMJOY MUNDUL . . . . . 2 Hay, 289

26. ——————— *Authority to sue for principal without special powers.*—A suit for rent under Act X of 1859 may be instituted by a gomashta employed in the collection of rents or management of land, on behalf of his principal, without his being specially empowered by warrant of attorney. MEAJAN KHAN *v.* AKAILY [Marsh., 384 : 2 Hay, 426

27. ——————— *Authority to sue on behalf of principal.*—In a suit, under Act X of 1859, where plaintiff sues as a gomashta of the zamindar, it is not necessary that a power-of-attorney or any other formal document conferring a special power on the plaintiff should be produced, if it is proved from the evidence that he filled that character. MADHO SINGH *v.* GUNESHEE LALL . 2 Agra, 275

28. Tahsildar, Power of—*Act X of 1859, s. 69.*—A newly-appointed tahsildar stands in the same position in respect to arrears of rent which accrued during the time of his predecessor as in respect to rents accruing during his own time, and may take advantage of s. 69, Act X of 1859, in respect of one as well as the other. *Held* (by MARKBY, *J.*) that no one can be plaintiff in a suit for rent except the person who has the right to recover; the only effect of s. 69 being to enable the person who is employed in the collection of rents, to sue as agent. *Held* also (by MARKBY, *J.*) that, though it has been decided that a general authority to collect rents and to sue for them must be stamped if, in writing, it has not yet been decided whether such authority must be in writing. MODHOOSOODUN SINGH *v.* MORAN & Co. . . 11 W. R., 43

29. ——————— Naib, Power of—*Power of mofussil naib to grant pottahs at fixed rents.*—As it does not fall within the ordinary scope of the duties of a mofussil naib to grant pottahs for fixed rents, it is requisite in such cases that express authority should be proved to make the grants valid. GOLUCKMONEE DABEA *v.* ASSIMOODEEN . 1 W. R., 56

OOMA TARA DEBIA *v.* PEENA BIBEE [2 W. R., 155

PUNCHANUN BOSE *v.* PEARY MOHUN DEB [2 W. R., 225

KALEE COOMAR DOSS *v.* ANEES [3 W. R., Act X, 1

30. ——————— *Power to grant mokurari lease.*—The grant of a mokurari lease is beyond the scope of a naib's general authority. To enable him to give such a lease, his principal's special consent or approval is necessary. UNNODA PERSHAD BANERJEE *v.* CHUNDER SEKHUR DEB [7 W. R., 394

31. ——————— Agent of lessor—*Power to grant lease—Stipulation for recovery of costs of litigation from lessor.*—The agent of a lessor was held to have acted in excess of his power in granting a lease containing a stipulation that the lessee was to receive from the lessor the expenses which he might incur in any litigation which might take place with third parties respecting the land leased. Where such litigation did ensue, and the lessee was cast in costs, he was held entitled to recover the same, not from the lessor, but from the agent. KENNY *v.* MOOKTA SOONDEREE DABEE . . . 7 W. R., 419

32. ——————— Agent of inamdar—*Power to lease on permanent tenure.*—An inamdar's agent cannot grant lands on suti or other permanent tenure without express authority from his principal. NASARVANJI HORMASJI *v.* NARAYAN TRIMBAK PATIL [4 Bom., A. C., 125

33. ——————— Manager—*Agent granting lease on pretended title afterwards set aside—Right of lessees to possession.*—Where a manager has conveyed certain property to himself by a pretended deed of gift, and under such pretended title granted a darmokurari lease, and his title is set aside by a decree of Court, the lessees cannot be allowed to maintain possession, at any rate, where the lease granted is beyond the powers of the manager as agent. SHEO SHUNKUR LALL *v.* DHURM JOY POOREE [8 W. R., 360

34. ——————— Agent of zamindar—*Power to authorize transfer of lease.*—Without special powers, the ordinary agent of a zamindar who cannot grant a lease cannot authorize the quasi transfer of a lease by a tenant to some other party. RAI MOORAREE DOSS *v.* BUCHA SINGH . 4 N. W., 122

35. ——————— Agent of owner of estate—*Lease by agent—Fraud and collusion—Ratification.*—In a suit to set aside a lease as granted without authority by an agent to the defendant, who was the naib of the estate, and as procured by fraud by the defendant in collusion with the agent, the latter charge of collusion having been withdrawn at the hearing before the Subordinate Judge, the High Court remarked on the impropriety of presenting a plaint charging collusion between the agent and defendant without good grounds for such imputation, and on the withdrawal of such charge at the hearing if there were grounds for it; and agreed with the Subordinate Judge in thinking that the owner of the estate in issue must be presumed to know what was being done on her behalf by her agent. The presumption is that a man acts rightly and not fraudulently. The mere circumstance that the rents were low does not give rise to the presumption that there had been fraudulent conduct on the part of the naib, or that he did not state the circumstance to the agent before obtaining the lease from him. There is also this difference between

PRINCIPAL AND AGENT—*continued*

1. AUTHORITY OF AGENTS—*continued*

this case and other cases in which contracts between [illegible]

NUND CHUNDER BOSE *v.* BROUGHTON [17 W. R., 301

Affirmed by Privy Council ADMINISTRATOR GENERAL OF BENGAL *v.* ANUNDO CHUNDER BOSE [21 W. R., 425

36. ——— Agent for receipt of rent—*Notice of renewal to.*—A lessor's agent for the *receipt of rent is not necessarily his agent to receive* the lessee's notice of option to renew the lease, but if he has received such notice and given it to the lessor within time, the notice is sufficient. BARNET *v.* SKINNER . 2 W. R., 208

37. ——— Agent to give lease—*Notice of prior claim.*—*Semble per* NORMAN, *J.*—A person who has authority to conduct the negotiation respecting a lease is such an agent that a notice to him may be notice to his principal. NUDDEAR CHAND SEIN *v.* KISHOREE LAL CHUCKERBUTTY 7 W. R., 463

38. ——— Headman of village—*Acts* [illegible]

or implicit assent or sanction in absence thereof. Requisite authority may be inferred from the facts of each case by showing that the headman of the village have usually in similar disputes been permitted to act and represent for the other sharers. *Held* also that agency in every case can only be created by the will of the principal and his will may be manifested in writing or orally, or simply by placing another in a position so as to be understood according to ordinary rules and usages to represent and act for one who has placed him. GUNGAPERSHAD *v.* AJOODHIA PERSHAD. GUNGAPERSHAD *v.* RAM PERSHAD Agra, F. B., 31 Ed. 1874, 23

39. ——— Agent in survey of land—*Thakbust map—Act of agent—Endorsement—Evidence.*—In a suit for possession of certain lands for rectification of a thakbust map, and reversal of an Act X decision, the plaintiffs obtained a decree in the Court of first instance, the lower Appellate Court and subsequently in the High Court on appeal. It appeared that the lower Courts had before them an incorrect copy of the thakbust map, the original forming part of the record of another suit. The High Court on appeal refused to send for this map, but subsequently, on review, it was sent for. There was an *endorsement on the back* which did not appear on the copies originally before the Court, to the effect that the lands in dispute were pointed out by one *T. C.* acting as agent for the plaintiffs to be measured as belonging to the defendant's talukh. *Held* the case must be remanded to the lower Appellate Court to determine (1) whether *T. C.* was the agent of the plaintiff, (2) whether acting within the scope of his authority as such agent he did sign the map as a correct map and pointed out the lands as belonging to the defendant; (3) and if so, how far these acts of the agent were binding on the plaintiffs. SUDAKHINA CHOWDHRAIN *v.* RAJ MOHAN BOSE [3 B. L. R., A. C., 377

40. ——— Power to appear in suit—*Manager.*—The manager of an estate under a safunamah on behalf of *B* cannot, without special authority from *B*, represent him in any suit or charge him with the costs of the defence of an action brought against him. BHOLANATH SANDYAL *v.* GOUREE PERSHAD MOITRO 16 W. R., 310

41. ——— Power-of-attorney—*Option of agent to accept service of summons.*—A person holding a power-of-attorney, even if authorized by the power to appear and defend suits on behalf of his principal, is at liberty to refuse to accept service of summons and appear in a suit brought against his principal, but may either act upon the power or not, as he may think proper. IN THE MATTER OF THE PETITION OF LUCHMEE CHUND [I. L. R., 8 Calc., 317

42. ——— Power to carry on suits—*Assent to be bound by witness.*—An agent's assent to be bound by the statement of a particular witness is not an assent to arbitration, but is an act entirely within the scope of his general authority as agent to carry on his principal's suits and to do all acts necessary to that end. RAJENDER CHUNDER NEWOGEE *v.* MAHOMED AYNOODDEEN W. R., 1864, 143

43. ——— Mooktear, Power of—*Admission of title by mooktear—Authority of mooktear to bind mortgagee.*—Where a mortgagee signed a mooktearnama in which he stated that he would abide by any arguments which might be urged and any documents which might be filed by the mooktear thereby appointed, and the mooktear subsequently filed a written statement signed by himself alone in which he admitted the mortgagor's title:—*Held* the written statement could not be incorporated with the mooktearnama so as to make it part of the document signed by the mortgagee. LUCHMEE BUKSH ROY *v.* RUNJEET RAM PANDAY

[13 B. L. R., P. C., 177: 20 W. R., 375

S. C. in Court below 12 W. R., 443

See SUNDER DAS *v.* FATIMULUN NISSA [1 C. W. N., 513

44. ——— Mooktear appointed by several co-sharers—*Authority of agent—Evidence of general authority.*—Where a general mooktear empowered to act on behalf of co-sharers does formal acts to enforce the rights of his principals (the zamindars) *it is not necessary to trace back* his authority in each case to the explicit sanction of every single member of the family. Mooktears must be considered to have a certain discretion and,

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

unless the contrary is shown, to do such acts as come within the ordinary scope of their duty with authority. HURRY KISTO ROY *v.* MOTEE LALL NUNDEE . . . . . 14 W. R., 36

45. ———— *Authority to sign deed of sale—Proof of authority of agent.*—Where a man resists liability for a deed of sale executed by his am-mooktear, it is necessary for the purchaser claiming under that deed to show that the mooktear had authority either by virtue of a general or special power-of-attorney to execute that deed and to bind his principal by executing that deed. MOHAN KOOER *v.* AJOODHYA DOSS [20 W. R., 119

46. ———— *Pardanashin woman—Account stated.*—A mooktearnama executed by a pardanashin woman appointed her husband to be her general mooktear, and declared that "all acts done by the said mooktear, such as giving and taking loans to and from others, executing on my behalf, getting executed in my favour, deeds of absolute sale," and so on, "shall be accepted by me." It was sought to render the principal liable, on an account stated by her husband as her mooktear so empowered, for a debt, without proof that the money constituting it had been borrowed on her account. *Held*, on the construction of the mooktearnama, that the mooktear had no authority to bind her by such a statement of account, whatever authority he might have had to bind her by an actual borrowing of money on her behalf. No implication of authority in the mooktear to bind the woman by his stated account had arisen from the carrying on of a course of business. Accordingly, when the evidence of express authority failed, the statement of account by the mooktear was insufficient to render the principal liable. No evidence was given of the items lent, so as to establish an indebtedness independently of the account stated. SUDISHT LALL *v.* SHEOBARAT KOER [I. L. R., 7 Calc., 245
L. R., 8 I. A., 39

47. ———— Manager of firm—*Power of manager to bind partners in concern.*—The partners of a concern are bound by the acknowledgments of their manager as their avowed agent. MASSEYK *v.* GRISH CHUNDER CHUCKERBUTTY 24 W. R., 34

48. ———— Partner of firm—*Knowledge of person dealing with partner—Contract incapable of division.*—A firm of carriers authorized one of their partners to draw bills on the firm to the extent of R200 each. The partner, acting in excess of his authority, and without the knowledge of the firm, made two promissory notes, in the name of the firm, for R1,000 each. The plaintiff knew the partner was limited to a particular sum, but also knew that two of his bills for R300 each had been previously accepted by the firm. In an action on the notes,—*Held*, first, that the firm was not liable for the whole amount drawn; and, secondly, that the contract, whereon the action was founded, was not capable of division, and therefore the firm was not liable to the extent of R200. PREMABHAI HEMABHAI *v.* BROWN [10 Bom., 319

49. ———— Partnership in tea garden—*Liability of partner for acts of managing partner—Authority of agent.*—By an agreement made on 22nd July 1862 between *C* and *T* (since deceased) and the defendants *P* and *S*, *C* agreed to sell, and *T*, *P*, and *S* to purchase, a half share in the lands, plantation and estate belonging to *C*, known as the Laojan Tea Estates and Grants. The agreement provided that *C* was to conduct and manage all matters and affairs of the estates, but nothing was said as to its being done in his own name or in that of the partners of any firm. Money to carry on the business was provided by means of bills drawn by the local manager upon *C* in the same manner as if he (*C*) had been the sole owner, the defendants being fully aware of this and finding the funds. This mode of dealing continued down to the time of the transaction, which is the subject of this suit. The only act in the way of notice to the public on the part of the defendants was a notification in a directory published by them in Calcutta (*T, S & Co.* being booksellers and publishers), in which in the list of tea estates the Laojan concern was mentioned, and *C*, *T*, *P*, and *S* named as proprietors. In the directory for 1870 and 1872 *C* was also described as Calcutta agent. This suit was brought to recover a balance due in respect of moneys alleged to have been advanced by the plaintiffs on the tea to be manufactured in the season 1872, the plaintiffs being tea brokers who made the advances on the security of tea invoices and bills of lading. The terms on which the required advances were to be made were arranged by an agreement, dated 9th February 1872, between *C* and the plaintiffs, who were under the belief that *C* was the proprietor of the Laojan concern and not merely manager. By reason of *C's* death and the non-delivery of a portion of the season's tea, the plaintiffs were unable to reimburse themselves for their later advances, and brought the present suit against the defendants, who, they contended, were bound by all *C's* acts and dealings. *Held* by COUCH, *C.J.*, that, assuming that the plaintiffs knew what was in the directory, it could not be considered as a notice to them that the authority which *C* had been exercising, and which he continued to exercise with, so far as it related to bills and drafts drawn by the local manager, the knowledge of his partners, the defendants, had been determined, and that he had only the authority of an ordinary Calcutta agent. *Held* also that the question in the case was whether the transaction between *C* and the plaintiffs was within the scope of the authority which *C* had, or was allowed by his partners to appear to have, in managing and conducting the affairs and business of the partnership. It was a question of actual or apparent authority, and whether the transaction was one which the owner of a tea garden carrying on the cultivation of it would in the ordinary course of business enter into. *Held* further that the transaction would have been according

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*continued.*

fendants were therefore bound by the agreement of the 9th February 1872. SPINK *v.* MORAN

[21 W. R., 161

50. ——— Mercantile agent—*Power of agent to indorse bills—Special authority—Implied authority.*—A special authority is required to empower a mercantile agent to draw or endorse bills and notes, but the authority may be implied from circumstances. PESTONJEE NESSERWANJEE *v.* GOOL MAHOMED SAHIB . . . 7 Mad., 369

51. ——— Managing agent—*Liability of principal—Banker and customer—Bills of exchange—Indorser and acceptor.*—*N & Co*, the managing agents of the Baree Tea Company, had a general banking account with the Oriental Bank Corporation, which account they were allowed to overdraw on having the overdraft properly secured. Under the articles of association of the Baree Tea Company, *N & Co* had power to "draw, accept, indorse, and negotiate on behalf of the company all such cheques, promissory notes, drafts, etc, as should be necessary for enabling them to carry on the business of the company." Purporting to act under this power, *N & Co.* drew a bill of exchange on the managing agents of the company, which was accepted by the latter, and indorsed by *N & Co.* to the Oriental Bank Corporation, who credited the amount to *N & Co.'s* general account. The amount was drawn out by cheques drawn by *N & Co* personally without reference to

...ENTAL BANK CORPORATION *v.* BAREE TEA COMPANY I. L. R., 9 Calc., 880: 13 C. L. R., 412

52. ——— Agent acting contrary to authority—*Liability of agent.*—An agent who acts contrary to the authority given him by his principal is himself liable on the transaction in which he has so acted. GOMANEE LALL *v.* JEEWUN RAM

[2 Agra, 33

53. ——— Agent acting out of scope of authority—*Liability of principal.*—*Held* that an agent who is appointed for the general management and conduct of business cannot bind his principal by an unusual contract, not strictly relating to the conduct of the business, unless he has express or implied authority for the same. The fact that a consignor dealt in good faith with the agent, who exceeded his authority, is not sufficient to bind the principal. The consignor dealing with the agent

PRINCIPAL AND AGENT—*continued.*

1. AUTHORITY OF AGENTS—*concluded.*

54. ——— Payment to agent in belief he was principal—*Liability of purchaser.*—Where a party purchased cotton from a person both

55. ——— Suit brought by agent for principal—*Dismissal of suit brought by agent in his principal's name—Amendment of plaint—Court, power of.*—A Court in which a suit is brought on behalf of one person, through the agency of another, is entitled to inquire as to the agent's authority. A suit for arrears of rent was brought by an agent, professing to act under authority from his principal. The plaintiff, after instituting the suit in his own name as agent, obtained an order from the Court granting him leave to amend the plaint by substituting the name of his principal as plaintiff, suing through him, an amendment which the defendant resisted disputing the authority of the agent. *Held* that the Court in allowing it did not decide that the agent had authority: that remained to be proved; and as it was not proved, the suit failed. NAM NARAIN SINGH *v.* RAGHU NATH SAHAI . . . I. L. R., 19 Calc., 678

[L. R., 19 I. A., 135

2. RATIFICATION.

56. ——— Effect of ratification—*Act of principal.*—Where the act of the agent has been communicated to and ratified by the principal, it becomes the act of the principal in point of law. PESTONJEE NESSERWANJEE *v.* GOOL MAHOMED SAHIB . . . 7 Mad., 369

57. ——— Promise to redeem mortgage—*Consideration—Contract made by agent on*

Evidence was given that he had promised his adoptive mothers to redeem the mortgages, and that he had stood by and allowed the plaintiff to carry out the provisions of the mortgage-deeds to his own detriment by paying maintenance to the defendant's adoptive mothers, and by paying off certain mortgages which had been created by them previously to the adoption

the authorized contract of an agent can only be effectual when the contract has been made by the agent

PRINCIPAL AND AGENT—*continued.*

2. RATIFICATION—*concluded.*

avowedly for or on account of the principal, and not when it has been made on account of the agent himself. SHIDDESHVAR *v.* RAMCHANDRARAV

[I. L. R., 6 Bom., 463

58. ——— Acquiescence by co-sharers —*Mortgage by lambardar—Acquiescence in acts of agent.*—Where a mortgage was made by a lambardar of his own share and shares of his co-sharers as agent on their part in order to raise a sum required to pay the Government revenue,—*Held* that the co-sharers being aware of the fact of mortgage, and not having at the time repudiated it, and, moreover, having acquiesced in the decree of the Court of first instance which awarded their shares on payment of their quota of the mortgage-debt and interest, must be taken to have thereby consented to the act of the lambardar which was done on their behalf. PUNCHUM SINGH *v.* MUNGLEE SINGH

[2 Agra, Pt. II, 207

59. ——— Acquiescence by mortgagor —*Condition in wajib-ul-urz—Execution of wajib-ul-urz as mortgagee.*—*Held* that the original proprietors were not bound by a condition in the wajib-ul-urz which had been signed and attested by a third party then in possession, not as authorized agent on behalf of the proprietors, but as a mortgagee. Subsequent acquiescence by the mortgagor or his representative might be only an acquiescence in the mortgagee's act to the extent and in the qualified way in which his consent was given. BHAGEERUTH *v.* MOHUN

[2 Agra, 129

But *see* MISAJOOLNISSA *v.* BUNSEEDHUR

[1 N. W., 193: Ed. 1873, 277

3. REVOCATION.

60. Agency of manager—*Revocation by one of several shareholders.*—A principal can determine the authority given to an agent. The authority given to a manager may be revoked by a shareholder, and another shareholder cannot resist such revocation, unless there has been a stipulation in the deed providing for the appointment of a manager that the authority should continue for some definite time. BULAKEE LALL *v.* INDURPUTTEE KOWAR . . . . . . 3 W. R., 41

61. ——— Agent to sell property—*Agreement—Remuneration for work and labour done.*—The defendant requested the plaintiff to sell for him a plot of ground on the Esplanade in Bombay at any rate exceeding the price at which the defendant himself had purchased it, and agreed to give him as remuneration half of the net profit realized on the sale. The defendant subsequently revoked this authority, and the plaintiff shortly afterwards found a purchaser, whose offer the defendant did not accept. *Held* that the plaintiff could not recover on the agreement, which had not been performed on his part; that there was no ground for holding that the plaintiff and the defendant were partners in the transaction as between themselves; and that the plaintiff was not entitled to recover for work done as broker, or for commission, the nature of the agreement being that the plaintiff took the risk of the authority being revoked. HURST *v.* WATSON

[2 Bom., 423: 2nd Ed., 400

PRINCIPAL AND AGENT—*continued.*

3. REVOCATION—*concluded.*

62. ——— Hereditary agency—*Contract—Consideration—Specific performance—Contract Act (IX of 1872), ss. 202, 203.*—The defendant, by an agreement in the nature of a letter of attorney, constituted the plaintiff and his descendants the hereditary agents of the defendant, gave him authority to collect the rents of his share in an inam village, and promised to pay him an annual salary out of the rents. *Held* that, as between the parties and during their lifetime, the appointment was valid and binding, whether or not any valuable consideration passed, the mere acceptance of the office by the plaintiff being a sufficient consideration for the appointment. But, independently of the terms of the agreement, and whether or not the agency had been created for valuable consideration, the defendant had, under the general provisions of s. 203 of the Contract Act (IX of 1872), a right to revoke the authority, as the mere arrangement that the plaintiff's salary should be paid out of the rents could not be regarded as giving to the plaintiff an interest in the property, the subject-matter of the agency, within the meaning of s. 202. If the defendant had revoked the agency improperly, the remedy lay, under ordinary circumstances, in a suit by the plaintiff for damages for breach of contract. Where, however, the plaintiff chose to sue for specific performance, and demanded arrears of salary,—*Held* that, without a valuable consideration for the defendant's promise, the agreement passed by him to the plaintiff would be *nudum pactum*, and the plaintiff would not be entitled to recover, except for work and services actually rendered. VISHNUCHARYA *v.* RAMCHANDRA

[I. L. R., 5 Bom., 253

63. ——— Revocation of authority—*Contract Act (IX of 1872), ss. 201, 202, 203—Agent—Interest of agent in property—Exercise of authority so as to bind principal.*—The plaintiff received instructions by letter from the defendants to purchase cotton on their behalf. This letter was received by the plaintiff before a telegram sent by the defendants the next day revoking the order reached him. The plaintiff replied by letter stating that the telegram had arrived too late, and that the purchase had already been made. In fact, the plaintiff had merely appropriated to the defendants a contract entered into by himself with a third party the day before the defendants' order reached him. *Held* that the telegram was a revocation of the order contained in the letter of the previous day. *Held* further that the plaintiff had no such interest in the subject-matter of the agency as to prevent its termination; nor had he exercised his authority so as to bind his principal, no contractual relation with any third person having been created before the receipt of the telegram. LAKHMICHAND RAMCHAND *v.* CHOTOORAM MOTIRAM

[I. L. R., 24 Bom., 403

PRINCIPAL AND AGENT—*continued.*

4 DUTY OF AGENTS TO ACCOUNT.

64. ———— Form of account—*Right to* ... of an ... irres- ... ie does ...

to enable an agent to prepare accounts to be furnished to his principal, he should be allowed to have reasonable access, at proper times and in the presence of responsible persons, to such books and papers in the principal's possession as may be necessary for the preparation of the accounts. ANNODA PERSAD ROY *v.* DWARKANATH GANGOPADHYA

[I. L. R., 6 Calc., 754: 8 C. L. R., 321

65. ———— Right to account on death of manager—*Manager of company and employer—Liability to account—Accrual of right on death of manager against representatives*—A manager is bound to account to his employer whenever he is called upon to do so under reasonable circumstances ...

AND SHIPPING COMPANY *v.* LAWLESS

[I. L. R., 7 Calc., 627

5. LIABILITY OF PRINCIPAL

66. ———— Proof of purchase having been made for principal—*Constructive purchase by agent with funds of principal*—To establish a *primâ facie* case of constructive purchase by an agent out of the funds of the principal, it must be proved that at the time of the purchase the agent had in his hands funds of the principal sufficient to make the purchase. ROOKONISSA *v.* WOOLFUT ALI. SUFDUR ALI *v.* WOOLFUT ALI . . 3 W. R., 232

67. ———— Right to sue principal—*Election to sue agent—Suit, Dismissal of*—Where a ...

[I. L. R., ...

68. ———— Purchase by agent out of scope of authority—*Assistant in indigo factory, Purchase of seed by—Disclosed principal*—*Held* by the majority (GLOVER, J., *dissentiente*) that it is not within the reasonable scope of the authority of an assistant in an indigo factory to purchase any amount of indigo seed for his master and to make his master liable particularly when the seed was not purchased or used for the factory; and that though the assistant in writing to the vendor for the seed, styled himself in the body of the letter as the manager of the concern yet his signing himself for another person, and not for the owner of the factory, disclosed to the vendor that the other person, and not the owner of the factory, was his principal. ROGHOOBURDYAL MUNDUR *v.* CHRISTIAN . 3 W. R., 123

PRINCIPAL AND AGENT—*continued*

5 LIABILITY OF PRINCIPAL—*continued.*

69. ———— Liability of principal to be sued on negotiable instrument executed by agent in his own name—*Contract Act, 1872, ss 233, 234*—Whether, having regard to ss 233 and 234 of the Contract Act, a principal cannot be proceeded against upon a negotiable instrument executed by an agent in his own name—*Quære*—*Per* SUBRAHMANIA AYYAR, J. KRISNA AYYAR *v.* KRISHNASAMI AYYAR . I. L. R., 23 Mad., 597

70. ———— Right of person dealing with agent personally liable—*Suit and judgment recovered against agent—Subsequent suit against agent barred—Act IX of 1872 (Contract Act), s 233*—The obligee under a hypothecation-bond brought a suit thereon against one who, upon the face of the instrument, contracted as obligor, but whom, when the suit was instituted, the plaintiff knew to have acted as agent in the transaction for a third person. Having obtained a decree, he satisfied it in part by attachment of a sum of money and next caused the hypothecated property to be sold, and purchased it himself. Upon attempting to obtain possession he was successfully resisted by the principal debtor under the hypothecation bond, on the ground that the latter was the real owner of the property and that the decree-holder had derived no title thereto from his judgment debtor. He then sued the principal debtor to recover the balance remaining due upon the bond, after giving credit for the amount recovered by attachment in the suit against the agent. *Held* that the plaintiff, having elected to hold the agent responsible upon the contract, and having obtained judgment and decree against him and written up full satisfaction of the decree, could not afterwards maintain a suit against the principal in respect of the same subject-matter. *Priestly v. Fernie, 3 H. and C., 977: 34 L. J. Ex., 172,* referred to. BIR BHADDHAR SEWAK PANDE *v.* SARJU PRASAD

[I. L. R., 9 All., 681

71. ———— Carriage of goods by railway—*Goods passing over the lines of several companies—Agreement for interchange of traffic—Loss of goods—Liability*—The plaintiff delivered to the ...

Between the two railway companies there existed an agreement arranging for the interchange of traffic, which provided, *inter alia*, that goods should be booked through to and from all stations on both lines at certain stated rates; that in such cases one company should receive payment and should account to

PRINCIPAL AND AGENT—*continued.*

5. LIABILITY OF PRINCIPAL—*continued.*

the other; that any claim for loss or damage should be paid by the company in whose custody the goods were when lost or damaged, or if that could not be ascertained, then by both companies rateably; and that no alteration affecting the through traffic should be made by either company without previous notice to the other. The defendants pleaded that the suit was wrongly brought against them, as there was no contract between themselves and the plaintiff. *Held* that the suit, whether or not it might also have been brought against the Madras Railway Company, was rightly brought against the defendants, inasmuch as the agreement between the two companies, if it did not actually constitute a partnership between them, showed at least that the Madras Railway Company became the agents of the defendants to make the contract for carriage with the plaintiffs. G. I. P. RAILWAY COMPANY *v.* RADHAKISAN KHUSHALDAS

I. L. R., 5 Bom., 371

72. ———— Undisclosed principal—*Settlement of accounts between principal and agent—Right of unpaid vendor—Contract Act (IX of 1872), ss. 231, 232.*—The defendant, who resided in Dholera, employed the firm of *S K* as his agents in Bombay. A running account was kept, in which the defendant was debited with the price of goods purchased on his account by *S K*, and was credited with the price of goods sold by *S K* on his account, and with the amount of the remittances which he made from time to time. In fulfilment of orders received from the defendant on 16th March 1879, *S K*, on the 23rd March 1879, bought from the plaintiff 20,000 cocoanuts (out of a cargo of 42,000 then lately arrived at Bombay); on the 24th March 1879, 10,160 cocoanuts (out of a cargo of 23,000); and on the 27th March, 26,626 cocoanuts (out of a cargo of 71,250). By each of these three contracts it was agreed that the purchase money should be paid on delivery. At the time of making these contracts the plaintiff did not know, nor had he any reason to suspect, that *S K* was an agent, and not principal, in the transactions. On the 27th and 28th March 1879 the 30,160 cocoanuts (the subject-matter of the first two contracts) were transhipped into the vessel *Lakhmiprasad,* and on the 29th March 1879, the 26,626 cocoanuts (the subject-matter of the third contract) were transhipped into the vessel *Lalsari* for conveyance to Dholera The *Lalsari* sailed from Bombay on the 31st March, and on her arrival at Dholera the defendant obtained possession of the third lot of 26,626 cocoanuts which had been shipped on board. On the 1st April *S K* received from the defendant remittances sufficient to pay for all the cocoanuts, and to leave a balance of R1,727 to the credit of the defendant in his account with *S K*. These remittances were made by the defendant in good faith, and were received by *S K* at a time when the plaintiff gave credit to *S K*, and did not know of any one else to be charged with the price of the cocoanuts. On the 2nd April the firm of *S K* stopped payment, and on the 3rd April 1879 the plaintiff, in consequence of the failure of *S K* and the non-payment of the price of the cocoanuts, transhipped the 30,160 cocoanuts (the subject of the first two contracts) from the *Lakhmiprasad* into the *Ramprasad.* These cocoanuts were subsequently sold, and the proceeds of the sale deposited in the Bank of Bombay to abide the result of this suit. On the 4th April the plaintiff discovered that the defendant was the principal in the cocoanut transaction, and brought this suit against him to recover the price of the three lots of cocoanuts. The defendant denied that *S K* had authority to pledge his (defendant's) credit in making purchases, and contended that, having in good faith paid his agent *S K* for the cocoanuts prior to the institution of the suit, he (the defendant) was not liable to the plaintiff. *Held* that the plaintiff was entitled to recover. The rule of English law, which makes the liability of an undisclosed principal subject to the qualification that he has not *bonâ fide* paid the agent, or that the state of accounts has not been altered, is not adopted in the Contract Act. S. 232 is to be read as a qualification of the first portion of paragraph 1 of s. 231, which gives a principal a general right to enforce a contract entered into by his agent. S. 232 qualifies that general right by making it subject to the rights and obligations subsisting between the agent and the other contracting party. The 2nd clause of paragraph 1 of s. 231 gives a party contracting with an agent the same rights against the principal only as he would have had against the agent; and s. 234 adds a further qualification to his rights as against the principal. S. 232 of the Contract Act adopts the qualification imposed by English law upon the right of the principal to enforce a contract, *viz.*, that he must take the contract subject to all the equities, in the same way as if the agent were the real principal; but it does not impose upon the right of the other contracting party the qualification laid down by the cases of *Thompson* v. *Davenport, 2 Smith's L. C., 7th Ed., 364,* and *Armstrong* v. *Stokes, L. R., 7 Q. B., 598,* namely, that the principal has not paid the agent, or that the state of the account between the principal and agent has not been altered to the prejudice of the principal. The only qualification to the right of the other contracting party against the principal is that imposed by s. 234, namely, that he has not induced the principal to act upon the belief that the agent only will be held liable. PREMJI TRIKAMDAS *v.* MADHOWJI MUNJI . . **I. L. R., 4 Bom., 447**

73. ———— Secret arrangement by agent—*Purchase by agent afterwards adopted by principal.*—If a principal adopts the acts of an agent in respect of the purchase of a property, he must take the property subject to the conditions with which the agent encumbered it, notwithstanding any secret arrangement between them not known to third parties. ISHEN CHUNDEE SINGH *v.* SHAMA CHURN . . . . . . **W. R., 1864, 3**

74. ———— Fraud—*Fraudulent statements made by agent.*—Statements fraudulently made by

PRINCIPAL AND AGENT—*continued.*

5 LIABILITY OF PRINCIPAL—*continued.*

an agent for his own benefit are not binding on the principal JOWAHIR LALL *v.* POOKURUM SINGH [6 W. R., 252

75. ——————— *Fraud of agent in sale of property.*—If an agent, authorized to sell property, commits a fraud against his principal, the principal is the person who ought to suffer, and not a stranger. DOORGA NARAIN SEN *v.* BANEY MADHUB MOZOOMDAR . I. L. R., 7 Calc., 199

76. ——————— *Fraud of agent, Adoption of, by principal.*—Principals are not allowed to benefit by adopting the fraud of their agents KOYLASH CHUNDER BANERJEE *v.* KALEE PROSONNO CHOWDHRY . . 16 W. R., 80

77. ——————— *Liability in civil action of principal for consequences of agent's fraud*—In a suit to recover the value of bullocks hired by the defendant's gomashta to convey quantities of salt from the Government golahs, which, proving to be in excess of the quantity entered in the Government pass owing to the fraud of the gomashta in making an addition to the lawful quantity, was seized by the salt officials as contraband, and the bullocks sold under the provisions of Regulation X of 1819,—*Held* that neither the want of authority on the part of the gomashta, nor the ignorance of the salt merchant, the defendant, could be pleaded to exonerate him from the consequences of his servant's fraudulent act SADHOOJUNNA *v.* RAMHURRY MUNDUL . . . . 1 Hay, 461

78 ——————— *Bankruptcy of agent, Effect of—Breach of contract—Damages—Amendment of bill of complaint*—This was a suit for [illegible]

of loss in the sale of silk, which the defendants, after the said bankruptcy, had shipped direct to London, and sold there on non-acceptance by the plaintiffs, [illegible]

may sell it at the market price; and should this be under the contract rate, you agree to pay the difference" Cl. 10 of the agreement was as follows "As you have no authority to make advances previous to the receipt of the silk, and as Carr Tagore & Co. stipulate for the advance in part of the sum which they are out of pocket, to carry on the filatures, the advances proposed being R50,000, at such times and in such portions as they may require after the delivery of the first parcel of silk under this contract, so that such advances shall not at any time

PRINCIPAL AND AGENT—*continued.*

5 LIABILITY OF PRINCIPAL—*concluded*

[illegible]

clauses the defendants could not resort to the advances for their set-off, that the plaintiffs were not liable for the R18,024; and that the contract was not determined Plaintiff also alleged a series of frauds on the part of their agents, with whom defendants were in collusion, but these charges were abandoned at the hearing *Held* that acceptance by the agent binds the principal where there is no fraud, that voluntary acceptance of an agent's bill as payment discharges the principal; that a contract is not determined by death or bankruptcy of an agent, unless there has been an express stipulation to that effect, that an impossibility of fulfilling the terms of a contract must be clearly established in order to avoid a liability for breach thereof, that when a place of delivery is specified in a contract delivery must be made there, that the plaintiff, having failed to prove alleged fraud in a deed, although entitled to relief under a distinct head of equity, will not be allowed to [illegible]

any balance that should be found against him, that the mode of ascertaining damages for breach of contract prescribed in the contract must be adopted, and the remedy by action at once accrues POLE *v.* GORDON [2 Hyde, 289: Cor, 83: Bourke, O C., 1

79 ——————— Misfeasance and tort of agent—*Liability of principal for wrongful acts of agent*—A principal is liable for the misfeasance or tort of his agent, when such misfeasance or tort has been done or committed with the subsequent as- [illegible]

[illegible] N. W., [illegible]

6 LIABILITY OF AGENTS.

80. ——————— Banian, Liability of—*Custom.*—There is a presumption in Calcutta that where a vendor of goods deals with a banian of a European firm, *qua* banian, he is only to look to the banian for the price. FAIZULLAH *v.* RAMKAMAL MITTER [2 B. L. R., O C., 7

JUGGOBUNDOO SHAW *v.* GRANT, SMITH & CO. [2 Hyde, 129: Cor., 47

S C. on appeal GRANT, SMITH & CO. *v.* JUGGOBUNDOO SHAW [Bourke, A. O C., 117: 3 Hyde, 301

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

81. ——— Agent of foreign principal—*Presumption of law as to whom credit is given.*—Where it is sought to make the agent of a foreign principal liable on a contract, there is no presumption of law, but the case must be determined by the particular facts. But in the absence of evidence to the contrary, it will be presumed, as a matter of fact, that credit was given to the agent. McGAVIN v. WILSON . . 1 Ind. Jur., N. S., 405

82. ——— Agent mixing transactions of principal with his own—*Borrowing.*—An agent is personally liable who mixes up his private transactions with those of his principal by borrowing for both. JUGGURNATH ROY CHOWDHRY v. MUNOREKHA DOSSEE . . 2 W. R., 156

83. ——— Agent dealing with third parties' goods as those of the principal—*Liability to owner of goods.*—An agent who deals with another man's goods as if they belonged to his principal may be answerable to the true owner, notwithstanding that he acts by the command or direction of his principal. WISE v. BURN

[4 W. R., Rec. Ref., 1

84. ——— Unconditional acceptance of bill by agent—*Liability on bill.*—*Held* that the defendant's agent, having unconditionally accepted the bill, must be held liable for the amount. SALIG RAM v. JUGGUN NATH . . 1 Agra, 137

85. ——— Purchase by agent—*Knowledge of agency by vendor—Government servant.*—The defendant, a servant of Government, having given orders for bricks, and the plaintiff being aware that the defendant was a servant of Government, and that the bricks were required for building bridges on account of Government,—*Held* that the Government was liable, and not the defendant personally. SHEENATH ROY v. ROSS . 4 W. R., S. C. C. Ref., 13

86. ——— Goods ordered by principal and accepted by agent—*Personal liability of agent.*—In a suit for the recovery of the value of certain articles sold and delivered to defendant No. 1, who had given an order for payment, which defendant No. 2, as his agent, had accepted by an endorsement, plaintiff gave up the claim against defendant No. 1, and demanded the amount from defendant No. 2 alone. *Held* that, under the circumstances, there could be no claim against defendant No. 2. KALEE MOHUN SIRCAR v. HUMAUN KADER MAHOMED ALI . . . . 25 W. R., 91

87. ——— Liability in case of two innocent persons—*Liability of agents to third parties—Forgery.*—Two letters were presented to *M*, one addressed to himself and the other to the manager of the Mussooree Savings Bank, both purporting to be written by *K*. In the letter to *M*, *M* was requested to deliver to the manager of the Bank the letter addressed to him. In the letter to the manager he was asked to send R2,500 in currency notes through *M*, payment being promised by a remittance through another bank or through *M*. *M* delivered the letter to the manager, who upon the strength of it made over the notes to *M*, who gave a receipt for them for and on behalf of *K*, and afterwards handed them over to the person who had brought him the letter. The letters were forgeries. In a suit against *M* by the Bank to recover the money paid to *M*,—*Held* that, in presenting the letter, in receiving the notes, and in granting a receipt for them, the defendant was in some sense an agent of *K*; but, inasmuch as the notes were given on the authority of the letter addressed to the plaintiff himself, and not in consequence of any representation made by the defendant, the latter could not be held liable for the loss sustained by the former. MOONEY v. MUSSOOREE SAVINGS BANK

[6 N. W., 319

88. ——— Undisclosed principal—*Promissory note signed by agent.*—If an agent signs a promissory note without disclosing the names of his principals, the latter are not liable. SHEO CHURN SAHOO v. CURTIS . . . . 3 W. R., 139

89. ——— *Contract Act (IX of 1872), s. 230.*—A broker gave to one *G* the following sold note: "Sold this day by order and for account of E. E. Gubboy, to my principal, G. P. Notes for R2,00,000 (two lakhs) at R98-11. (Sd.) A. T. A., Broker." This note was endorsed—"A. T. A., for principal." In a suit by *G* against the broker for failure to take delivery,—*Held* that there was nothing in this contract to rebut the personal liability of the broker. GUBBOY v. AVETOOM

[I. L. R., 17 Calc., 449

90. ——— *Liability of agent for rent—Honorary secretary to a school maintained by a foreign society—Contract Act (IX of 1872), s. 230.*—The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in question was occupied by the Beni Israel school of Bombay which was maintained by the Anglo-Jewish Association of London, that he was Honorary Secretary of the school, and as such, and not in his personal capacity, had hired the house, and that he had never paid the rent or expenses of the school out of his own pocket. He contended that he was not liable to be sued personally. *Held* that the defendant was liable for the rent. There was nothing to show that the contract for the house was made on the personal credit of any one except the defendant. BHOJABHAI ALLARAKHIA v. HAYEM SAMUEL

[I. L. R., 22 Bom., 754

91. ——— *Right to sue—Liability of agent—Charter party—Actual knowledge—Disclosure of name of principal at time of making the contract—Presumption of liability of agent where name of principal not disclosed—Contract Act (IX of 1872), s. 230.*—The plaintiffs by charter-party contracted to let the steam-ship *Oakdale* to the defendants upon certain terms. The first clause of the charter-party stated that the plaintiffs "agreed as agents for owners of the said steam-ship," and subsequent clauses provided that the owers should bind themselves to receive the cargo

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

on board, and that the master on behalf of the owners should have a lien on the cargo for freight, etc. The charter party was signed by the plaintiffs and defendants in their own names. The plaintiffs sued the defendants for breach of the charter-party in refusing to load the said steam ship. *Held* that the plaintiffs had contracted as agents, and were therefore not entitled to sue. If a contract made by a person who is an agent is worded so as, when taken as a whole, to convey to the other contracting party the notion that the agent is contracting in that character, he cannot sue or be sued on the contract. Where one contracting party knows that the other is contracting as an agent for a third person whose name he also knows the presumption laid down in cl. 2 of s. 230 of the Contract Act (IX of

[illegible]

knowledge. MACKINNON, MACKENZIE & Co. *v.* LANG, MOIR & Co. . I. L. R., 5 Bom., 584

92. ——— ——— *Liability of agent—Contract Act (IX of 1872), s. 230—Evidence Act (I of 1872), s. 92—Charter-party—Employment of stevedores to load and discharge cargo.* —The defendants let a steam ship to the plaintiff for

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sufficient crew of seamen, engineers, stokers, firemen, and other necessary persons for working cargo with all despatch;" and that in taking and discharging cargo "the master and his crew with his boats shall be aiding and assisting to the utmost of their power," and that "the owners or agents of the said steamship shall be held responsible to the said charterers for any incapacity, want of skill, insobriety, or negligence on the part of master, officers, engineers, stokers, firemen, or crew of the said steam ship." The names of the principals were not disclosed in the charter-party, but were verbally disclosed before the charter-party was signed. In an action against the agents for damages for refusing to supply stevedores and other persons, in addition to the crew, when loading and discharging cargo,—*Held* that the presumption created by the second clause of s. 230 of the Contract Act is merely a *primâ facie* one and may be rebutted, and that the contract was not personally binding on the agents, because the *primâ facie* presumption of an intention to contract personally was rebutted by the language of the contract itself. *Held* also that the terms of the charter-party showed that the crew only were to assist in loading and discharging cargo; and that the plaintiffs were not entitled to call on those responsible for the steamer to load and discharge cargo by stevedores instead of by the crew. Reading the second part of s. 230 of the Contract Act with s. 92 of the Evidence Act. *Semble*—That if, on the face of a written contract, an agent appears to be personally liable, he cannot escape liability by evidence of any disclosure of his principal's name apart from the contract. SOOPROMONIAN SETTY *v.* HEILGERS

I. L. R., 5 Calc., 71 : 4 C. L. R., 377

93. ——— ——— On 6th April 1865 *A*, who resided and carried on business at Bombay, through his gomastah at Calcutta, shipped on board the *Sir Jamsetjee Family* 268 bags of sugar, and received from the captain a bill of lading by which he certified that they were shipped in good order and well conditioned on board the said ship bound for Bombay to be there delivered in like good order and well conditioned to *B*, or his assigns, on payment of freight at R16 per ton. The bill of lading was subject to the usual exceptions. The vessel was at the time chartered to *H. A.* and *C. & C.* were agents for the owners. *H. A.* being unable to carry out the terms of the charter, there was a delay in the departure of the vessel. On 26th May 1865 *A* wrote to *C. & C.*, addressing them as agents of the ship: "I beg to inform you that I have shipped per *Sir Jamsetjee Family* 268 bags of sugar for Bombay; I hold the bills of lading for the same, and the ship is still detained here. I hope you will be kind enough to let me know what you will do about the cargo, if the said ship will sail for Bombay or trans-ship to any other vessel, or deliver the cargo here." To which *C. & C.* on the same day replied: "We shall be able to tell you in the course of a week or so what we propose doing with the ship *Sir Jamsetjee Family* as soon as any thing has been decided, due notice shall be given to the shippers of cargo already on board." On 1st June *C. & C.* again wrote: "*H. A.* having failed to carry out his charter of the *Sir Jamsetjee Family* in terms of the shipping order and sundry goods having been sent on board by him of which the following are believed to be to your order, and for which bills of lading have been signed and delivered to *H. A.*, we shall be glad to know whether you are willing that the said goods—268 bags of sugar—be trans-shipped to a steamer going to Bombay, at the current rate of freight, the bills of lading for the same being sent to the owners of the *Sir Jamsetjee Family*, to be delivered to the consignees of the goods upon production of the bills of lading already signed. You will, of course, understand that the goods are liable for the chartered rate, viz., R20-10 per ton; and the charterer having failed to complete the loading, the difference of freight between what *H. A.* granted you a shipping order at and the freight charged by the steamer will have to be paid by the shipper previous to the goods being delivered in Bombay." On the 8th June *A* replied: "I am agreed that my goods be trans-shipped to a steamer going to Bombay at the current rate of freight, but I must not pay the difference of freight whatever it may be. In regard to *H. A.*, I have nothing to do with them, as the bills of lading per *Sir Jamsetjee Family* for 268 bags of sugar being signed by the

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

81. ——— **Agent of foreign principal**—*Presumption of law as to whom credit is given.*—Where it is sought to make the agent of a foreign principal liable on a contract, there is no presumption of law, but the case must be determined by the particular facts. But in the absence of evidence to the contrary, it will be presumed, as a matter of fact, that credit was given to the agent. McGavin v. Wilson . . **1 Ind. Jur., N. S., 405**

82. ——— **Agent mixing transactions of principal with his own**—*Borrowing.*—An agent is personally liable who mixes up his private transactions with those of his principal by borrowing for both. Juggurnath Roy Chowdhry v. Munorekha Dossee . . **2 W. R., 156**

83. ——— **Agent dealing with third parties' goods as those of the principal**—*Liability to owner of goods.*—An agent who deals with another man's goods as if they belonged to his principal may be answerable to the true owner, notwithstanding that he acts by the command or direction of his principal. Wise v. Burn

[4 W. R., Rec. Ref., 1

84. ——— **Unconditional acceptance of bill by agent**—*Liability on bill.*—*Held* that the defendant's agent, having unconditionally accepted the bill, must be held liable for the amount. Salig Ram v. Juggun Nath . . **1 Agra, 137**

85. ——— **Purchase by agent**—*Knowledge of agency by vendor—Government servant.*—The defendant, a servant of Government, having given orders for bricks, and the plaintiff being aware that the defendant was a servant of Government, and that the bricks were required for building bridges on account of Government,—*Held* that the Government was liable, and not the defendant personally. Sreenath Roy v. Ross . **4 W. R., S. C. C. Ref., 13**

86. ——— **Goods ordered by principal and accepted by agent**—*Personal liability of agent.*—In a suit for the recovery of the value of certain articles sold and delivered to defendant No. 1, who had given an order for payment, which defendant No. 2, as his agent, had accepted by an endorsement, plaintiff gave up the claim against defendant No. 1, and demanded the amount from defendant No. 2 alone. *Held* that, under the circumstances, there could be no claim against defendant No. 2. Kalee Mohun Sircar v. Humaun Kader Mahomed Ali . . . . . **25 W. R., 91**

87. ——— **Liability in case of two innocent persons**—*Liability of agents to third parties—Forgery.*—Two letters were presented to *M*, one addressed to himself and the other to the manager of the Mussooree Savings Bank, both purporting to be written by *K*. In the letter to *M*, *M* was requested to deliver to the manager of the Bank the letter addressed to him. In the letter to the manager he was asked to send R2.500 in currency notes through *M*, payment being promised by a remittance through another bank or through *M*. *M* delivered the letter to the manager, who upon the strength of it made over the notes to *M*, who gave a receipt for them for and on behalf of *K*, and afterwards handed them over to the person who had brought him the letter The letters were forgeries. In a suit against *M* by the Bank to recover the money paid to *M*,—*Held* that, in presenting the letter, in receiving the notes, and in granting a receipt for them, the defendant was in some sense an agent of *K*; but, inasmuch as the notes were given on the authority of the letter addressed to the plaintiff himself, and not in consequence of any representation made by the defendant, the latter could not be held liable for the loss sustained by the former. Mooney v. Mussooree Savings Bank

[6 N. W., 319

88. ——— **Undisclosed principal**—*Promissory note signed by agent.*—If an agent signs a promissory note without disclosing the names of his principals, the latter are not liable. Sheo Churn Sahoo v. Curtis . . . . **3 W. R., 139**

89. ——— *Contract Act (IX of 1872), s. 230.*—A broker gave to one *G* the following sold note: "Sold this day by order and for account of E. E. Gubboy, to my principal, G. P. Notes for R2,00,000 (two lakhs) at Rs98-11. (Sd.) A. T. A., Broker." This note was endorsed—"A. T. A., for principal." In a suit by *G* against the broker for failure to take delivery,—*Held* that there was nothing in this contract to rebut the personal liability of the broker. Gubboy v. Avetoom

[I. L. R., 17 Calc., 449

90. ——— *Liability of agent for rent—Honorary secretary to a school maintained by a foreign society—Contract Act (IX of 1872), s. 230.*—The plaintiff sued the defendant to recover possession of a certain house in Bombay and for arrears of rent. The defendant pleaded that the house in question was occupied by the Beni Israel school of Bombay which was maintained by the Anglo-Jewish Association of London, that he was Honorary Secretary of the school, and as such, and not in his personal capacity, had hired the house, and that he had never paid the rent or expenses of the school out of his own pocket. He contended that he was not liable to be sued personally. *Held* that the defendant was liable for the rent. There was nothing to show that the contract for the house was made on the personal credit of any one except the defendant. Bhojabhai Allarakhia v. Hayem Samuel

[I. L. R., 22 Bom., 754

91. ——— *Right to sue—Liability of agent—Charter party—Actual knowledge—Disclosure of name of principal at time of making the contract—Presumption of liability of agent where name of principal not disclosed—Contract Act (IX of 1872), s. 230.*—The plaintiffs by charter-party contracted to let the steam-ship *Oakdale* to the defendants upon certain terms. The first clause of the charter-party stated that the plaintiffs "agreed as agents for owners of the said steam-ship," and subsequent clauses provided that the owers should bind themselves to receive the cargo

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

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therefore not entitled to sue. If a contract made by a person who is an agent is worded so as, when taken as a whole, to convey to the other contracting party the notion that the agent is contracting in that character, he cannot sue or be sued on the contract. Where one contracting party knows that the other is contracting as an agent for a third person whose name he also knows the presumption laid down in cl. 2 of s. 230 of the Contract Act (IX of 1872) does not arise, although at the time of making the contract the agent does not disclose the name of his principal. The essential point is the knowledge, and actual knowledge is equivalent to disclosure, the whole object of which would be to convey such knowledge. MACKINNON, MACKENZIE & Co. *v.* LANG, MOIR & Co. I. L. R., 5 Bom., 584

92. ——— ——— *Liability of agent—Contract Act (IX of 1872), s. 230—Evidence Act (I of 1872), s. 92—Charter-party—Employment of stevedores to load and discharge cargo.*—The defendants let a steam ship to the plaintiff for

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any port the charterers pleased. It was agreed that the steamer should be provided "with a proper and sufficient crew of seamen, engineers, stokers, firemen, and other necessary persons for working cargo with all despatch;" and that in taking and discharging cargo, "the master and his crew with his boats shall be aiding and assisting to the utmost of their power," and that "the owners or agents of the said steam ship shall be held responsible to the said charterers for any incapacity, want of skill, insobriety, or negligence on the part of master, officers, engineers, stokers, firemen, or crew of the said steam ship." The names of the principals were not disclosed in the charter party, but were verbally disclosed before the charter-party was signed. In an action against the agents for damages for refusing to supply stevedores and other persons, in addition to the crew, when loading and discharging cargo,—*Held* that the presumption created by the second clause of s. 230 of the Contract Act is merely a *primâ facie* one and may be rebutted, and that the contract was not personally binding on the agents, because the *primâ facie* presumption of an intention to contract personally was rebutted by the language of the contract itself. *Held* also that the terms of the charter-party showed that the crew only were to assist in loading and discharging cargo; and that the plaintiffs were not entitled to call on those responsible for the steamer to load and discharge cargo by stevedores instead of by the crew. Reading the second part of s. 230 of the Contract Act with s. 92 of the Evidence Act. *Semble*—That if, on the face of a written contract, an agent appears to be personally liable, he cannot escape liability by evidence of any disclosure of his principal's name apart from the contract. SOOPRAMONIAN SETTY *v.* HEILGERS

[I. L. R., 5 Calc., 71: 4 C. L. R., 377

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C. were agents for the owners. *H. A.* being unable to carry out the terms of the charter, there was a delay in the departure of the vessel. On 26th May 1865 *A.* wrote to *C. & C.*, addressing them as agents of the ship: "I beg to inform you that I have shipped per *Sir Jamsetjee Family* 268 bags of sugar for Bombay, I hold the bills of lading for the same, and the ship is still detained here. I hope you will be kind enough to let me know what you will do about the cargo, if the said ship will sail for Bombay or trans-ship to any other vessel, or deliver the cargo here." To which *C. & C.* on the same day replied: "We shall be able to tell you in the course of a week or so what we propose doing with the ship *Sir Jamsetjee Family*, as soon as any thing has been decided, due notice shall be given to the shippers of cargo already on board." On 1st June *C. & C.* again wrote: "*H. A.* having failed to carry out his charter of the *Sir Jamsetjee Family* in terms of the shipping order and sundry goods having been sent on board by him of which the following are believed to be to your order, and for which bills of lading have been signed and delivered to *H. A.*, we shall be glad to know whether you are willing that the said goods—268 bags of sugar—be trans-shipped to a steamer going to Bombay, at the current rate of freight, the bills of lading for the same being sent to the owners of the *Sir Jamsetjee Family*, to be delivered to the consignees of the goods upon production of the bills of lading already signed. You will, of course, understand that the goods are liable for the chartered rate, *viz.*, R20-10 per ton; and the charterer having failed to complete the loading, the difference of freight between what *H. A.* granted you a shipping order at and the freight charged by the steamer will have to be paid by the shipper previous to the goods being delivered in Bombay." On the 8th June *A.* replied: "I am agreed that my goods be trans-shipped to a steamer going to Bombay at the current rate of freight, but I must not pay the difference of freight, whatever it may be. In regard to *H. A.*, I have nothing to do with them, as the bills of lading per *Sir Jamsetjee Family* for 268 bags of sugar being signed by the

PRINCIPAL AND AGENT—*continued.*

6. LIABILITY OF AGENTS—*continued.*

captain of the same at the rate of freight, R16 per ton, I am liable for the same only. If you are willing to trans-ship my said goods to a steamer at the same rate of freight, I am willing and must pay it; otherwise you will kindly order to deliver my goods from *Sir Jamsetjee Family* here." *C & C* accepted and acted on the proposal in the last letter. The sugar was trans-shipped from the *Sir Jamsetjee Family* to the *Gunga,* from the mate of which *C & C* obtained a receipt, stating that the goods had been shipped in good order, etc. The goods were afterwards removed without the knowledge of *C & C* from the *Gunga* to another steamer, the *Mula,* which belonged to the same owners. Subsequently *C & C* gave up the receipt from the mate of the *Gunga,* and obtained in exchange a bill of lading signed by the agents for the captain of the *Mula.* The bill of lading stated the receipt of goods (in which were included those of *A*) from *C & C,* and made them deliverable to order of *C & C,* at Bombay, and receipt of freight for the whole at R15 per ton was admitted. *A* knew that his goods had been put on board the *Mula,* and got his policy of insurance, which was against a total loss only, transferred. There were inserted in red ink in the bill of lading when given to *A* the words, "Bags all more or less in bad order and torn; contents damaged and rotten; marks indistinct; not responsible for marks or condition of packages or contents." The *Mula* proceeded on her voyage, but returned to Calcutta with her cargo damaged by the perils of the sea: 260 of *A's* bags of sugar were condemned and sold in Calcutta, under the authority of the agents of the *Mula,* without notice to *C & C* or to *A,* and neither were aware that the sale was about to take place. The remaining eight bags were sent to Bombay in another ship by the agents of the *Gunga* and *Mula,* and were received by *A. Held* (overruling PHEAR, *J.*) that *C & C* were agents only of the owners of the *Sir Jamsetjee Family;* but had *C & C* been liable as agents for *A,* they would not have been liable for the full value of the goods damaged by the perils of the sea. *Quære*—If *C & C* had expressly, as agents of the owners of the *Sir Jamsetjee Family,* contracted to trans-ship and deliver at Bombay, according to the terms of the bill of lading, would they have been personally liable? *Semble*—A contract made with express reference to a principal, though not by name, would not render the agent personally liable as the agent of an undisclosed principal. COWIE *v.* DHURMSEE POONJABHOY . . 2 Ind. Jur., N. S., 75

94. ——— *Agents of ship —Liability of agents.*—Upon the following facts referred, "Defendants contracted with plaintiffs as agents of the captain and owners of a certain ship then in the Madras Roads. The plaintiffs were aware of this at the time when the contract was made. The captain was at the time in charge of his ship. At the time of the contract nothing was said by either party as to the person or persons on whose credit the contract was made,—all that occurred being that defendants, known by plaintiffs to be acting as agents for the captain and owners of the ship, agreed with plaintiffs to carry certain of their goods on board the ship to Calcutta. The defendants did not at the time of the contract in terms say that they contracted only as agents. The plaintiffs did not know the names of the owners, nor of the captain; nor had they any further or other knowledge of the latter than that which his designation by his office of master of the ship conveyed." *Held* that, in the absence of anything more than knowledge that the defendants were acting as agents of the master and owners of a ship in the Roads, a decision declaring the agents liable was strictly in accordance with English law. PATER *v.* GORDON [7 Mad., 82

95. ——— Captain and officers of man-of-war—*Damage occasioned by treatment of stranded ship without consent of owner.*—*A,* the captain of a man-of-war, gave written instructions to *B,* his lieutenant, concerning a certain ship which was stranded. The official instructions contained the following passage: "You will in all emergencies act as your discretion and judgment direct." At the same time, *A* sent a demi-official letter to *B,* in which, after several directions having reference to the disposal of the cargo, he added, "After getting all you can, I should think that the wreck ought to be burnt; but all is left to your discretion and judgment." In pursuance of these orders, the wreck was burnt without the consent of the owner. *A* subsequently ratified the act of his subordinate. *Held,* first, that *A,* by the expressions used in the demi-official letter, rendered himself liable as principal; and second, that *B,* as the agent directly concerned in causing the burning of the ship, was liable jointly with *A* to the owner for the damage occasioned thereby. ABDOOLA BIN SHAIK ALLY *v.* STEPHENS [2 Ind. Jur., O. S., 17

96. ——— Fraud—*Fraudulent agreement between agent and contractors for work.*—The ex-King of Oudh ordered *M,* one of his officers, to procure the erection of certain buildings. *M* made over to *Y* (also one of the King's officers) the contract for a portion of the work which the appellant undertook to execute. The contract for the work was signed by the appellant alone, and it provided (among other things) that *Y* was to be allowed R20,000 out of every R1,00,000 paid to the appellant. By another agreement it was stipulated that the work should be examined and checked by *Y* or his agents. The appellant was discharged before the completion of the work, and he sued *Y, M,* and the ex-King jointly. *Held* that *Y* did not render himself personally liable, and that the contract was of such a description that the appellant was not entitled to a decree against the other respondents in respect of it, as both *Y* and the appellant were parties to a fraud on the ex-King. BHOGOBAN CHUNDER SEN *v.* BADSA ALLY SHA [1 Ind. Jur., O. S., 103

97. ——— Payment of deposit as purchase-money with auctioneer—*Suit to recover deposit.*—The plaintiff purchased immoveable

PRINCIPAL AND AGENT—*continued.*

6 LIABILITY OF AGENTS—*continued*

property at an auction sale and deposited a certain amount on account of the purchase-money with the auctioneer The vendor refused to convey the property to the plaintiff *Held* that the money having been deposited with the auctioneer as a stakeholder and not as an agent merely, and being in his hands, the action to recover it lay against the auctioneer, and not against the vendor FESAJI ADAMJI *v* BHIMJI PURSHOTAM 4 Bom, O C, 125

98 ——— **Contract for municipality** —*Repudiation of contract by municipality—Want of authority* —Plaintiff sued one *M M*, overseer for the [illegible] municipal work The municipality having ignored the contract it was held that, the contract being a quasi-contract defendant could not be held personally liable in the action MODHOOSOODUN DEY *v*. MOHENDRONATH MOOKERJEE . 9 W R., 206

99 ——— **Gratuitous agent**—*Negligence—Gross negligence* —A gratuitous agent is liable for any loss sustained by his principal through the gross negligence of the agent What is gross negligence is a question on the facts of each particular case AGNEW *v* INDIAN CARRYING COMPANY [2 Mad, 449

100 [illegible] are only bound to act to the best of their judgment, and to use proper care and skill as agents in purchasing what they are ordered to purchase and their action cannot be repudiated unless they are shown to have been guilty of negligence BETTS *v* ARBUTHNOT 10 W. R., P. C, 65

Affirming decision of High Court in ARBUTHNOT *v* BETTS . 6 B L R, 273

101. ——— *Liability of firm for acts of member of firm—Contract Act, s 192* —The plaintiffs and defendants carried on business in the same place, and when a member of either firm was sent to Calcutta to make purchases, the other firm took advantage of the opportunity to get the same person to purchase goods on their behalf A member of the defendant's firm, who was sent to Calcutta, through his own negligence lost a sum of money given by the plaintiffs to the defendants' firm for the purchase of goods The lower Courts found that the defendants acted as agents *Held* that the defendants' firm, and not only the particular member of the firm by whose negligence the money was lost, was responsible NEKUNDEB MONDUL *v* NOCOWRI BISWAS . . 11 C. L. R., 547

102 ——— ——— *Liability for loss sustained by company* —*Held*, under the circumstances, that the company had suffered loss by the

PRINCIPAL AND AGENT—*continued.*

6 LIABILITY OF AGENTS—*concluded*

neglect of their agent, and that he was liable to make good the loss sustained in consequence of his negligence CRAWLEY *v* MALINO 1 Agra, 63

103 ——— **Suit by principal against agent to recover money received and not accounted for**—*Termination of agency—Act IX of 1872 (Contract Act) ss 201, 218* —Where an agent for the sale of goods receives the price thereof, the agency does not terminate with reference to ss 201 and 218 of the Contract Act (IX of 1872), [illegible] demand for an account of such price The agency does not terminate immediately on the sale of the goods. It does not terminate at the time when the plaintiff obtained knowledge of the defendant's breach of duty BABU RAM *v* RAM DAYAL [I. L. R., 12 All., 541

FINK *v* BULDEO DASS I L. R, 26 Calc, 715

7. COMMISSION AGENTS

104 ——— **Unauthorized profits of agent**—*Contract Act (IX of 1872), ss 215 216—Evidence Act (I of 1872), s 92—Contemporaneous oral agreement—Account sales* —The plaintiffs a firm of merchants entered into an agreement (which was reduced to writing) with the defendants who were dealers in coffee and other produce to the [illegible] *should receive a commission of 1 per cent for themselves and 2½ per cent for their agents* at the port of consignment; that the plaintiffs should make certain advances to the defendants against the produce, and that the sums advanced should be repaid with interest "at such rates as may be fixed at the various dates of such loans it being agreed that such interest is to be regulated by the then prevailing rate at the office of the Bank of Madras at Tellicherry" The written agreement was silent as to the mode of sale, rate of exchange and other matters connected with the business, but it was at the same time further agreed orally that the sales of the defendants' produce were to be made under the directions and at the discretion of the plaintiffs. Business was carried on on the footing of the above agreements for eighteen months during which period the plaintiffs furnished to the defendants copies of the account sales for the consignments made through them and they were accepted without objection by the defendants. The business resulted in the defendants becoming indebted to the plaintiffs, and about nine months after the date of the above-mentioned of agreement the defendants executed in favour of the plaintiffs a mortgage in which the then amount their indebtedness was recited. The defendants became further indebted to the plaintiffs and the plaintiffs, having furnished them with an account of the transactions between them, now sued to recover the balance

PRINCIPAL AND AGENT—*continued.*

7. COMMISSION AGENTS—*continued.*

due. The defendants admitted the correctness of the debit side of the account, but denied in general terms that of the credit side. Evidence was given by the plaintiffs of the receipt of the account-sales in the ordinary course of business and of the delivery of copies to the defendants from time to time, and they were filed as exhibits without further proof. It appeared that in the account the defendants were charged on account of local exchange at a rate higher than that actually paid to the Bank, with which the plaintiffs had made [illegible] without reference to the contract [illegible]. It also appeared that the plaintiffs, under an arrangement made with their agents at the ports of consignment, had received from them about 1 per cent. on the various consignments by way of return commission, and that this arrangement had not been communicated to the defendants. *Held* (1) that the account-sales were *primâ facie* proof of the transactions to which they related; (2) that evidence of the contemporaneous oral agreement was admissible; (3) that the defendants were not entitled to the benefit of the special arrangement between the plaintiffs and the Bank; (4) that the plaintiffs were liable to the defendants for the amount received by them as return commission. MAYEN *v.* ALSTON . . . I. L. R., 16 Mad., 238

105. ———— Principal and factor—*Consignment for sale—Advance by factor on consignment—Right of factor to sell goods consigned to him for sale below the limit of price prescribed by consignor.*—In January 1889 an agreement was made between the plaintiffs and the defendant which provided that the defendant in Bombay was to act for the plaintiffs "in influencing consignments of produce" to the care of the plaintiffs in London. Such produce was to be sold by the plaintiffs in London for a certain commission and brokerage. One of the terms of the agreement was that the business in England was to be worked entirely in the defendant's name, and the defendant was to "undertake to guarantee the plaintiffs free of all loss in connection with the said consignments and to guarantee the payment of redrafts, etc." On the 25th January 1889 the defendant consigned 435 packages of cloves to the plaintiffs in London and drew against the consignment a draft for £2,100 on the plaintiffs. In his consignment letter the defendant stated that the consignment was from his constituent *C K*, but that, as R30,000 had been advanced to him, the consignment was shipped in the defendant's name. The letter continued: "The cost is 9¼*d.* per pound, but he expects more, and not to be sold under the above rate." The sum drawn against the cloves (£2,100) was £400 in excess of their value, and on receipt of the consignment letter on the 11th February 1889, the plaintiffs at once telegraphed to the defendant to remit by cable £400 against overdraft against cloves. On the next day the defendant replied by telegraph: "I will remit you by outgoing mail." The plaintiffs accepted and paid the draft for £2,100 drawn against the cloves. The price of cloves in the London market fell rapidly. The defendant from time to time lowered the limit of price, but not to such an extent as to allow of a sale being effected. The lowest limit named by him was 6*d.* per pound on the 31st October 1889. In December 1889 the market price was only 5*d.* per pound, and the deficit owing to the plaintiffs was £1,300. The plaintiffs presented bills to the defendant for this balance, but they were refused. On the 5th February 1890, after due notice to the defendant, the 435 bales of cloves were sold, 20 of them at 4¾*d.* per pound and 415 at 4⅝*d.* The balance due to the plaintiffs in respect of this consignment after allowing for the proceeds of sale was £1,432-15-0. This sum was part of the amount for which the present suit was brought. The defendant contended that the plaintiffs were not justified in selling the cloves below the price limited, *viz.*, 6*d.* per pound, and claimed to be credited with £329-1-8, which was the difference between the amount actually realized by the sale and the amount which would have been obtained if the cloves had been sold at the prescribed price. *Held* by FARRAN, J., and by the Court of appeal on the evidence (1) that the plaintiffs had accepted the consignment and had advanced money against it on condition of being kept in funds in case a deficit should arise owing to a falling market, and that the defendant acquiesced in that condition (2) that the plaintiffs had throughout claimed the right to sell if the condition was not observed, and that the defendant inferentially admitted the right claimed by the plaintiffs. The conclusion to be drawn was that the business was conducted on that basis, and that, when the condition was broken, the plaintiffs' right to sell arose according to the course of business, notwithstanding the limit of price imposed by the defendant. *Per* SARGENT, *C.J.*—The result of the authorities is to show that where a factor for sale, who has made advances, claims the right to sell, *invito domino*, the question is whether there was an agreement between the parties, either express or to be inferred, from the general course of business or from the circumstances attending the particular consignment, that the factor should under any and what circumstances have the power to sell against the wish of the owner of the goods. The onus of proving such agreement lies on the factor who has made the advances. *Per* FARRAN, *J.*—On the whole, the authorities warrant the inference that where goods are consigned to a foreign merchant as security for an advance, albeit he may be a factor entrusted with the sale of goods on commission, and where by reason of the fall in the market or other causes his security is declining in value, and becoming insufficient, such foreign merchant is invested with a power of sale over the goods after due notice to his principal, although the latter may place a limit on their sale, and desire to hold them on, if the principal do not put his factor in funds to make up the deficit so caused. JAFFERBHOY LUDHABHOY CHATTOO *v.* CHARLESWORTH . . I. L. R., 17 Bom., 520

106. ———— Agency to sell, coupled with interest—*Contract Act, s. 202—Discretion as to price left with agent—Power of principal to impose limits as to price.*—The defendant consigned goods to a firm in London for

PRINCIPAL AND AGENT—*concluded.*

7. COMMISSION AGENTS—*concluded*

sale, and in respect of each consignment he received an advance from the plaintiff, who was the agent of the London firm, and signed a consignment note, *which contained the following passage* "I hereby authorize you to sell the above goods at the best price obtainable without reference to me, and I give you full discretion and power to act on my behalf to the best of your judgment in regard to such sale and in all matters connected with the management of this consignment. Should there be any short fall after realization of the above consignment, I hereby authorize you to draw on me for the amount, and I engage to honour such draft and to pay it on presentation" The plaintiff guaranteed the payment of the redrafts to the London firm, on whose account he made the advances to the defendant. Short falls ...nd the ... plain... amount ... ments ...

receipt of the advances and the signature of the co...

PRINCIPAL AND SURETY.

See Execution of Decree —Mode of Execution—Principal and Surety
[I. L. R., 4 Calc, 331
I. L. R., 10 Bom, 578

See Hindu Law—Contract—Principal and Surety . 4 Mad., 190

See Cases under Surety

1. LIABILITY OF PRINCIPAL

... liability— ... ties ... of a bond the principal ... due with interest notwithstanding that a decree has been obtained for the same sum against the other party. Mahomed Roheemooddeen *v.* Indoor Chunder Jowheree . . . 12 W. R, 103

2. ——— Remedy between principal and surety—*Defect in Collectorate treasury*— ...

open to the sureties is against the treasurer only. Sadut Ali Khan *v.* Manikarnika Chowdhrain Nund Mohun Chowdhry *v.* Manikarnika Chowdhrain . . . W. R., 1864, 119

3. ——— *Right of surety who has paid the debt to recover from principal* — Applying the law of England and Scotland and the general law of Europe to this country, it was held that, when a surety has paid off the debt of his principal, not only are all the collateral securities transferred to the surety, but by what is called subrogation, the right is also transferred to him to stand in the place of the original creditor, and to use against the principal debtor every remedy which the principal creditor himself could have used Accordingly, *the surety is not debarred from proceeding* against the original debtor upon the instrument itself which created the debt, by reason of the debt having been paid by himself Heera Lall Samant *v* Oozeer Ali 21 W R, 347

2 RIGHTS AND LIABILITIES OF SURETY.

4. Extent of liability — *Voluntary payments by principal* — The liability of a surety will not extend beyond the precise limits of his undertaking; he is not liable for any sum voluntarily paid by his principal to a third party for any purpose of his own Khettar Nath Seal *v* Shib Nath Chatterjee W R., 1864, 284

5. ——— *Specific contract —Liability of surety—Costs of suing principal* — *Held* that a surety's liability must be measured by the contract; and where the contract is specific and not in general and indefinite terms the surety cannot be held liable for costs and interest incurred in suing the principal debtor Dabee Churn *v* Jankee Pershad 3 Agra, 141

6. ——— Liability on bond—*Running account—Appropriation of payments—Joint bond —Notice to surety of default* —A principal and two sureties executed in favour of a bank a joint bond to secure the payment of a sum placed to the cash credit loan account of the principal, together with interest, and the premia on a policy of life assurance, within one year from the date of the bond At the end of the year a considerable sum remained unpaid, but the principal continued dealing with the bank, and the account was continued for three years after the date of the bond as a running account, during which time divers sums were paid in by the principal, more than sufficient to discharge the amount due at the end of the first year from the date of the bond, and divers sums were in like manner drawn out In a suit brought by the bank against the sureties to recover the amount due at the end of the first year, it was held that, inasmuch as the whole account from ... principal's ... nding ... the ... ns in the account; and, inasmuch as all the moneys due on

the bond at the end of the first year were thereby satisfied, no amount remained due on the bond. *Semble*—That for the purpose of giving persons who appear on the face of an instrument to have executed it as principals the equitable rights of sureties, they may show by evidence dehors the instrument that they executed only as sureties. *Semble*—That a surety is not entitled to notice of default made by the principal. *Semble*—That there being no express stipulation to the contrary, the fact that the principal was allowed a greater credit than that secured would not have discharged the sureties. KOONDAN LALL *v.* JAHANS . . . 1 Agra, 17

7. ———————— *Sale of mortgaged property in execution of money-decree obtained by first mortgagee—Effect on second mortgagee's rights—Purchase by one of several joint mortgagees of mortgaged property—Limitation—Suit for sale of mortgaged property.*—In January 1866 *B* obtained a simple money-decree only in a suit for enforcement of lien created by a bond executed by the wife of *Z*, and, at a sale in execution of such decree, a 10-biswas share hypothecated in the bond was sold and purchased by *Z* in November 1872. On the 3rd May 1872, two bonds were executed in favour of *B* and *H* jointly, the first by *Z* and *I* jointly hypothecating 6¼ out of the above-mentioned 10 biswas, and the second by *S*, in which the obligor promised to pay the obligees the amount of the bond given by *Z* and *I* in the event of such amount not being paid by them, and mortgaged certain property as security for such payment by him. In December 1872 *Z* gave another bond to *B* hypothecating the same 10 biswas, and in execution of a decree obtained by *B* upon this bond the 10 biswas were sold and purchased by *B* himself in 1877, and in 1883 were sold by him to *D*. Subsequently, *B* and *H* brought a suit against *Z* and *I*, the joint obligors, under the bond of the 3rd May 1872, the heirs of their surety *S*, a purchaser from those heirs of the property mortgaged in the security-bond, and *D*, in which they claimed to recover the money due on the bond by sale of the property mortgaged therein, and also by the sale of the property mortgaged in *S*'s security bond. *Held* that, inasmuch as the bond executed by *S* was only a guarantee for the personal obligation created by the joint bond of *Z* and *I*, and a cause of action could only accrue as against him in respect of the personal default of the joint obligors to pay the bond-money, and such default occurred beyond the period of limitation within which a suit to enforce the personal obligation to pay the money could have been maintained, it followed that, had there been a claim in the plaint to obtain a decree personally against the joint obligors, the plea of limitation by which such a claim could have been defeated would have been equally efficacious as regards the heirs of *S*; but no such claim had been made, and the obligation of surety under his bond of the 3rd May 1872 being confined to the personal default of *S*, his heirs had been wrongly imported into the present litigation, which alone sought to enforce the hypothecation of the joint bond against the hypothecated property. BHUP SINGH *v.* ZAIN-UL ABDIN

[I. L. R., 9 All., 205

8. ———————— *Contract Act, s. 127, illus. (c)—Surety-bond—Want of consideration.*—Where *N* advanced money to *K* on a bond hypothecating *K*'s property and mentioning *M* as surety for any balance that might remain due after realization of *K*'s property, *M* being no party to *K*'s bond, but having signed a separate surety-bond two days subsequent to the advance of the money,—*Held* that the subsequent surety-bond was void for want of consideration under s. 127 of the Contract Act (IX of 1872). *Per* STUART, C.J.—The legal position of the surety considered and determined. NANAK RAM *v.* MEHIN LAL

[I. L. R., 1 All., 487

9. ———————— **Bond for faithful discharge of duty of overseer**—*Carelessness of principal.*—By a bond given for the faithful discharge of the office of overseer to a ferry fund committee, the surety became bound "to make good any funds entrusted to the overseer which may be misused." *Held* that, under these words, the surety was liable for a loss of funds arising from the mere carelessness or indiscretion of the principal, independently of any dishonesty, as by his lending the money to contractors. SECRETARY OF THE FERRY FUND COMMITTEE *v.* WARD . . . Marsh., 89 : 1 Hay, 155

10. ———————— **Bond for performance of duties of office**—*Clerk of Small Cause Court—Subordinate Judge, Powers of.*—The defendant and *J W C*, Clerk of the Small Cause Court at Allahabad, entered into a bond to the Judge of the Small Cause Court, as well as to his successors in office, in a certain sum as security for the true and faithful performance by *J W C* of his duties as clerk of the said Court, and for his well and truly accounting for all moneys entrusted to his keeping as such Clerk of the Court. *Held*, in a suit against the defendant as surety, that he was liable for misappropriation by *J W C* of moneys arising from sales of moveable property held in execution of decrees passed by the Judge of the Small Cause Court in the exercise of his powers as Subordinate Judge, and that, had the Small Cause Court Judge not been invested at the time of the execution of the bond with the powers of a Subordinate Judge, the defendant's liability in respect of such moneys would not have been thereby affected. CROSTHWAITE *v.* HAMILTON . I. L. R., 1 All., 87

11. ———————— **Creditor and surety**—*Right of surety to benefit of securities held by creditor—Surety for a part of debt due by principal debtor to creditor—Payment by surety of that part—Right of surety to benefit of securities does not arise until whole of debt paid off—Contract Act (IX of 1872), s. 141.*—In August 1889, one *K* was indebted to the Bank of Bengal (the defendants) in the sum of R3,15,000. The Bank pressed for security or payment, and on the 5th September 1889 *K* executed, in favour of the Bank, two mortgages of certain immoveable properties, the value of which

PRINCIPAL AND SURETY—*continued*

2. RIGHTS AND LIABILITIES OF SURETY —*continued*

was estimated to be R1,35,000. The mortgages, though stamped to secure this amount only, were drawn to cover the whole liability of *K* to the Bank, and recited that he had become largely indebted to the Bank on certain bills, etc., and had agreed to give security in respect of such indebtedness as was thereafter expressed, and they contained covenants by *K* to pay to the Bank all sums of money then due, or thereafter to become due, by him in respect of such bills, etc. Besides the said two mortgages, the Bank obtained other securities for a further sum of R55,000, making the total sum secured R1,90,000 and leaving a balance of R1,25,000 unsecured. Under these

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R1,25,000. This sum he was subsequently obliged

[illegible]

R1,25,000, to the Bank, and that he was therefore to that extent entitled to stand in the place of the Bank and to receive a share of the proceeds of the said securities proportioned to the sum which he had paid. *Held* that the plaintiff was not entitled to the benefit of the securities held by the Bank until the whole of the debt due to the Bank by *K* was paid. A surety, who has paid the debt which he has

[illegible]

thing to deprive the surety of that right. But the creditor's right to hold his securities until his whole debt is paid is paramount to the surety's claim upon such securities, which only arises when the creditor's claim against such securities has been satisfied. GOVERDHANDAS GOKULDAS TEJPAL *v.* BANK OF BENGAL . . . I. L. R., 15 Bom., 48

12. ———— **Stipulation with Bank to be considered as sureties only as respected the principal debtor, not principal debtors as between themselves and Bank.**—The appellants, in becoming sureties to the respondent

[illegible]

principal debtors, so as not to be exonerated from liability by any dealings between the Bank and the principal debtor, which would otherwise have that effect. *Held* that the appellants became liable as principals to the Bank immediately on the default of

[illegible]

[illegible] A., 200

13. ———— **Laches of creditor**—*What amounts to laches—Discharge of surety.*—Plaintiff advanced money to *A* to enable him to complete a Government contract and repayment was secured by an assignment of the expected profits. The official to whom the arrangement was notified declined to recognize it, and this was known to all parties. *K* made default in payment, and the plaintiff, who had taken no further steps in applying to the Government for payment of profits according to the arrangement between himself and *K*, found that *K* had been drawing the profits. In a suit against the surety, who claimed to be exempt from liability at least to the extent of the profits which the plaintiff might by due diligence have received,—*Held* that the plaintiff

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v. DENONATH BONNERJEE . Bourke, O. C., 1

14. ———— **Mutual debts**—*Set off—Discharge of surety.*—*R* borrowed money of the *D. B.* Corporation payable by monthly instalments and *G* became security for him. *R* failed to pay the *D. B.* Corporation, having then a considerable balance to his credit in their hands. A year after they sued *G* as surety for the sum borrowed. *Held*, in giving a decree for the plaintiffs, that a banker need not set off against a debt a cash balance of the debtors in his hands, but may proceed against the surety. DELHI BANK CORPORATION *v.* GREENWAY

[Bourke, O. C., 237

15. ———— **Agreement to mortgage, Assignment of**—*Bond of indemnity—Guarantee—Interest.*—Liability of parties discussed and form of decree given in a case where, by an agreement in writing, one of the defendants, in consideration of money lent to him by *B*, the other defendant, agreed to execute a mortgage to *B* containing the usual covenants (in default the agreement to stand as a mortgage) and *B* assigned the agreement to the plaintiff, guaranteeing by bond of even date the payment of the principal and interest specified in the agreement. MANICKYA MOYEE *v.* BARODA PROSAD MOOKERJEE

[I. L. R., 9 Calc., 355: 11 C. L. R., 430

16. ———— **Suit against surety**—*Acquittal of principal by Criminal Court.*—The acquittal of the principal in a Criminal Court is no bar to a civil action against the sureties. In a suit by the mutwalli of the Hooghly Imambara against the treasurer of that endowment and sureties under a security bond executed on an optional stamp of R8 for a sum of R17,280-5-6 alleged to have been misappropriated by the treasurer, who had been committed to, but acquitted by, the Sessions Court,—*Held* that, although there was gross neglect on the part of the mutwalli in the supervision and examination of his cash balance, yet as there was no evidence of fraud or mutual connivance at the delinquence of the treasurer, the former was entitled to

PRINCIPAL AND SURETY—*continued.*

2. RIGHTS AND LIABILITIES OF SURETY—*continued.*

the bond at the end of the first year were thereby satisfied, no amount remained due on the bond. *Semble*—That for the purpose of giving persons who appear on the face of an instrument to have executed it as principals the equitable rights of sureties, they may show by evidence dehors the instrument that they executed only as sureties. *Semble*—That a surety is not entitled to notice of default made by the principal. *Semble*—That there being no express stipulation to the contrary, the fact that the principal was allowed a greater credit than that secured would not have discharged the sureties. KOONDAN LALL *v.* JAHANS . . . 1 Agra, 17

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[I. L. R., 9 All., 205

8. ——— *Contract Act, s. 127, illus. (c)—Surety-bond—Want of consideration.*—Where *N* advanced money to *K* on a bond hypothecating *K*'s property and mentioning *M* as surety for any balance that might remain due after realization of *K*'s property, *M* being no party to *K*'s bond, but having signed a separate surety-bond two days subsequent to the advance of the money,—*Held* that the subsequent surety-bond was void for want of consideration under s. 127 of the Contract Act (IX of 1872). *Per* STUART, C.J.—The legal position of the surety considered and determined. NANAK RAM *v.* MEHIN LAL

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PRINCIPAL AND SURETY—*continued*
2 RIGHTS AND LIABILITIES OF SURETY—*continued*

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to that extent entitled to stand in the place of the Bank and to receive a share of the proceeds of the said securities proportioned to the sum which he had paid *Held* that the plaintiff was not entitled to the benefit of the securities held by the Bank until the whole of the debt due to the Bank by *K* was [illegible]

and the surety is that the creditor shall not do any thing to deprive the surety of that right But the creditor's right to hold his securities until his whole debt is paid is paramount to the surety's claim upon such securities which only arises when the creditor's claim against such securities has been satisfied. GOVERDHANDAS GOKULDAS TEJPAL *v* BANK OF BENGAL I L R., 15 Bom, 48

12 ——— Stipulation with Bank to be considered as sureties only as respected the principal debtor, not principal debtors as between themselves and Bank.—The appellants in becoming sureties to the respondent Bank covenanted [illegible]

liability by any dealings between the Bank and the principal debtor which would otherwise have that effect *Held* that the appellants became liable as principals to the Bank immediately or the default of the principal debtor, and were not discharged by reason of time having been given to him. The effect of the deed being plain neither appellant could escape liability except by proof of misrepresentation or undue influence HODGES *v* DELHI AND LONDON BANK [L. R., 27 I. A., 168

PRINCIPAL AND SURETY—*continued*
2. RIGHTS AND LIABILITIES OF SURETY—*continued*

13 ——— Laches of creditor—*What amounts to laches—Discharge of surety*—Plaintiff advanced money to *K* to enable him to complete a Government contract and repayment was secured by an assignment of the expected profits The official to whom the arrangement was notified declined to recognize it, and this was known to all parties. *K* made default in payment and the plaintiff who had taken no further steps in applying to the Government for payment of profits according to the arrangement between himself and *K*, found that *K* had been drawing the profits In a suit against the surety who claimed to be exempt from liability at least to the extent of the profits which the plaintiff might [illegible]

amount to laches so as to discharge the surety from any portion of his liability DWARKANATH MITTER *v* DENONATH BONNERJEE . Bourke, O C., 1

14 ——— Mutual debts—*Set off—Discharge of surety*—*R* borrowed money of the *D B* Corporation payable by monthly instalments and *G* became security for him *P* failed to pay the *D B* Corporation having then a considerable balance to his credit in their hands A year after they sued *G* as surety for the sum borrowed. *Held* in giving a decree for the plaintiffs that a banker need not set off against a debt a cash balance of the debtors in his hands but may proceed against the surety DELHI BANK CORPORATION *v* GREENWAY [Bourke, O C, 237

15 — — Agreement to mortgage, Assignment of—*Bond of indemnity—Guarantee—Interest*—Liability of parties discussed and form of decree given in a case where, by an agreement in writing one of the defendants in consideration of money lent to him by *B*, the other defendant, agreed to execute a mortgage to *B* containing the usual covenants (in default the agreement to stand as a mortgage) and *B* assigned the agreement to the plaintiff guaranteeing by bond of even date the payment of the principal and interest specified in the agreement. MANICKYA MOYEE *v* BARODA PROSAD MOOKERJEE [I L R., 9 Calc., 355 . 11 C L R., 430

16. ——— Suit against surety—*Acquittal of principal by Criminal Court*—The acquittal of the principal in a Criminal Court is no bar to a civil action against the sureties In a suit by the mutwalli of the Hooghly Imambara against the treasurer of that endowment and sureties under a security bond executed on an optional stamp of R8 for a sum of R17,280-5-6 alleged to have been misappropriated by the treasurer who had been committed to, but acquitted by, the Sessions Court—*Held* that although there was gross neglect on the part of the mutwalli in the supervision and examination of his cash balance, yet as there was no evidence of fraud or mutual connivance at the delinquence of the treasurer, the former was entitled to

PRINCIPAL AND SURETY—*continued.*

2. RIGHTS AND LIABILITIES OF SURETY —*continued.*

recover from the sureties the sum which the stamp used on the security bond would cover—*viz.*, R1,000, with costs in proportion and interest. KERAMUT ALI *v.* ABDOOL WAHAB . . 17 W. R., 131

17. ———— *Suit for breach of contract—Performance by surety.*—Where the surety had begun to perform the duty which the principal had contended to perform,—*Held* that this circumstance would not preclude the plaintiffs from suing the defendant as surety for breach of the contract. PIERCE *v.* OPENDRA SHETTI GANAPATHY [7 Mad., 364

18. ———— *Contract Act (IX of 1872), ss. 133, 139—Surety still liable though remedy against principal barred.*—Where a plaintiff sued a principal and surety for arrears of rent, and it appeared that the principal was dead at the time the suit was instituted, and where the representative of the principal was not made a party till after the right to recover the arrears as against him was barred by limitation,—*Held* that the surety was still liable, the suit as against him having been instituted within the period allowed. *Hajarimal* v. *Krishnarav, I. L. R., 5 Bom., 647,* cited and approved. KRISHTO KISHORI CHOWDHRAIN *v.* RADHA ROMUN MUNSHI . . I. L. R., 12 Calc., 330

19. ———— *Obligation to sue principal.*—*Held* that a creditor is not bound to exhaust his remedies against the principal debtor before suing the surety, and that, when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt. LACHMAN JOHARIMAL *v.* BAPU KHANDU. NANDRAM SARDARMAL *v.* BHABANI HAIBATI 6 Bom., A. C., 241

20. ———— *Contract Act, ss. 134, 137.*—A surety's liability to pay the debt is not removed by reason of the creditor's omission to sue the principal. SANKANA KALANA *v.* VIRUPAKSHAPA GANESHAPA . I. L. R., 7 Bom., 146

21. ———— *Suit on hundi—Accommodation acceptance—Contract Act, s. 128—Co-extensive liability of surety.*—In a suit against the acceptor of a hundi, the defendant contended that, as he had accepted the hundi for the accommodation only of a third person, he was liable only as surety, and the plaintiff therefore could not proceed against him until he had exhausted all his remedies against the principal. *Held* that the liability of a surety being under the Contract Act co-extensive, unless there is some contrary agreement, with that of his principal, it was not necessary for the plaintiff to have first exhausted his remedies against the principal. *Totakot Shangunni Menon* v. *Kuusingal Kaku Varid, 4 Mad., 190,* and *Lachman Joharimal* v. *Bapu Khandu, 6 Bom., A. C., 241,* cited. PANIOTY *v.* DWARKA MOHUN DASS [4 C. L. R., 145

22. ———— Execution of decree against surety—*Right to execute decree against property forming security for payment of debt where principals have been released.*—Where a judgment-creditor or decree-holder releases his deceased judgment-debtor's representatives, into whose hands that debtor's assets have come, and exempts the property in question from execution, he cannot go against property which only became liable by way of security for the due payment of the debt by the principal debtor. VILLAYET ALI KHAN *v.* AMEENOODDEEN AHMED . . . . . 23 W. R., 19

PRINCIPAL AND SURETY—*continued.*

2. RIGHTS AND LIABILITIES OF SURETY —*concluded.*

3. DISCHARGE OF SURETY.

23. ———— Death of principal—*Execution of decree.*—A decree was obtained against a surety only, the principal debtor being dead and his property having been attached as of an intestate, and proclamation made. *Held* that the property could not be taken in execution of the decree against the surety. KALI CHARAN *v.* SRIRAM [2 B. L. R., A. C., 192: 11 W. R., 60

24. ———— *Beng. Reg. II of 1806, s. 4.*—The liability of a surety or his heir under s. 4, Regulation II of 1806, ceased after the death of the principal. DHURM CHAND SREEMUL *v.* HURRISH CHUNDER DOOBEY . 2 Hay, 115

25. ———— Indulgence granted to principal—*Absence of injury to surety. Semble*—An indulgence granted to a principal debtor does not absolve a surety who is not injured thereby. DELHI BANK CORPORATION *v.* GREENWAY [Bourke, O. C., 227

26. ———— Relinquishment of portion of claim by creditor—*Act prejudicial to surety.*—Where a creditor sued his principal debtor and two sureties upon a mortgage-bond, and in his plaint formally relinquished his claim against part of the mortgaged property, it was held that after such relinquishment the sureties were no longer bound, their position being altered for the worse by reason of such relinquishment. NARAYAN GOVIND OK *v.* GANESH ATMARAM FADKE . 7 Bom., A. C., 118

27. ———— Right of surety to disclosure of material facts—*Absence of fraud.*—There is no rule of law entitling a surety, without question asked, to a disclosure of all material facts known to the creditor which it may be material for him to know. Without proof of fraudulent misrepresentation or concealment on the part of the creditor or his agent, a surety is not entitled to be discharged from his suretyship. DELHI AND LONDON BANK *v.* HUNTER . . . . 3 N. W., 264

28. ———— Concealment of material fact from surety—*Guarantee—Contract Act (IX of 1872), ss. 133, 143—Further duties imposed on person for whom defendants were sureties.*—In August 1881 the defendants became sureties to the Bank of Bengal for the due discharge by one *B* of the duties and liabilities of the office of khajanchi of the Bank in Bombay. *B* was the second clerk in the Bank, and it was arranged between him and the agent

PRINCIPAL AND SURETY—*continued.*

3 DISCHARGE OF SURETY—*continued*

that he should still continue to fill that office He did

the Bank had appointed *B* to perform the duties of second clerk in addition to those of khajanchi without

much as the evidence showed that *B* was second clerk

of the contract, but whether, as the surety bond was silent as to this part of the arrangement between the Bank and *B*, and it was made (as the defendants alleged) without their knowledge and consent, they

continue to fill the office of second clerk, or that, if the defendants had been informed of it, it would have in the least degree affected their readiness to make themselves liable for his faithful discharge of the duties of khajanchi The evidence showed that the duties of the two offices were perfectly distinct and therefore, even if *B* had been re-appointed to the office of second clerk after his appointment to the

contended for the defendants that they were discharged from liability, inasmuch as in the year 1883 the names on certain bills discounted with the Bank were found to be forged The Bank then made a claim upon *B* in respect thereof, and he repudiated his liability. The defendants contended, on the authority of *Phillips* v *Foxall, L R, 7 Q B 666* that it was the duty of the Bank to have informed them of this occurrence at that time. *Held* (distinguishing *Phillips* v *Foxall*) that it could not have been assumed that *B* was infallible in detecting forgeries, and the guarantee given by the defendants was not

PRINCIPAL AND SURETY—*continued.*

3 DISCHARGE OF SURETY—*continued*

BANK OF BENGAL I L. R., 15 Bom., 585

29 ———— Subsequent arrangement—*Obtaining fresh acknowledgment from debtor*—Money was lent on the security of a third party who died before the loan was repaid. The lender then took a fresh acknowledgment from the borrower for the sum due *Held* that the subsequent arrangement which did not contemplate the continuance of the third party's security, cancelled his liability SEETARAM SAHOO *v* DACOSTA 12 W. R., 294

30 ———— Variance in terms of contract—*Contract Act, s 133*—A kabuliat whereby a lessee agrees without the consent of the person

the contract of guarantee, and discharges the lessee's surety in respect of arrears of rent accruing subsequent to such variance KHATUN BIBI *v* ABDULLAH [I L. R., 3 All., 9

31. ———— Neglect to register bond—*Suit for money lent against principal*—In a suit against a principal and two sureties to recover the amount advanced on a bond by which certain immoveable property was mortgaged one of the sureties appeared and contended that he was discharged from his liability in consequence of the plaintiff's neglect to have the bond registered *Held* that the surety was discharged as he could only be liable by virtue of the mortgage-bond, which, being invalid for want of registration could not be used against him The principal however might be sued as for money lent, if the loan could be proved by the other evidence SHANKAR BAPU *v* VISHNU NARAYAN [4 Bom., A. C., 79

32. ———— Bills of exchange—*Deposit of goods as collateral security for repayment—Sale by creditor of goods deposited as security*—*A* drew five bills in favour of *B* on *F* & *Co* who accepted them and got them discounted by the Bank of Bengal, and on their becoming due procured their renewal. *F* & *Co* subsequently drew three bills on the Bank, and for securing as well the repayment of the principal sum due on these bills and interest, as of all sums which the Bank had already advanced or should advance on account of the drawers deposited as collateral security various quantities of Chili copper of a larger amount in value than the advances then made By a condition in these bills the Bank was authorized, in default of payment within the time stipulated, to dispose of the copper by public or private sale, and to reimburse themselves the principal and interest due thereon Shortly afterwards *F* & *Co* failed and assignees of their estate and effects were appointed under the Insolvent Act. On presentation to *A* of the first of the renewed bills, he served notice on the Bank not to part with the securities

PRINCIPAL AND SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

deposited with them, alleging that the bills drawn and renewed by him were accommodation bills, for which he had not received any consideration, and were renewed on the faith of the securities being applicable to their discharge. The assignees of *F & Co.* redeemed the copper by paying to the Bank the amount of the principal and interest due on the bills drawn by *F & Co.*, all the bills drawn by *A* were dishonoured, and the Bank of Bengal brought an action against *A* for their amount. On a bill filed by *A*, the Bank was restrained by injunction from proceeding with the action at law. *Held* on appeal by the Judicial Committee, discharging the injunction and reversing the decree of the Supreme Court, that, under the circumstances, the redemption of the securities was a sale within the meaning of the condition contained in the deposit bills, and that such sale was not a release to *A* as surety for the previous bills, the condition not being that the copper or the proceeds thereof should be applied preferentially or *pari passu* with the other debts, but simply in reimbursement to the Bank of the principal and interest due on the bills BANK OF BENGAL *v.* RADHAKISSEN MITTER . . . . 3 Moore's I. A., 19

33. ———— Agreement for payment of decree, or in default to execute it—*Failure to execute it on default—Act IX of 1872, ss. 134, 137, 139, and 141.*—A decree-holder, in execution proceedings, agreed to accept payment of the decretal amount by the judgment-debtors in annual instalments. He also accepted from certain other persons a surety-bond in the following terms: "In case of default of paying the instalments, the whole decretal money, with costs and interest at 8 annas per cent., shall be executed after one month; and for the satisfaction of the decree-holder we, the executants, stand as sureties of the judgment-debtors." The judgment-debtors paid five instalments and then made default. The decree-holder omitted to apply for execution, and the decree became time-barred. He then sued the sureties to recover the amount of the decree. *Held* that the terms of the bond requiring the creditor to execute his decree within one month were peremptory, and imported much more than the usual agreement under such circumstances; that the decree holder might execute his decree, if he pleased, on a default; that the legal consequence of his omission to execute the decree being the discharge of the principal debtors, the sureties would, under s. 134 of the Contract Act, stand discharged likewise; that his action was much more serious than "mere forbearance" in favour of his debtors, in the sense of s. 137; that he had done an act inconsistent with the equities of the sureties, and omitted to do an act which his duty to them (under the agreement) required, whereby their eventual remedy against the principal debtors was impaired (s. 139); that he had deprived the sureties of the benefit of the security constituted by the decree; that they were therefore discharged to the extent of the value of that security (s. 141); and that the suit must consequently be dismissed. HAZARI *v.* CHUNNI LAL . I. L. R., 8 All., 259

PRINCIPAL AND SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

34. ———— Giving time to principal—*Execution of subsequent agreement unknown to surety.*—*A* and his surety *B* executed a bond to *C* for the faithful discharge of *A*'s duties as a gomashta. In September 1866, upon accounts being rendered, *A* was found indebted to *C* in a certain sum of money. *A* thereupon executed an ikrar to *C*, which was accepted by *C* agreeing thereby to pay the amount due in February following. On default being made, *C* sued *A* and *B* for the amount due. *Held* that the acceptance of the ikrar, without the knowledge or consent of *B* giving time for payment, was a discharge to the surety. PURI SUNDARI DEBI *v.* DROBOMAYI DEBI . . 7 B. L. R., Ap., 10

S. C. PUREE SOONDUREE DABEE *v.* CHUNDER SHEKHUR GHOSSAL . . . 15 W. R., 252

35. ———— *Liability of surety—Acceptance of promissory notes.*—*A* entered into a bond to *C* as surety for *B*'s good conduct, etc., as *C*'s servant. *C* subsequently, on *A*'s request, retained *B* in his service. *B* became a defaulter, and with *A*'s concurrence gave *C* promissory notes to satisfy the defalcations. *Held* that *C* could sue *A* on the bond, although he had sued and recovered against *B* on one of the promissory notes and had received payment on another. WISEMAN *v.* GOPAUL DOSS SEN

[1 Ind. Jur., N. S., 277

36. ———— *Negotiable Instruments Act (XXVI of 1881), ss. 37, 39, 66—Contract Act, s. 135—Accommodation maker, Discharge of—Presentment of promissory note.*—Suit by the endorsee against the maker of a promissory note, dated 9th August 1886. The plaintiff was aware that the note was made by the defendant for the accommodation of the acceptor, Watson & Co., with whom the plaintiff had large dealings. On the 4th August 1887, Watson & Co. executed in favour of the plaintiff and another creditor a mortgage of certain property to secure the amount then due by Watson & Co., including the amount due to the plaintiff on the promissory note: the mortgage contained a personal covenant by Watson & Co. to pay the sums due, together with interest on the 4th August 1888; and the mortgagees practically took over the whole business of the mortgagor, and it was intended that they should work it for his benefit up to that date. The promissory note fell due in June 1887, but was not presented to the defendant for payment. *Held* that the plaintiff, by accepting the mortgage, promised to give time to Watson & Co., and thus rendered it impossible for him to sue Watson & Co. had the defendant as surety called on him to do so, and that the defendant was accordingly discharged. *Pogose* v. *Bank of Bengal, I. L. R., 3 Calc., 174,* distinguished. *Semble*—The maker of a promissory note is not discharged by the holder's failure to present it at due date. RAMAKISTNAYYA *v.* KASSIM

[I. L. R., 13 Mad., 172

37. ———— *Sureties of naib—Acceptance of bonds from naib.*—The sureties of a naib are absolved from liability if the principal

PRINCIPAL AND SURETY—*continued.*

3 DISCHARGE OF SURETY—*continued.*

takes bonds from the naib in acknowledgment of the debts, giving him different periods of time for payment, without the knowledge and consent of the sureties POGOSE *v.* ANUND CHUNDER GOHOO

[1 W. R., 81

38 ——————— *Proof of fact of person being surety* —In a suit against *D* and *K* on a promissory note, where *K* raised the defence that he was only a surety for *D*, and that, the plaintiff having given time, *D* was released from liability, —*Held* that it was necessary to show that the fact that *K* signed the note only as surety for *D* was known to the plaintiff at the time when the note was made *Held* also that a binding contract to give time to the principal cannot be inferred from the mere receipt by the creditor of interest in advance on the note. PUNCHANUN GHOSE *v.* DALY

[15 B L R., 331

39 ——————— *Acceptance of interest in excess or advance —Discharge of surety* —In an action against a surety for principal and interest payable on a promissory note,—*Held*, overruling the decision of the Court below (MACPHERSON, J), that the creditor, by the mere acceptance, without the knowledge or consent of the surety, of interest in excess of what was due on the note, bound himself to give time to the principal debtor, and thereby discharged the surety KALI PRASANNA ROY *v* AMBICA CHARAN BOSE

9 B L. R , 261; 18 W. R., 416

40. ——————— *Acceptance of interest in advance* —The mere taking by the holder of a promissory note of interest in advance from the principal debtor does not operate as an agreement not to sue during the time covered by the interest, and therefore does not constitute such a giving of time to the principal as would release the surety DWARKANATH MITTER *v.* DALY DWARKANATH MITTER *v* BIRCH . . 15 B. L. R., 338 note

41 ——————— *Interest paid in advance—Discharge of surety—Accommodation acceptor—Contract Act (IV of 1872), s. 135* —The drawer of hundis paid advance interest to the holder to obtain time, which he did obtain, for payment after due date. *Held* by the Privy Council that the liability of an accommodation acceptor of the hundis depended on whether he knew of and consented to this arrangement *Held* also, on the merits, that he knew of, and consented to advance interest being taken GOURCHANDRA RAI *v.* PROTAPCHANDRA DASS . I L. R., 6 Calc., 241 : 6 C. L. R., 591

Affirming on appeal PROTAP CHUNDER DAS *v* GOUR CHUNDER ROY

[I. L. R., 4 Calc., 132; 3 C. L. R., 455

42. ——————— *Suit on hundi—Accommodation—Acceptance* —The defendant, in the course of dealing with *S A* of Patna, used to draw hundis at Patna on himself at Calcutta, and sell them to *S A* at Patna; *S A* sometimes only paying part of the consideration for the hundi. On 13th September 1867 the defendant drew a hundi for R2,500, payable forty-one days after date in the usual way, and it was stipulated between him and *S A* that the value should be paid by *S A* in three days. On 15th September, the plaintiff in Calcutta [illegible] and the plaintiff took the hundi to the defendant in Calcutta, and, informing him of *S A*'s failure, [illegible] failure of *S A*, who had not paid the consideration [illegible] ayment [illegible] wrote [illegible] letter, [illegible] to his him in Calcutta: Further, I sent you a chitti (hundi) for R2,500 drawn by Bhugwan Das (the [illegible] the defendant's refusal to pay on the due date the plaintiff made the arrangement with *S A* which is embodied in the following letter from *S A* to the plaintiff, dated November 3rd, 1867 " Further I discounted with you at Calcutta hundis for R5,000 which, one Pitam Das coming to Calcutta, were paid off in the following manner a hundi for R2,500 drawn by Bhugwan Das on Bhugwan Das value deposited by me on the 15th day of the light side of the moon in Bhadra payable forty-one days after date in Company's rupees, and a hundi for R2,500 by Gapi Shaw, Debi Shaw, Padha Shaw, Ram Sahayi Roy value deposited by me on 14th day of the light side of the moon in Bhadra payable forty one days after date in Company's rupees. I discounted hundis of this description, and out of them I paid R2,200 in cash through Syad Mahomed Hossein Khan Sahib The balance, R2,800 is due, the condition for payment of which is as follows (here follows the manner in which payment was to be made): I made an agreement of this sort, and I will pay the whole of the amount, inclusive of interest at 8 annas, and will take the two hundis from Bhai Ram Kissen Futteh Chund with whom they are kept. Should I not pay the money according to the condition then you have the authority " For the defendant it was contended that the effect of the letter of 16th September was to make the defendant a surety only for *S A*, that the plaintiff had notice of this at the time of entering into the agreement giving time to *S A*, which therefore operated as a release to the defendant In a suit by the plaintiff to recover the amount of the hundi from the defendant, the Court found that it was not proved that the hundi had been accepted by the defendant but held that, whether the effect of the agreement contained in the

PRINCIPAL AND SURETY—*continued.*

3. DISCHARGE OF SURETY—*continued.*

letter of September 16th was to make the defendant a surety only or not, the defendant was liable. *Per* NORMAN, *J.*—Notice of the defendant's position in regard to the hundi was not communicated to the plaintiff. *Per* MACPHERSON, *J.*—The agreement contained in the letter of 16th September did not alter the position of the parties so as to make *S A* the principal debtor and the defendant his surety. HARJIBAN DAS *v.* BHUGWAN DAS

[7 B. L. R., 535 : 16 W. R., O. C., 16

43. ———— Omission by creditor to sue principal debtor within period of limitation—*Contract Act, ss. 134, 137—Discharge of surety.*—The omission of a creditor to sue his principal debtor within the period of limitation discharges the surety under s. 134 of the Contract Act (IX of 1872); even though the non-suing within such period arose from the creditor's forbearance. s. 137 of the Contract Act does not limit the effect of s. 134. Its object is to explain and prevent misconception as to the meaning of s. 135. It applies only to a forbearance during the time that the creditor can be said to be forbearing to exercise a right which is still in existence. *Hajarimal* v. *Krishnarav, I. L. R., 5 Bom., 647,* and *Kristo Kishori Chowdhrain* v. *Radha Romun Munshi, I. L. R., 12 Calc., 330,* dissented from. *Hazari* v. *Chunni Lal, I. L. R., 8 All., 259,* referred to. RADHA *v.* KINLOCK . . . I. L. R., 11 All., 310

44. ———— Omission of creditor to serve summons on the principal debtor—*Contract Act, s. 134—Civil Procedure Code (Act XIV of 1882), s. 99A—Practice.*—In a suit against the principal debtor and the surety the omission of the creditor to effect service of summons on the principal debtor does not discharge the surety from his liability under s. 134 of the Contract Act (IX of 1872). ALLI *v.* MAHOMED

[I. L. R., 14 Bom., 237

45. ———— Suit for rent—*Release of parties who were sureties for payment of rent.*—Where in a suit for rent some persons were made parties as purchasers of certain property which had been hypothecated by some of the lessees as security for the rent, and subsequently they were released by the plaintiff,—*Held* that the release of these defendants had not the effect of the release of the liability of the other defendants. *Heeralall Samunt* v. *Oozeer Ali, 21 W. R., 347,* distinguished. JOGEMAYA DASSI *v.* GIRINDRA NATH MUKERJEE

[4 C. W. N., 590

46. ———— Agreement to give time to principal debtor—*Contract Act (IX of 1872), ss. 135, 137—Gratuitous agreement.*—A mere gratuitous agreement by a creditor to give time to the principal debtor will not discharge the surety. In order to have such effect, an agreement to give time to the principal debtor must amount to a contract, that is, there must be consideration therefor. *Philpot* v. *Briant, 4 Bing., 717 ; Tucker* v. *Laing, 2 K. and J., 748;* and *Clarke* v. *Birley, L. R., 41 Ch.*

PRINCIPAL AND SURETY—*concluded.*

3. DISCHARGE OF SURETY—*concluded.*

D., 422, referred to. DAMODAR DAS *v.* MUHAMMAD HUSAIN . . . I. L. R., 22 All., 351

PRINTING PRESSES AND NEWSPAPERS ACT (XXV OF 1867).

———— ss. 3 and 12—"*Publisher,*" *Meaning of.*—The word "publisher" has been used in the Printing Presses and Newspapers Act (XXV of 1867) in the restricted sense, and does not include a person who merely sells a book or a paper. QUEEN-EMPRESS *v.* BANKA PATNI . I. L. R., 23 Calc., 414

PRIORITY.

———— of deeds.

See CASES UNDER MORTGAGE—MARSHALLING.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

See CASES UNDER VENDOR AND PURCHASER—LIEN.

See CASES UNDER VENDOR AND PURCHASER—NOTICE.

See CASES UNDER VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY.

———— of Official Assignee.

See CASES UNDER INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE.

———— of registered over unregistered deed.

See CASES UNDER REGISTRATION ACT, 1877, SS. 49 AND 50.

PRISONER.

See CASES UNDER ACCUSED PERSON.

See CASES UNDER PARDON.

———— Examination of—

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

See CASES UNDER EXAMINATION OF ACCUSED PERSON.

———— Rights and privileges of—

1. ———— Preparation of petition of appeal.—Every facility should be allowed to prisoners to enable them to prepare their petition of appeal. QUEEN *v.* NITTO GOPAL PAULIT

[13 W. R., Cr., 69

2. ———— Presentation of petition of appeal—*Right to present petition to Court without intervention of vakil.*—A prisoner in jail under

PRISONER—*continued*

a civil warrant is entitled to present a petition of appeal to the Court having power to hear appeals without the intervention of a vakil IN THE MATTER OF THE PETITION OF KRISTNAPPAH . 6 Mad., 38

3. ——— **Employment of pleaders**—*Vakalatnama, Opportunity for giving*—Prisoners should have the fullest opportunity of giving vakalatnamas to any persons they please IN THE MATTER OF THE PETITION OF DADABHAI . 1 Bom., 16

4. ——— **Conversing with and instructing pleaders**—*Private instructions*—Prisoners should be allowed to have free converse with their vakils out of the hearing of the police officers in charge of such prisoners REG *v* KASHINATH DINKAR . . 8 Bom., Cr., 126

5. ——— **Right of freedom from fetters on trial.**—A Judge should not refuse to try a prisoner brought up in chains to stand his trial but the Judge may direct the removal of the fetters, unless satisfied by a representation from the proper officer that they are necessary. ANONYMOUS [4 Mad., Ap., 69

6. ——— **Nature of charge**—*Accused, Right of, to know exact nature of charge made against him*—*Criminal Procedure Code (Act V of 1882), s 221*—An accused is entitled to know with [illegible] not committed by himself, but by others with whom he was in company BEHARI MAHTON *v* QUEEN-EMPRESS . I. L. R., 11 Calc., 106

7. ——— *Right of accused to have charge read and to appear by mukhtar*—The Magistrate, when he has prepared the charge, is bound to read it to the accused and to ask him if he wishes to have any witnesses summoned to give evidence on his behalf at the Sessions. The Magistrate cannot refuse to permit an accused person to attend at the Sessions by mukhtar QUEEN *v* HURNATH ROY . . 2 W. R., Cr., 50

8 ——— **Right to copies of documents**—*Right of, on trial*—*Evidence*—A prisoner applied for copies of certain documents filed in Court for the purpose of his defence *Held* the Magistrate had erred in refusing his application *Per* LOCH, J—A prisoner is entitled to have copies of all documents for which he asks and which he thinks necessary for his defence, and it is for the officer trying the case, whether Magistrate or Judge to determine at the hearing whether the documents filed by the prisoner are or are not admissible as evidence IN THE MATTER OF THE PETITION OF SHIB PERSAD PANDA [6 B. L. R., Ap., 59: 14 W. R., Cr., 77

9 **Right to inspect books in case of theft**—*Right to make statement*—So far as it may be necessary for the purposes of the trial, when books are the subject of a charge of theft the accused is entitled to inspection of the books. It is not competent to the Court in a criminal trial to refuse to

PRISONER—*concluded*

allow the accused to make a statement IN THE MATTER OF ABDUL GUFFOOR 10 C. L. R., 54

10. ——— **Right of accused to hear sentence**—*Criminal Procedure Code, 1861, 1869, s 277.*—When the proceedings in a case tried by a Subordinate Magistrate are submitted, under s 277 of the Code of Criminal Procedure, to a District Magistrate to pass sentence upon the accused the accused is entitled to be present at the passing of such sentence before the District Magistrate REG *v* RAGHA NARANJI 7 Bom., Cr., 31

QUEEN *v* GUNESH SIRCAR 7 W R., Cr., 38

PRISONERS' TESTIMONY ACT (XV OF 1869)

See CIVIL PROCEDURE CODE 1882 s 87 (1859, s 78) 4 B L. R., O C., 51

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—PRISONERS' TESTIMONY ACT 5 B. L R., 215: 13 W. R., 278

PRISONS ACT (XXVI OF 1870)

——— **Power of superintendent of jail**—*Abetting escape of prisoner*—*Beng. Reg XII of 1816.*—A superintendent of a jail has no power under Act XXVI of 1870 to imprison for one year a night-watchman convicted before him on a charge of aiding and abetting the escape of a prisoner Neither had he power under Regulation XII of 1816 QUEEN *v*. SHEOUMBER LAL . . 4 N. W., 4

——— s. 45—*Entering a havalat with intent to convey food to prisoner*—*Rules made by Local Government for the management and discipline of prisons*—*House-trespass Offence in relation to prison*—*Penal Code, s. 442*—*Previous acquittal*—*Per* SPANKIE, J., and OLDFIELD, J (STUART, C J., doubting), that a havalat (lock up) is a prison within the meaning of the Prisons Act *Per* STUART, C.J., that food is not an "article" within the meaning of s 45 of that Act *Per* STUART, C.J., and OLDFIELD, J., that the conveyance of food into a havalat not being expressly prohibited by the rules made by the Local Government under s. 54 of that Act for the management and discipline of prisons is not "contrary to the regulations of the prisons" within the meaning of s. 45 of that Act, and is therefore not an offence punishable under that section *Held* therefore *per* STUART C.J., and OLDFIELD J., that, where a person entered into a havalat with intent to convey or attempt to convey food to an under-trial prisoner, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Penal Code, and it was not an act punishable under s 45 of the Prisons Act. *Per* SPANKIE, J., *contra* *Per* STUART, C.J., that the fact that such person had been tried for house-trespass and acquitted was no bar to his being tried subsequently for an offence under s 45 of the Prisons Act. EMPRESS *v* LALLI [I. L. R., 2 All., 301

PRIVACY.

See CUSTOM . I. L. R., 10 All., 358

See JURISDICTION OF CIVIL COURT—PRIVACY, INVASION OF.

See CASES UNDER PRESCRIPTION—EASEMENTS—PRIVACY.

See RIGHT OF SUIT—PRIVACY, INVASION OF.

——— Intrusion on—

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[I. L. R., 22 Calc., 391, 994

See PENAL CODE, s. 332.
[I. L. R., 18 All., 246

PRIVATE DEFENCE, RIGHT OF—

See CULPABLE HOMICIDE.
[12 W. R., Cr., 15
I. L. R., 3 All., 253

See RIOTING . . 1 C. L. R., 521
[10 C. L. R., 578
I. L. R., 13 Mad., 148
I. L. R., 24 Calc., 686
I. L. R., 26 Calc., 574

1. ——— Commencement of, and restrictions on, right—*Penal Code, ss. 97, 99.*—The right of private defence as described in s. 97 of the Penal Code is subject to the restrictions mentioned in s. 99, that is, it should be exercised only in the defence of one's own body or that of another person against an offence affecting the human body. Under s. 102, the right commences only on a reasonable apprehension of danger to the body caused by an attempt or threat to commit an offence, and by s. 99, cl. 4, the right is restricted to not inflicting more harm than it is necessary to inflict for the purpose of defence. QUEEN *v.* GOBARDHAN BHUYAN
[4 B. L. R., Ap., 101 : 13 W. R., Cr., 55

2. ——— Extent of right—*Penal Code, s. 103 and s. 99.*—The right of private defence under s. 103 of the Penal Code is restricted by s. 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence. QUEEN *v.* DHUNUNJAI POLY
[14 W. R., Cr., 68

3. ——— Commencement and extent of the right—*Penal Code, ss. 99, 105—Information of offence to be committed.*—The third clause of s. 99 of the Penal Code must be read with the first clause of s. 105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences. Before such apprehension commences, the owner of the property is not called upon to apply for protection to the public authorities. The apprehension which justifies a recourse to the authorities ought to be based on some information of a definite kind as to the time and place of the danger actually threatened. The accused No. 1 received information, one evening, that the complainants intended to go on his land on the following day and uproot the juvari

PRIVATE DEFENCE, RIGHT OF —*continued.*

seed sown in it. At about 3 o'clock next morning he was informed that the complainants had entered on his land and were ploughing up the seed. Thereupon he at once proceeded to the spot, followed by the other accused, and remonstrated with the complainants. The complainants, without paying any attention to his remonstrances, commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. The accused were thereupon charged and convicted, under ss. 304, 114, 325, and 323 of the Penal Code, of culpable homicide not amounting to murder, of voluntarily causing grievous hurt, and of causing hurt. *Held*, reversing the convictions, that the complainants being the aggressors, the accused had, under the circumstances, the right of private defence, both of person and of property, and that, in the exercise of this right, they did not inflict more harm than was necessary. *Held* also that the accused were not bound to act on the information received on the previous evening and seek the protection of the public authorities, as they had no reason to apprehend a night-attack on their property. QUEEN-EMPRESS *v.* NARSANG PATHABHAI
[I. L. R., 14 Bom., 441

4. ——— Pleading right—*Persons inviting attack.*—The right of private defence cannot be pleaded by persons who, believing they will be attacked, court the attack. QUEEN *v.* NOWABDEE
[W. R., 1864, Cr., 11

5. ——— *Onus probandi—Alternative plea.*—It is for those who raise the plea of private defence to prove it. The act charged cannot be denied, and the plea of private defence raised as an alternative. If raised, a full account of the occurrence must be given in evidence. IN THE MATTER OF THE PETITION OF JAMES SIRDAR
[1 C. L. R., 62

6. ——— *Right of private defence—Plea of accused.*—If the accused pleads not guilty and does not admit the act, but the pleader for the defence advances in his argument the plea of the right of private defence, the duty of the Court is to accept the plea if it appears upon the evidence, either for the prosecution or from the defence, that what was done by the accused was in self-defence. PASPUT GOPE *v.* RAM BHAJAN OJHA
[1 C. W. N., 545

7. ——— *Onus probandi—Evidence Act, s. 105.*—Where the accused had been convicted of riot under s. 148 and of grevious hurt under s. 325 of the Penal Code, the Sessions Judge on appeal held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence; but, inasmuch as they had not set up the plea of private defence, he considered it was not competent to him to set aside the conviction. *Held* that, though the onus was on the accused, the finding of the Judge amounted to one that they had discharged that onus, and on that finding the accused were entitled to an acquittal. IN THE MATTER ON KALI CHURN MOOKERJEE . . 11 C. L. R., 232

PRIVATE DEFENCE, RIGHT OF —*continued*

8 ———— Exercise of right—*Possession* —A party in possession of land is legally entitled to defend his possession against another party seeking to eject him by force QUEEN *v*. TULSI SINGH

[2 B. L. R., A. Cr., 16 : 10 W. R., Cr., 64

QUEEN *v*. MOKPE 12 W. R., Cr., 15

9. ———— *Dispute as to possession of land* —Where *A* is in actual peaceable possession of land, *B*'s attempt to recover possession of it by force is an illegal act which *A* has a right to resist. If *B* uses force in carrying out his attempt, *A* has a right to oppose force to force, and to inflict upon *B* such injury as is necessary to compel him to desist QUEEN *v*. SACHEE *alias* SACHEE BOLER . . 7 W. R., Cr., 112

10 ———— *Criminal trespass* —*Penal Code, ss 99 and 104* —Where the offence which occasions the right of private defence of property is criminal trespass, the right of defence [illegible]

11.———— *Culpable homicide* —The legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a latee which results in the death of the party attacking, and such right of private defence of the body extends under s 100 of the Penal Code, to the taking of life where grievous hurt is reasonably apprehended QUEEN *v*. MOIZUDIN

[11 W. R., Cr., 41

12 ———— *Penal Code ss 149, 304—Culpable homicide* —The prisoners, who in resisting a sudden attack made upon them by [illegible] by the Sessions Judge under ss 148 and 304 of the Penal Code The High Court acquitted the prisoners, holding that the force used or the injuries inflicted, were not such as to exceed their rights of private defence of property QUEEN *v*. GOOROO CHURN CHAND 6 B. L. R., Ap., 9 : 14 W. R., Cr., 69

13 ———— *Penal Code, s 100, cl. 2, and s. 103, cl 4* —Under the facts of this case, a person was held to have rightly exercised the right of private defence as contemplated in cl 2, s. 100, and cl. 4, s. 103, Penal Code, though in the exercise of such right he killed one of his aggressors. QUEEN *v*. RAM LALL SINGH

[22 W. R., Cr., 51

14 ———— *House-breaking* —*Limits of right of defence* —The right of private defence of property against house breaking does not extend to causing the death of the house-breaker when he has made his escape from the premises empty handed, and is at some distance from the place

No more harm should be done than is necessary to effect his capture QUEEN *v*. BOLAKI JOLAHAD

[1 B. L. R., S. N., 8 : 10 W. R., Cr., 9

15 ———— *Attacking man found in house at night* —The accused was attacked by a man whom he found by a hole cut in his house for the purpose of committing a burglary, and struck the man a blow which caused his death *Held* that the accused simply exercised his right of private defence, and had committed no crime QUEEN *v*. PELKOO NUSHYO . . . 2 W. R., Cr., 42

16 ———— *House-trespass with intent to commit adultery—Penal Code ss 96, 104* Where a person assisted by a friend retaliated severely on another who trespassed into his house with the object of having intercourse with his wife he was held to have committed no offence; ss 96 and [illegible]

[20 W. R., Cr., 50

17. ———— *Resisting police officer making search without warrant Obstruction of public servant—Penal Code s 99—Criminal Procedure Code, 1861, s 135* —An officer subordinate to an officer in charge of a police station who was deputed by the latter to make an inquiry under s 135 of the Code of Criminal Procedure, attempted without a search warrant to enter a house in search of property alleged to have been stolen, and was obstructed and resisted. *Held* (applying s 99 of the Penal Code) that even though the police officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could [illegible]

SHRINIVAS . . 7 Bom., Cr., 50

18 ———— *Penal Code (Act XLV of 1860), s 99—Obstruction of, and resistance to, Inspector searching house without warrant —Officer acting illegally but in good faith—Madras Abkari Act, ss 31 and 36* —A Sub-Inspector of Salt and Abkari attempted, without a search warrant, to enter a house in search of property, the illicit possession of which is an offence under the Madras Abkari Act, and was obstructed and resisted. *Held* that, having regard to s. 99 of the Penal [illegible]

[I. L. R., 10 Mad., 340

19 ———— *Penal Code, ss 99 and 186—Voluntarily obstructing a public servant in discharge of his duties—Mamlatdar's decree—Execution by a surveyor under Collector's orders—*

PRIVACY.

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PRIVATE DEFENCE, RIGHT OF
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[11 W R , Cr , 41

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[20 W. R , Cr , 36

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[I. L. R., 19 Mad., 349

19 ———— *Penal Code, ss 99 and 186—Voluntarily obstructing a public servant in discharge of his duties—Mamlatdar's decree — Execution by a surveyor under Collector's orders—*

PRIVATE DEFENCE, RIGHT OF —*continued.*

Public function.—In a suit filed in a Mamlatdar's Court under Bombay Act III of 1876, the plaintiff obtained a decree against the accused for possession of a certain piece of land. When the Mamlatdar proceeded to execute the decree, he found that there was no land corresponding to the boundaries set forth in the plaint, and that the parties were joint owners and in joint occupation of the land in dispute. Finding himself unable to execute the decree, the Mamlatdar referred the matter to the Collector for advice The Collector, on looking into the papers of the case, ordered a surveyor to execute the decree by dividing the land in dispute and putting the decree-holder in possession of his share. The surveyor, in attempting to execute the decree, was obstructed by the accused, who was thereupon tried and convicted of voluntarily obstructing a public servant in the discharge of his public functions, under s. 186 of the Penal Code (Act XLV of 1860). *Held* that the Collector's order was entirely *ultra vires* as to leave no room for the operation of either the first or the second clause of s. 99 of the Penal Code, as to right of private defence. QUEEN-EMPRESS *v.* TULSIRAM [I. L. R., 13 Bom., 168

20. ———— *Penal Code, s. 99 —Resistance to warrant of arrest in execution of a decree—Assault on officer.*—A warrant issued for the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. *Held,* with reference to s. 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence. QUEEN-EMPRESS *v.* JANKI PRASAD . I. L. R., 8 All., 293

21. ———— *Premeditated riot.* —There can be no right of private defence, either on one side or the other, in a case of premeditated riot. QUEEN *v.* JEOLALL . 7 W. R., Cr., 34

22. ———— *Penal Code (Act XLV of 1860), s. 96 et seqq.*—When a body of men are determined to vindicate their rights or supposed rights by unlawful force and when they engage in a fight with men who, on the other hand, are equally determined to vindicate by unlawful force their rights or supposed rights, no question of self-defence arises. QUEEN-EMPRESS *v.* PRAG DAT [I. L. R., 20 All., 459

23. ———— *Penal Code, s. 104 —Persons acquitted of culpable homicide, but convicted of rioting.*—In an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that, not being legally guilty of any offence coupled with rioting, and not being rioters or members of an unlawful assembly, they could claim the benefit of s. 104, Penal Code: they were therefore released. QUEEN *v.* MITTO SINGH . . . 3 W. R., Cr., 41

24. ———— *Rioting—Unlawful assembly—Right of private defence of property —Penal Code (Act XLV of 1860), ss. 97, 103, 104, 105, and 107.*—A party of persons consisting of some five peadas and a number of coolies sufficient for the work to be done went to a spot on a river flowing through the lands of *M* for the purpose of either repairing or erecting a bund across it to cause the water to flow down a channel on the lands of their master *T*. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not during the subsequent occurrence use force. Having arrived at the spot about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P.M. a body of men, consisting about 1,200 in all, many of them armed with lathis and headed by the prisoners, who were servants of *M*, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked *T*'s men, some five of whom were more or less severely wounded with the lathis. The occurrence resulted in the conviction of some of *M*'s servants for rioting under s. 147 of the Penal Code. *M*'s people wholly denied any right on the part of *T* to construct or repair the bund, and had previously denied the existence of such right and refused permission to *T* to exercise it. It was contended that the assembly of *M*'s people was not an "unlawful assembly"; that the interference by *T*'s people with the channel of the river justified them in coming to stop the work, and the show and use of force in compelling them to do so. *Held* that the prisoners had been rightly convicted. *Held* further that, as no right of private defence of property is conferred by the Penal Code, except as against the perpetrators of offences under the Penal Code, and that, as upon the facts of the case as found no offence had been committed by *T*'s people, their acts amounting merely to a civil trespass, and as there was no pressing or immediate necessity of a kind, showing that there was no time to have recourse to the protection of the public authorities, no question as to the right of private defence arose in the case. GANOURI LAL DAS *v.* QUEEN-EMPRESS . I. L. R., 16 Calc., 206

25. ———— *Trespass—Penal Code, ss. 97, 104, 105.*—Where *A* trespassed on the lands of *B*, whose servants seized and confined *A* till the following day, when *B* gave information to the police, it was held that the conduct of *B* and his servants in confining *A* could not be supported on the ground that they were exercising the right of private defence of property under ss. 97, 104, and 105 of the Penal Code. SHURUFOODDIN *v.* KASSINATH [13 W. R., Cr., 64

26. ———— *Trespass—Demand for payment of rent.*—Mere persistence in demand for rent does not amount to trespass justifying the exercise of the right of private defence. MAHOMED JAN *v.* KHADI SHEIKH. HURNATH DE *v.* JOYGOPAL DE. HURIS CHUNDRA DAS *v.* BOLA

PRIVATE DEFENCE, RIGHT OF —*concluded*

AUDHICAREE AHMUDDY *v* ANUND MOHUN MOZOOMDAR 16 W R., Cr, 75

27 ——— *Penal Code, ss 97, 99—Wrongful distraint of crops* —Where a zamin

trespass *Quære*—Would the raiyats in such a case be protected by the provisions of the Penal Code ss 97 and 99 in preventing the distraint and confining the men employed to make it? QUEEN *v* KANHAI SHAHU 23 W R, Cr, 40

PRIVATE PROSECUTOR

——— Right to papers—*Criminal Procedure Code (Act XXI of 1861) s 434*—Private prosecutor not allowed to appear on a reference to the High Court under s 434 of the Criminal Procedure Code QUEEN *v* RAMJAI MOZUMDAR [6 B L R. Ap, 46

S C SUDDURUDDEEN SIRCAR *v* RAM JOY MOJOOMDAR 14 W R, Cr, 51

PRIVILEGE

See DEFAMATION 8 Bom, Cr, 168
[I L R, 6 Mad, 381
I L R, 11 Mad, 477
I L R, 15 Mad, 214, 414
I L R, 16 Mad, 235
I L R, 17 Bom 127, 573
I L R., 22 Calc, 46
I L R 17 Mad, 87
I L R, 19 Bom, 51, 340

See FALSE CHARGE
[I L R., 19 Bom, 51

See CASES UNDER LIBEL
[I L R, 14 Bom., 97
I L R, 23 Calc, 867

——— from arrest

See CASES UNDER ARREST—CIVIL ARREST

See CONTEMPT OF COURT—EFFECT OF CONTEMPT 4 B L R O C, 90

See PARDANASHIN WOMEN
[8 W R, 282
1 B L R., F B, 31
I L R 4 Calc, 583
I L R, 7 Calc, 19

——— from attendance in Court

See CASES UNDER PARDANASHIN WOMEN

See PARTIES—PRIVILEGES OF PARTIES
[Marsh, 627
15 W R, 129

——— from suit.

See CASES UNDER JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS

PRIVILEGED COMMUNICATION.

See ARBITRATION — AWARDS — VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE I L R., 4 Calc, 231

See CASES UNDER DEFAMATION

See INSPECTION OF DOCUMENTS
[I L R., 2 Bom, 453
I L R., 11 Calc, 655
I L R., 12 Calc, 265
I L R 15 Bom, 7
I L R 22 Calc, 105

See CASES UNDER LIBEL

1 ——— Professional communication —*Attorney and client—Privilege—Act I of 1872 s 126*—To be privileged under s. 126 of the Evidence Act (I of 1872) a communication by a party to his attorney must be of a confidential or private nature Where defendants at an interview at which the plaintiff was present admitted their partnership to their attorney who was then also acting as attorney for the plaintiff—*Held* that the attorney was not precluded by s 126 of the Evidence Act (I of 1872) from giving evidence of this admission to him 1st because the defendants statements having been made in presence and hearing of the plaintiff could not be regarded as confidential or private 2nd because those statements did not appear to have been made to the attorney exclusively in his character of attorney for the defendants but to have been addressed to him also as attorney for the plaintiff MEMON HAJEE HAROON MAHOMED *v* ABDUL KARIM I L R., 3 Bom, 91

2 ——— *Privilege Extent of—How far solicitor bound to disclose communication made in course of employment—Attorney and client—Evidence Act (I of 1872) s 126*—The law relating to professional communications between a solicitor and a client is the same in India as in

in the course and for the purpose of his employment

Act protects from publicity not merely the details of ... be ... ro- ... iew ... ook down a certain statement made by a person named *A B*, who was in his client's company, and whose name was communicated to him in the course and for the purpose of his professional employment *A B* was afterwards tried for defamation, and the solicitor was

PRIVILEGED COMMUNICATION —*continued.*

examined by the prosecution with reference to the statement made to him by the accused at the above interview. The solicitor was asked whether the person who had made the statement had given his name as *A B*. The solicitor declined to answer the question on the ground of privilege. *Held* that the solicitor was bound to answer the question, unless *A B's* name was communicated to him by his client in confidence with a view to its not being disclosed. FRAMJI BHICAJI *v.* MOHANSING DHANSING . I. L. R., 18 Bom., 263

3. ———— *Communication to Mukhtars acting as pleaders for their clients—Evidence Act (I of 1872), s. 126.*—The restrictions imposed by s. 126 of the Evidence Act in respect of what are known as privileged communications extend also to communications made to mukhtars when acting as pleaders for their clients. ABBAS PEADA *v.* QUEEN-EMPRESS . . I. L. R., 25 Calc., 736 [2 C. W. N., 484

4. ———— *Communication to clerk of pleader—Evidence Act (I of 1872), ss. 120, 127.—Per* BANERJEE, *J.*—S. 127 of the Evidence Act (I of 1872) extends to a communication made to the pleader's clerk the same confidential character that attaches to a communication to the pleader direct, under s. 126. KAMESHWAR PERSHAD *v.* AMANUTULLA . . . . I. L. R., 26 Calc., 53 [2 C. W. N., 649

5. ———— *Act II of 1855, s. 24—Vakil and client.*—S. 24, Act II of 1855, does not warrant a vakil's exclusion from the witness-box, though it may excuse his answering certain questions relating to communications between him and his client. DOOLAR JHA *v.* RUNJEET ROY [15 W. R., 340

6. ———— *Act II of 1855, s. 24—Mukhtar and client.*—The question whether a communication between the accused and witness is privileged, is a question of law for the Judge to decide. Communications between mukhtars and their clients are not privileged within s. 24 of Act II of 1855. QUEEN *v.* CHANDRAKANT CHUCKERBUTTY [1 B. L. R., A. Cr., 8 : 10 W. R., Cr., 14

7. ———— *Prosecutor in criminal case and his attorney and clerk.—Semble*—Communications between a prosecutor in a criminal case and his attorney, and between the attorney and his clerk with respect to the case, are not privileged. IN THE MATTER OF THE PETITION OF BELILIOS [12 B. L. R., 249

S. C. QUEEN *v.* BELILIOS . 20 W. R., Cr., 61

8. ———— **Statements laid before counsel**—*Legal advice.*—Statements laid by clients before counsel for the purpose of obtaining legal advice are privileged. MUNCHERSHAW BEZONJI *v.* NEW DHURUMSEY SPINNING AND WEAVING COMPANY . . . . I. L. R., 4 Bom., 576

9. ———— **Letters between Government servants**—*Discovery—Production of documents—Solicitor and client—Act XIV of 1882, s. 133.*—Letters written by one of the defendant's servants to another for the purpose of obtaining information with a view to possible future litigation *are not privileged,* even though they might, under the circumstances, be required for the use of the defendant's solicitor. In order that privilege may be claimed, it must be shown on the face of the affidavit that the documents were prepared or written merely for the use of the solicitor. BIPRO DOSS DEY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL [I. L. R., 11 Calc., 655

10. ———— **Letters between solicitors for various plaintiffs**—*Attorney and client—Inspection—Production—Waiver of privilege.*—The plaintiffs resided in England, and sued the defendant in Bombay for specific performance of an agreement to purchase certain premises. This agreement had been made on behalf of the plaintiffs by *S*, their agent in Bombay. The defendant pleaded that by the terms of the agreement it was provided that the deed of assignment should contain a covenant by the three plaintiffs to indemnify the defendant against any claims upon the premises that might be made at any time by or on behalf of the representatives of one *N*. The defendant's solicitor prepared a draft assignment which contained this covenant, and sent it to the plaintiff's solicitors (Messrs. *P* and *W*) for approval. On the 19th March 1880 *W* called upon *B*, the defendant's solicitor, and informed him that *M*, the third plaintiff, refused to sign any deed which contained the above covenant. At this interview *W* read to *B* portions of a letter written with reference to the proposed deed by *McG & Co.* (solicitors for the first two plaintiffs) to *V*, the solicitor of the third plaintiff, and of another letter written by *V* to his client, the third plaintiff. The defendant called upon the plaintiff to produce these letters for inspection. *Held* that the letters were privileged, and that the fact that portions of them had been read to the defendant's solicitor was no waiver of the privilege as regarded the parts which were not read. KAY *v.* POORUNCHAND POONALAL . I. L. R., 4 Bom., 631

11. ———— **Letters by client to solicitor**—*Discovery—Affidavit of documents—Sufficiency of affidavit—Further affidavit—Inspection of documents—Practice.*—Where in an affidavit of documents privilege is claimed for a correspondence on the ground that it contains instructions and confidential communications from the client (the plaintiff) to his solicitor, it must appear not merely that the correspondence generally contains instructions, etc., but that each letter contains instructions or confidential communications to the attorneys with reference to the conduct of the suit. *Bewicke* v. *Graham,* 7 *Q. B. D.,* 400, followed. ORIENTAL BANK CORPORATION *v.* BROWN & CO. . I. L. R., 12 Calc., 265

12. ———— **Statement in petition to Magistrate**—*Defamation.*—*Held* that, under the circumstances of the case, the allegations contained in a petition presented by respondent to the Magistrate acting in his administrative capacity cannot be regarded as a privileged communication made in the course of judicial proceedings; and it being proved that the allegations so made were made with sinister

PRIVILEGED COMMUNICATION —concluded

motive and malicious intent on and that they were irrelevant to the occasion the appellant was entitled to some substantial damages CHOWDHRY GORDUTT SINGH v GOPAL DASS 1 Agra, 33

13 ———— Statement to punchayet—*Illegal conviction for defamation* —Where a person called upon by a punchayet convened by the complainant's relatives to explain why he had made a defamatory remark concerning the complainant made a statement by way of explanation —*Held* that such statement being privileged a conviction for defamation for making such statement was illegal IN RE GOVINDAPPA NAYAK I L R, 7 Mad, 36

14 ———— Petition to Revenue Officer —*Defamation — Presumptions as to malice* — Certain raiyats in a zamindari village addressed a petition to the tehsildar praying that the Village Munsif might be retained in office notwithstanding the zamindar's application for his removal The petition imputed criminal acts to the zemindar who now sued the petitioners for damages on the ground that the petition contained a false and malicious libel It was found that in fact the communication was made *bonâ fide* and that there was some ground for some of the imputations *Held* the petition was a privileged communication and the alleged libel was not actionable The question when malice may be presumed, discussed VENKATA NARASIMHA v KOTAYYA . I L R, 12 Mad, 374

15 ———— Communication by a servant of a company to one of his subordinates as to another subordinate—*Defamation* —In an action for damages for defamation brought by a brewer recently employed by a brewery company against the local manager of the company the defamatory statements complained of were contained in a letter written by the defendant to the directors of the company and also in a letter written to another brewer in the employ of the company, in which he said that the plaintiff had failed most utterly and I have been compelled to inform him that you will take the position of senior brewer at the brewery' *Held* that all these statements were in the nature of privileged communications LEISHMAN v HOLLAND I L R, 14 Mad., 51

16 ———— Letter from husband to wife —*Evidence Act (I of 1872) s 122—Letter taken on search of wife's house* —On a trial for the offence of breach of trust by a public servant a letter was tendered in evidence for the prosecution which had been sent by the accused to his wife at Pondicherry and had been found on a search of her house made there by the police *Held* that the letter was not inadmissible in evidence against the accused as being a privileged communication S 122 of the Evidence Act was not applicable QUEEN EMPRESS v DONAGHUE I L R., 22 Mad., 1

PRIVY COUNCIL.

See CASES UNDER APPEAL TO PRIVY COUNCIL.

PRIVY COUNCIL—concluded

———— Decree of—

See CASES UNDER EXECUTION OF DECREE —ORDERS AND DECREES OF PRIVY COUNCIL

———— Execution of decree of—

See CASES UNDER EXECUTION OF DECREE — ORDERS AND DECREES OF PRIVY COUNCIL

See CASES UNDER LIMITATION ACT 1877, ART 180 (1859 s 19)

See MESNE PROFITS—ASSESSMENT IN EXECUTION AND SUITS FOR MESNE PROFITS

[5 B L R, 605 13 Moore's I A, 490
16 W R, 30
23 W R, 449

PRIVY COUNCIL APPEALS ACT (VI OF 1874)

See CASES UNDER APPEAL TO PRIVY COUNCIL

PRIVY COUNCIL, PRACTICE OF—

PRIVY COUNCIL, PRACTICE OF —*continued.*

See CASES UNDER APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

1. ADMISSION TO PRACTICE.

1. ———— **Rules of 31st of March 1871**—*Vakil of High Court.*—The words of ss. 2 and 3 of the Rules of 31st March 1871 are such that the classes of persons to be admitted to practise in the Privy Council must be either solicitors or others practising in London, or solicitors admitted by the High Court in India or in the Colonies, respectively, and have not left an undefined class admissible at the discretion of the Judicial Committee. IN THE MATTER OF THE PETITION OF TWIDALE

[I. L. R., 16 Calc., 636
L. R., 16 I. A., 163

2. RECORD, PREPARATION OF.

2. ———— **Decision limited to one of several issues of law**—*Omission of immaterial matter in preparation of printed book.*—In a suit in which the original Court had framed and decided several issues, the High Court on appeal confined their decision to the questions which in their opinion governed the case, leaving other issues undecided as not affecting the result after the decision to which they had come. Afterwards the suit was admitted to appeal in conformity with s. 603, Code of Civil Procedure. In the preparation of the printed copy of the record the question arose whether the copy should be made of the whole record, or of only so much of it as was material to the correctness of the High Court's decision. Their Lordships directed that only so much of the original record as bore upon, and was material to, the questions decided by the High Court, and the subject of the appeal, should be printed in the copy. VENKATA SURIYA MAHIPATI RAM KRISHNA RAO *v.* COURT OF WARDS

[I. L. R., 20 Mad., 395
L. R., 24 I. A., 194

3. APPEALS FROM INTERLOCUTORY ORDERS.

3. ———— There is no law which requires a suitor to appeal from interlocutory orders under penalty of forfeiting for ever the benefit of the consideration of the Appellate Court. The Privy Council have in many cases corrected erroneous interlocutory orders on the appeal of the whole cause coming before them. MOHESHUR SINGH *v.* GOVERNMENT OF INDIA

[3 W. R., P. C., 45 : 7 Moore's I. A., 283

SHEONATH *alias* BURRAY KAKA *v.* RAMNATH *alias* CHOTAY KAKA

[1 Ind. Jur., N. S., 161 : 5 W. R., P. C., 21
10 Moore's I. A., 413

FORBES *v.* AMEEROONISSA BEGUM

[1 Ind. Jur., N. S., 117
5 W. R., P. C., 47
10 Moore's I. A., 340

PRIVY COUNCIL, PRACTICE OF —*continued.*

4. ENLARGING TIME FOR APPEAL.

4. ———— **Jurisdiction of Judicial Committee as to application to enlarge time for appeal.**—The Judicial Committee have no jurisdiction to entertain an application for extension of time to appeal until the petition of appeal is lodged. Where it appeared that an inquiry was pending before the Master in the Court below, arising out of the decree which was the subject of the appeal, the result of which might render the prosecution of the appeal unnecessary, the Judicial Committee enlarged the time prescribed by Rule 5 of the Order in Council of 13th June 1853 for prosecution thereof, until further order. GUNGADHUR SEAL *v.* RADDAMONEY DOSSEE . 6 Moore's I. A., 209

5. SPECIAL LEAVE TO APPEAL.

5. ———— **Form of petition**—*Amendment of a petition too general and vague.*—It is incumbent upon a party applying for special leave to appeal to set out in the petition a full statement of the facts and legal grounds, to show that there is a substantial case on the merits, and a point of law involved, proper to be determined by the Appellate Court. A petition for special leave to appeal contained a general statement of the proceedings in India, and an averment that they were irregular and contrary to law. Such petition ordered to be dismissed or to stand over for amendment as being too general and vague. On the amended petition, stating in detail the facts, and specifically showing legal grounds of objection to the decrees and order of the Court below refusing leave to appeal, special leave to appeal was granted. GOREE MONEE DOSSEE *v.* JUGGUT INDRO NARAIN CHOWDRY . 11 Moore's I. A., 1

6. ———— **Application for special leave**—*Omission of material facts—Costs.*—A petition for special leave to appeal being *ex-parte*, it is a universal and most important rule of the Court that every fact which is material to the determination of the question raised upon the petition should be truly and fairly stated, and where there is an omission of material facts, whether it arises from improper intention on the part of the petitioner, or whether it arises from accident or negligence, still the effect is the same, if the Court has been induced to make an order which, if the facts had been fully before it, it would not, or might not, have been induced to make. Where the Court was of opinion that there had been no intentional misrepresentation, and that there had been delay on the other side, it discharged an order giving special leave to appeal where an important fact had been kept from the Court, without costs, remarking that it would have thought it right, whether the mistake was intentional or not, to have given costs, had it not been for the delay. MOHUN LALL SOOKUL *v.* BEBEE DOSS . . 8 Moore's I. A., 193

7. ———— *Incorrect statement of facts—Incorrect statement as to valuation.*—In this case the Privy Council originally gave leave to appeal, provided satisfactory evidence were supplied by the appellants to the Registrar of the Sudder

PRIVY COUNCIL, PRACTICE OF —*continued*.

5 SPECIAL LEAVE TO APPEAL—*continued*

Court that the real or market value of the land in dispute exceeded R10 000 This order was subsequently discharged as obtained upon an incorrect

attended to MOHUN LOLL SOOKUL v DEBEE DOSS DUTT 2 W. R., P. C, 9
[8 Moore's I. A, 492

8. ——— Reasons omitted in order admitting to review—*Civil Procedure Code (Act XIV of 1882), s 626* —With reference to the requirement in s 626 of the Civil Procedure Code that reasons should be recorded by the Judge granting an order of admission to review, the mere omission to record them was not held a ground for granting special leave to appeal from the order or from the decree, which was subsequently made SHANKAR BAKSH v. BULWANT SINGH EX PARTE SHANKAR BAKSH I L. R, 27 Calc, 333
[L. R 27 I. A, 79
4 C. W. N, 203

9 ——— Counter petition to dismiss appeal—*Leave to appeal granted ex-parte* —If leave to appeal b
may, as a matter
to dismiss the app
DHUR DOSS.

10 ——— Appeal in matter not strictly appealable—*Stat 3 & 4 Will IV, c 41.* —Where a matter has been referred by Her Majesty to the Judicial Committee which is not strictly an appealable grievance, their Lordships may, under the reservations contained in 3 & 4 Will IV, c 41, advise Her Majesty to grant the petitioner leave to appeal MORGAN v LEECH 2 Moore's I A., 428

11. ——— Special leave where no application made in India *Case under appeal-*

12 ——— Special leave where application in India not made within time—*Order giving interest on amount of decree* —Leave to appeal was granted on payment of costs from an order of the Sudder Court at Bombay decreeing interest upon the amount awarded by the judgment of the Court, the appellant having failed to apply to the Court in India within six months as required by the Order in Council of 10th April 1838 KIRKLAND v. MODEE PESTONJEE KHOORSHEDJEE
[3 Moore's I. A., 220

PRIVY COUNCIL, PRACTICE OF —*continued*.

5 SPECIAL LEAVE TO APPEAL—*continued*

13 ——— *Alteration of practice by High Court—Appeal from original decree and order refusing review* —Pending pro-

months prescribed by the Order in Council of the 10th

14. ——— Case under appealable value—*Subject matter at issue exceeding appealable value* —Special leave to appeal granted, notwithstanding that no application had been made for such leave to the Court below, upon the allegation that, though the amount decreed was much under the appealable value, the original demand being necessarily limited by the jurisdiction of the Court in which the suit was originally instituted, yet the subject matter at issue exceeded in value the appealable amount MUTUSAWMY JAGAVERA YETTAPA NAIKER v VENKATASWARA YETTIA
[10 Moore's I. A, 313
1 Ind Jur, N. S, 205

15. ——— *Leave granted on terms Provision for payment of compensation agreed on* —Where the Court grants leave to appeal under the general jurisdiction of the Queen in Council, it will impose such terms upon the party applying as the special circumstances of the case require. Appeal admitted from an order confirming the report of the commissioners in a partition suit, although the appealable value was under R10 000, the amount prescribed by the Order in Council of the 10th April 1838 The petitioner (the plaintiff) had offered to compensate the defendant if the report of the commissioners was varied. The Judicial Committee, in granting leave to appeal, put the petitioner upon terms of lodging in the Council office, within four months, a certificate of recognizance to the Queen in the sum of £1,000 for such compensation and costs as might be awarded IN RE SIBNARAIN GHOSE 5 Moore's I. A., 322

16 ——— *Value of the subject matter disputed* —The value of the subject-

PRIVY COUNCIL, PRACTICE OF —*continued.*

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PRIVY COUNCIL, PRACTICE OF *—continued.*

5 SPECIAL LEAVE TO APPEAL—*continued*

Court that the real or market value of the land in dispute exceeded R10 000 This order was subsequently discharged as obtained upon an incorrect statement of the facts, it appearing afterwards that the appellants had satisfied the Registrar that the real or market value of the land exceeded R10,000. The appeal was restored, with a general suggestion that the terms of the Bengal Stamp Regulation (X of 1829) upon the subject of value should be carefully attended to MOHUN LOLL SOOKUL v DEBEE DOSS DUTT 2 W. R., P. C, 9 [8 Moore's I A., 492

8 ———— Reasons omitted in order admitting to review—*Civil Procedure Code (Act XIV of 1882), s 626*—With reference to the requirement in s 626 of the Civil Procedure Code that reasons should be recorded by the Judge granting an order of admission to review, the mere omission to record them was not held a ground for granting special leave to appeal from the order or from the decree, which was subsequently made SHANKAR BAKSH v. BULWANT SINGH EX-PARTE SHANKAR BAKSH I L. R., 27 Calc, 333 [L. R. 27 I. A, 79 4 C W. N., 203

9 ———— Counter petition to dismiss appeal—*Leave to appeal granted ex-parte*—If

DHUR DOSS.

10. ———— Appeal in matter not strictly appealable—*Stat 3 & 4 Will IV, c 41.*—Where a matter has been referred by Her Majesty to the Judicial Committee which is not strictly an

11. ———— Special leave where no application made in India *Case under appealable value*—The Judicial Committee will not enter-

12. ———— Special leave where application in India not made within time—*Order giving interest on amount of decree*—Leave to appeal was granted on payment of costs from an order of the Sudder Court at Bombay decreeing interest upon the amount awarded by the judgment of the Court, the appellant having failed to apply to the Court in India within six months as required by the Order in Council of 10th April 1838 KIRKLAND v. MODEE PESTONJEE KHOORSHEDJEE [3 Moore's I. A., 220

PRIVY COUNCIL, PRACTICE OF *—continued*

5 SPECIAL LEAVE TO APPEAL—*continued*

13 ——————— *Alteration of practice by High Court—Appeal from original decree and order refusing review*—Pending pro-

decree and the order refusing a review was allowed NOGENDRO CHUNDER GHOSE v MAHOMED EUSUFF [12 Moore's I. A., 107

14. ———— Case under appealable value—*Subject-matter at issue exceeding appealable value*—Special leave to appeal granted, not withstanding that no application had been made for such leave to the Court below, upon the allegation that, though the amount decreed was much under the appealable value, the original demand being necessarily limited by the jurisdiction of the Court in which the suit was originally instituted, yet the subject matter at issue exceeded in value the appealable amount MUTUSAWMY JAGAVERA YETTAPA NAIKER v VENKATASWARA YETTIA [10 Moore's I. A, 313 1 Ind. Jur, N. S, 205

15 ———— ———— *Leave granted on terms Provision for payment of compensation agreed on*—Where the Court grants leave to appeal under the general jurisdiction of the Queen in Council it will impose such terms upon the party applying as the special circumstances of the case require. Appeal admitted from an order confirming the report of the commissioners in a partition suit, although the appealable value was under R10 000, the amount prescribed by the Order in Council of the 10th April 1838 The petitioner (the plaintiff) had offered to compensate the defendant if the report of the commissioners was varied The Judicial Committee, in granting leave to appeal, put the petitioner upon terms of lodging in the Council office, within four months, a certificate of recognizance to the Queen in the sum of £1 000 for such compensation and costs as might be awarded. IN RE SIBNARAIN GHOSE 5 Moore's I. A, 322

16. ———————— *Value of the subject matter disputed*—The value of the subject-matter in dispute, though laid in the plaint at a sum

appeal the Sudder Court dismissed the entire claim, and, on the ground that the matter in dispute was

PRIVY COUNCIL, PRACTICE OF —*continued.*

5. SPECIAL LEAVE TO APPEAL—*continued.*

calculated by the Zillah Judge. PRANNATH ROY CHOWDHRY *v.* SURNOMOYEE
[7 Moore's I. A., 553

17. ——— *Important principle of law involved.*—Where an important principle of law was involved in the decision, special leave to appeal was granted, though the amount of damages recovered was under the appealable value. ROGERS *v.* RAJENDRO DUTT
[2 W. R., P. C., 51: 8 Moore's I. A., 103

KERAKOOSE *v.* BROOKS
[8 Moore's I. A., 339: 4 W. R., P. C., 61

18. ——— *Question of public importance.*—Where a question of great public importance arose, special leave was granted, though the subject-matter in dispute was under R10,000. SUMBHOOLALL GIRBHURLALL *v.* COLLECTOR OF SURAT . . . . . 8 Moore's I. A., 1
[4 W. R., P. C., 55

19. ——— *Question on which the decison of many suits depended.*—Special leave to appeal given in a case involving a question of tenure service, called chakeran, although the subject-matter in dispute was below the appealable value; there being many other suits depending on the decision of the case. JOYKISSEN MOOKERJEE *v.* COLLECTOR OF EAST BURDWAN 8 Moore's I. A., 265

20. ——— *Leave granted on terms as to payment of costs—Question of jurisdiction.*—The Supreme Court, in overruling the objections to the jurisdiction of the Court, refused leave to appeal, the subject matter of the action being trifling and under the amount required by the rules of the Privy Council. On petition, the Judicial Committee granted leave to appeal, but upon terms of the East India Company paying the respondent's costs of the appeal, to enable him to appear, to prevent the question being argued *ex-parte.* SPOONER *v.* JUDDOW
[4 Moore's I. A., 353

21. ——— Leave in suits consolidated by consent—*Valuation.*—Special leave to appeal granted in a suit which had been consolidated by consent of both parties. A defendant to a suit, having adopted a certain valuation, cannot in the same suit object to that valuation. KRISTO INDRO SAHA *v.* HUROMONEE DOSSEE . . L. R., 1 I. A., 84

22. ——— Decrees of the High Court made on cross-appeals—*Procedure.*—The High Court passed a separate decree on a cross-appeal identical in terms with those of a decree passed on the appeal in the same suit. From the latter decree an appeal to Her Majesty in Council was then declared by the High Court to be admitted under s. 603, Civil Procedure Code. But the defendant's application to have his appeal from the decree on the cross-appeal similarly admitted was refused. The Judicial Committee was of opinion that special leave should be granted to appeal from this decree, without further security being required than had already been taken in respect of the appeal in the other. MUHAMMAD IKRAM-UD-DIN *v.* NAJIBAN . . I. L. R., 19 All., 95
[L. R., 23 I. A., 167

23. ——— Leave on appeal from a decree not final—*Practice on erroneous construction of Charter.*—On a special application to the King in Council, founded on the fact that the previous uniform practice of the Supreme Court at Madras, though upon an erroneous construction of the Charter, was to admit only appeals upon a final decree, leave to appeal was granted by the Privy Council. EAST INDIA COMPANY *v.* ALLY
[7 Moore's I. A., 555

24. ——— Order as to custody of child —*Child with Christian father and Mahomedan mother.*—Special leave to appeal allowed from an order of the High Court of Judicature for the North-West Provinces of India, by which order an infant daughter was taken from the custody of her mother, a Mahomedan, on the ground that the minor's deceased father had been a professed Christian, and her mother, who was, as the Court held, living in adultery, was inducing her daughter to adopt the faith and habits of a Mahomedan. Liberty given, pending the hearing of the appeal, to the petitioner to apply to the High Court to have access at suitable times to her daughter. IN THE MATTER OF SKINNER *alias* NAWSHABA BEGUM . . . . 13 Moore's I. A., 532

25. ——— Order as to important question of law.—Special leave to appeal was granted to try the question whether, under the Registration Act, 1871, a Zillah Judge can review an order of his own Court refusing to register a document. REASUT HOSSEIN *v.* ABDOOLLAH . . L. R., 1 I. A., 72

26. ——— Appeal from Non-Regulation Provinces—*Stat. 3 & 4 Will. IV., c. 41.*—No provision by Statute or Charter being made for appeal to Her Majesty in Council from judgments of the Court of the Judicial Commissioner of Oudh, created on the annexation of that kingdom in the year 1858, the Judicial Committee, to prevent the denial of justice, admitted an appeal under Stat. 3 & 4 Will. IV., c. 41. SALIK RAM *v.* AZIM ALI BEG
[1 Ind. Jur., O. S., 117: 8 Moore's I. A., 270

27. ——— Order suspending pleader for misconduct—*Act XX of 1865.*—The High Court, acting regularly within its jurisdiction, suspended a pleader from practice for misconduct. The Judicial Committee, not being prepared to say, from the materials before it, that the High Court's conclusion on a pure question of fact was wrong, refused to grant special leave to appeal. It would not have followed, even if more doubt had been entertained on such a question, that an appeal would have been granted against Judges so acting. IN THE MATTER OF QUARRY
[I. L. R., 2 All., 511: L. R., 7 I. A., 6

28. ——— Leave to appeal on terms—*Counter-petition to revoke leave.*—Leave to appeal on an *ex-parte* application was, under the special

PRIVY COUNCIL, PRACTICE OF
—*continued*

5 SPECIAL LEAVE TO APPEAL—*concluded*

circumstances, granted on terms of the appellant

leave granted to appeal The Judicial Committee under the circumstances, there having been great delay, made an order putting the appellant upon terms of lodging his petition of appeal within six

29. ———— **Time for making application**—*Application nunc pro tunc—Special appeal, Appeal from order on—Judgments of lower Court on facts* —Where a case has been heard by the High Court on special appeal, and on appeal to the Privy Council it is desired to include in the appeal the

[12 B. L R, P. C, 107; 18 W. R, 299

30 ———— *Application nunc pro tunc—Leave to appeal granted without authority—Preliminary objection* —An objection that an appeal has come before the Judicial Committee without proper authority ought to be taken at the earliest moment, but may be entertained at any stage of the appeal, and is not unfrequently heard when the appeal is called on and before the arguments on the merits have commenced An appeal

such special leave, but leave was refused under the particular circumstances of the case GAJADHAR PERSAD *v* WIDOWS OF EMAM ALI BEG

[15 B L R., P. C, 221
L R., 2 I. A, 205

6 LEAVE TO DEFEND APPEAL

31. ———— **Appeal by one of two defendants severed in defence**—*Alternative liability* —Two sets of defendants severed in their

respondent, the other defendants were held entitled to appear, and to lodge a separate case EAST INDIA COMPANY *v* ROBERTSON . 7 Moore's I. A., 361

PRIVY COUNCIL, PRACTICE OF
—*continued*

6 LEAVE TO DEFEND APPEAL—*concluded*

32 ———— **Allowing respondent to defend after great delay in appearing**—*Leave on terms* —Where the respondent did not appear, the appeal was after two years set down for hearing *ex parte* Before the hearing, the respondent appeared, and moved under special circumstances to

[5 Moore's I. A, 447

33. ———— **Delay of respondents in** ... *peremptory* ... having been ... d from India, and the appellants being ready with their case for

part, giving the appellant liberty to proceed in the

[4 Moore's I. A., 201

7 CROSS-APPEAL

34 ———— **Admission of cross appeal after time**—*Admission on conditions* —A cross-appeal from a decree of the Sudder Court in India, although not interposed within the proper time, admitted upon conditions (1) of the principal appeal being prosecuted, and (2) that the principal and cross appeals be consolidated and heard on one printed case OMANATH CHOWDHRY *v* NUJEEB CHOWDHRY

[8 Moore's I. A, 498

35 ———— *Mistake of respondents as to practice* —Cross appeal allowed from

Judicial Committee upon a cross appeal Such cross-appeal directed to be prosecuted and heard upon one printed case if the principal appeal was proceeded with, but in the event of the principal appeal being dismissed for want of prosecution liberty was reserved to the respondents to prosecute the cross appeal as a separate appeal NANA NARAIN RAO *v* HURREE PUNT BHAO . 6 Moore's I A., 464

36 ———— **Leave given at hearing to bring cross appeal in order to open out whole decree**

PRIVY COUNCIL, PRACTICE OF —*continued*.

7. CROSS-APPEAL—*concluded*.

a cross-appeal, and the appellants not objecting, the appeal was heard from the whole decree. MYNA BOYEE *v.* OOTTORAM
[2 W. R., P. C., 4: 8 Moore's I. A., 400

8. VALUATION OF APPEAL.

37. ———— Mode of valuation—*Appeal to Privy Council—Appealable value—Stamp on plaint—Beng. Reg. X of 1829, s. 17.*—In estimating the appealable value for an appeal to the Privy Council by order of 10th April 1838, *viz.*, R10,000, regard should be had to the whole matter involved in the suit, and not to the value of a fractional part of the property sought to be recovered. A suit was brought to recover a zamindari in the possession of different persons under deeds of sale in execution of a decree. The value of the property was, by Bengal Regulation X of 1829, stated in the plaint to be R11,325. The Sudder Court upheld the sales so far as related to the claim of some of the defendants. The other defendants applied for leave to appeal to England, which the Sudder Court refused, on the ground that, as the value of their portion was only R8,215, it was not within the appealable value; but this construction was overruled by the Judicial Committee, and leave was granted to appeal. *Quære*—Whether the stamp on the plaint required by Regulation X of 1829, s. 17, being for fiscal purposes only, is conclusive of the value of the property sued for. AMEENA KHATOON *v.* RADHABENOD MISSER
[7 Moore's I. A., 261

38. ——— Test of value of property *Market value—Appeal to Privy Council.*—By Bengal Regulation X of 1829, the test of the value of the property in suit is the selling or market value. MOHUN LALL SOOKUL *v.* BEBEE DOSS
[8 Moore's I. A., 193

39. ———— Case under appealable value unless by addition of interest after decree—*Discretion of Judicial Committee.*—Leave to appeal to the Privy Council is to be given in cases where the petition is presented within the prescribed period, and the value of the matter in dispute in the appeal amounts to R10,000, including interest up to the decree. The grant of leave to appeal in cases where the specified amount of R10,000 can only be reached by the addition of interest subsequent to the decree is in the discretion of the Privy Council. SUTEESCHUNDER ROY *v* GUNES CHUNDER. SURNOMOYEE *v.* SUTEESCHUNDER ROY. GOOROOPERSAD KHOOND *v.* JUGGUT CHUNDER
[3 W. R., P. C., 14: 8 Moore's I. A., 164, 165, 166

40. ———— Abandonment on appeal of part of amount of claim—*Reduction of claim to below prescribed limit of appealable amount.*—The defendants, having a *bonâ fide* intention to appeal in respect of the whole amount decreed, obtained the certificate and admission of their appeal as competent within the Code of Civil Procedure.

PRIVY COUNCIL, PRACTICE OF —*continued*.

8. VALUATION OF APPEAL—*continued*.

Afterwards, in their printed case and at the hearing, they withdrew part of their appeal, reducing, by so doing, the amount in dispute to one below the limit prescribed for appeals, where there is no special leave obtained. *Held* that this did not render the appeal incompetent. KALKA SINGH *v.* PARAS RAM
[I. L. R., 22 Calc., 434
L. R., 22 I. A., 68

41. ——— Addition of costs of suit to principal sum—*Appealable value—Appeal to Privy Council.*—Costs of suit cannot be added to the principal sum and interest in calculating the appealable value of R10,000, the amount restricted by the Order in Council of the 10th April 1838. DOORGA DOSS CHOWDRY *v.* RAMANAUTH CHOWDRY
[8 Moore's I. A., 262

42. ———— Actual value of property in suit—*Valuation in plaint—Evidence.*—Appeal admitted from the Sudder Court at Calcutta in a case where the land sued for was laid in the plaint as under R10,000 upon evidence stating the value of the property much to exceed that sum. GOURMONEY DEBIA *v.* ABDOOL GUNNY . 8 Moore's I. A., 268

43. ———— *Valuation in plaint—Evidence.*—The amount of the stamp upon the plaint is not conclusive of the value of the subject-matter of the suit. By the procedure of the Native Courts the value of the suit for the purpose of the stamp duty is assessed at three times the annual rent payable to Government in respect of the property sued for. *Held,* on an *ex-parte* petition for leave to appeal in a case in which the value was laid in the plaint as being under R10,000, that as the calculation was estimated with reference to the stamp duty only, leave to appeal would be granted conditionally upon the production of satisfactory evidence in India by the petitioner, and transmitted with the transcript, that the real or market value of the property exceeded R10,000, otherwise the leave granted to be null and of no effect. MOHUN LALL SOOKUL *v.* BEBEE DOSS . . 7 Moore's I. A., 428

44. ———— Consolidation of suits under appealable value—*Stat. 21 Geo. III., c. 70, s. 21.*—Upon the construction of the Stat. 21 Geo. III., c. 70, s. 21, it was held that two suits (each for less than R50,000, but both for more than that amount), in which separate judgments were given, could not be consolidated for the purpose of permitting an appeal to the Privy Council; each judgment, when pronounced, having been final and conclusive. MAHOMED UBDOOLLAH *v.* MOTEECHUND
[5 W. R., P. C., 34: 1 Moore's I. A., 363

45. ———— Several suits each under appealable value—*Suits as to same question of law—Leave to appeal granted on condition.*—Five separate suits were brought by the same plaintiff against the same defendants in which the same question of law was raised. The amount involved in each suit was under R10,000, the appealable value, although in the aggregate the amounts claimed exceeded

PRIVY COUNCIL, PRACTICE OF —*continued.*

8 VALUATION OF APPEAL—*concluded.*

otherwise the five transcripts to be remitted in the ordinary course GOPAL LALL THAKOOR *v* TELUK CHUNDER RAI . . 7 Moore's I. A., 548

9 STAY OF PROCEEDINGS IN INDIA PENDING APPEAL

46. ———— Refusal to stay proceedings —*Appeal specially admitted by Privy Council* — By a decree of the Sudder Court at Calcutta a suit was remanded to the Zillah Court to be tried *de novo* An appeal to England from this decree was refused, but, upon special application, was admitted by the Judicial Committee of the Privy Council, whereupon the appellant applied to the High Court at Calcutta to stay proceedings pending the appeal to England, on the ground that the decision of the Appellate Court would govern the question at issue, which application that Court refused The appellant then presented a petition to Her Majesty in Council, and applied *ex parte* for the same relief, but the Judicial Committee in the respondent's absence, refused to make any order, though without prejudice to the petitioner's further application when he had served the respondent PERLADH SEIN *v* BHOODOO SINGH [10 Moore's I. A, 78

47. ———— Application to stay proceedings without appealing from order refusing to stay them—*Appeal from order of remand—Delay in applying* —Application to stay

to the party applying unless the delay asked for be granted and that the party applying has come

issues framed in accordance with the provisions of Act XIII of 1859, s 139, having failed in obtaining

without determining the question of their right to interfere in such circumstances held that the petitioner had not shown any such injury, or used such expedition as entitled him to ask for a stay of proceedings *Quære* -Whether, where an order has been made by the superior Court below refusing to stay proceedings, and such order is not specially appealed

PRIVY COUNCIL, PRACTICE OF —*continued.*

9 STAY OF PROCEEDINGS IN INDIA PENDING APPEAL—*continued*

from, the Judicial Committee have any authority to

48. ———— Stay of execution—*Application to set aside order of Court in India for execu*

order and the probability of its having been acted on in India IN RE BOMMARANJEE BAHADUR [5 Moore's I A., 298

49 ———— Stay of proceedings on recognizances—*Abandonment of appeal—Vacation of recognizance pending appeal* —Recognizance entered into to abide the determination of an appeal vacated upon petition of the appellant upon the abandonment of the appeal REED *v* GOURMONEY DABEE 6 Moore's I A, 490

50 ———— Refusal of order staying execution where decree was not yet appealed to the Privy Council, but leave to appeal from interlocutory orders in execution granted *Security for performance of order to be made by Her Majesty in Council—Civil Procedure* ... *elow* —A who had to Her r of the

the decree being reversed This accompanied a petition for special leave to appeal against those orders The latter was granted, but it not being competent to the Judicial Committee to make any order as to the stay of execution an intimation was made by it to the Court below that it appeared to be the reasonable course that the opposite party should not pending the appeal, be put into possession of the large sums in dispute That intimation being made, the petitioner might apply to the Court below for the due security of all money paid into the Treasury in obedience to the decree *Sidhee Nazir Ali Khan* v *Oojoodhyaram Khan, 10 Moore's I A, 322,* and *Jarutool Batool* v *Hosseinee Begum, 10 Moore's I A, 196,* referred to INDER KUMARI *v*. JAIPAL KUMARI [I. L. R, 14 Calc., 290 L. R., 14 I. A, 1

51. ———— *Civil Procedure Code (1882), s 608, sub-s (c)*—The High Court having, under s 603, sub s (a) of the Civil Procedure Code, declared the admission of an appeal from their decree, refused an order, applied for under

PRIVY COUNCIL, PRACTICE OF—*continued.*

9. STAY OF PROCEEDINGS IN INDIA PENDING APPEAL—*concluded.*

s. 608, sub-s (*c*), for staying execution pending the appeal, the two Judges constitüting the Court differing as to whether or not the case was such that the application should be granted. Their Lordships decided that the execution of the decree should be stayed pending the appeal. An order of Her Majesty in Council followed to that effect. CHATRAPAT SINGH DURGA *v.* DWARKANATH GHOSE

[I. L. R., 22 Calc., 1
L. R., 21 I. A., 170

52. ———— **Stay of proceedings in India pending appeal**—*Protection of property pending an appeal by special leave—Order for stay of proceedings—Civil Procedure Code (Act XIV of 1882), Ch. XLV.*—Special leave of Her Majesty in Council was obtained for the filing an appeal from a decree of the High Court affirming the dismissal of the petitioner's suit. The High Court rejected his application as plaintiff (appellant) for an order staying execution and continuing the possession of a manager of the estate in litigation pending the result of the appeal. The rejection was grounded on the absence of authority for this purpose, the High Court being authorized in their judgment only to make such an order in regard to appeals admitted by themselves. On the petition that the High Court's decision might be reversed or such order made as would protect the property to abide the ultimate disposal of the suit, thier Lordships were of opinion that direct interference to continue the management or to appoint a Receiver was impracticable. But that, on the other hand, interference had, on occasions, been effected where, the appellant being in possession, an order for stay of proceedings had maintained the existing state of things. Therefore, an order staying proceedings should now be recommended by them, the petitioner being answerable in damages, and any aggrieved respondent having leave to move for the discharge of the order. MOHESCHANDRA DHAL *v.* SATRUGHAN DHAL . . I. L. R., 27 Calc., 1

EX-PARTE MOHESCHANDRA DHAL

[L. R., 26 I. A., 281
4 C. W. N., 34

10. WITHDRAWAL OF APPEAL.

53. ———— **Application for dismissal of appeal by agreement**—*Arrangement between parties.*—A petition to dismiss an appeal from the Sudder Court in India, and for an order directing that Court to carry into execution the terms of a deed of compromise, upon which the withdrawal of the appeal was founded, refused. All that the Privy Council will do in such circumstances is to make an order of dismissal, reserving to the parties leave to apply to the Court in India to take further proceedings in pursuance of such agreement. SUTTI CHURN GHOSAL *v.* MUDDEN KISHORE INDOO

[5 Moore's I. A., 107

PRIVY COUNCIL, PRACTICE OF—*continued.*

11. INSOLVENCY OF APPELLANT.

54. ———— **Effect of insolvency of appellant on appeal**—*Procedure—Adjournment to allow Official Assignee to appear.*—After an appeal from Calcutta had been set down for hearing, intelligence was received shortly before the day appointed for hearing that the appellant had been adjudged an insolvent under the Indian Insolvent Act, 11 & 12 Vict., c. 21. On the appeal being opened, the Court postponed the hearing for six months, to enable the Official Assignee in insolvency in Calcutta to revive the appeal and prosecute the same, and in default the appeal to be dismissed; and directed the respondents to serve the Official Assignee in India with such notice. No steps having been taken by the Official Assignee within the time limited for prosecution, their Lordships refused a further extension of time and dismissed the appeal. GOOROO CHURN SEIN *v.* RADHANAUTH SEIN . 7 Moore's I. A., 1

12. DEATH OF PARTY ON RECORD.

55. ———— **Practice relating to substitution of parties on revivor**—*Representative character to be ascertained by lower Court.*—On the death of a party on the record of an appeal pending before Her Majesty in Council, proof must be given in the Court from which the appeal has been preferred of the representative character of the person or persons by or against whom revivor is sought. There ought to be some finding of the Court below; which also should give its own opinion as to who are the parties proper to be substituted upon the record. A certificate or statement on which their Lordships can act should be made by the Court below. HAIDAR ALI *v.* TASSADDUK RASUL. EX-PARTE HAIDAR ALI . I. L. R., 16 Calc., 184

[L. R., 16 I. A., 209

56. ———— **Death of respondent after hearing and before judgment**—*Addition of parties.*—Where the respondent, a widow and heir, died after the case had been argued, and in consequence the inheritance ceased to be represented in the suit, and there was no one in whose presence certain necessary accounts could properly be taken against the widow, the Judicial Committee, after adding the heir, thought it unnecessary to delay the decree, but let it rest with the plaintiff, the appellant, to apply to the Court below to add the necessary parties. SURENDRO KESHUB ROY *v.* DOORGASOONDERY DOSSEE . . I. L. R., 19 Calc., 513

[L. R., 19 I. A., 108

See CHETAN CHARAN DAS *v.* BALBHADRA DAS

[I. L. R., 21 All., 314

13. SUBSTITUTION OF APPELLANT.

57. ———— **Procedure**—*Security for costs—Terms as to costs.*—An appellant, after the transmission of his appeal to England, obtained leave in the High Court to withdraw it. The appeal involved the rights of a minor, party to the suit, whose mother and guardian obtained an order for her to be

PRIVY COUNCIL, PRACTICE OF — *continued*

13 SUBSTITUTION OF APPELLANT —*concluded*

substituted for the withdrawing appellant, on the terms that she should give security to the satisfaction of the High Court for costs already ordered, and should undertake to abide by any order as to general costs GAUR MOHUN CHAKERBATI v TARASUNDERI DEBI I L R, 17 Calc, 693

14 DISMISSAL OF APPEAL FOR WANT OF PROSECUTION

58 ———— **Delay in taking proceedings after admission of appeal** —An appeal was allowed in October 1854 by the Supreme Court at Calcutta to England After the allowance of the appeal, no further steps were taken by the appellant In March 1856 the Judicial Committee, upon a certificate of the Registrar of the Supreme Court that no further proceedings had been taken after the order allowing the appeal dismissed the appeal at the instance of the respondents for want of prosecution RABUTTY DOSSEE v RADHANAUTH SEIN [6 Moore's I A, 346

such circumstances on application by the respondent, the appeal was dismissed, and the respondent's costs directed to be paid out of the sum deposited in the Council office the balance to be returned to the appellant GOURMONEE DEBIA v ABDOOL GUNNEE [10 Moore's I. A., 59

60 ———— *Failure to deposit security* —Six months having elapsed without the

HURROSOONDREE DIBIAH v PRAN KISHEN SINGH [7 Moore's I. A, 16

61. ———— **Application to the Court in India by infant on coming of age to withdraw from the suit**—*Guardian and ward*— An infant appellant, in an appeal pending in the Privy Council, having come of age, and having petitioned the High Court in India to be allowed to withdraw from the suit,—*Held* that it was competent to the respondent in England to have the appeal dismissed for want of prosecution, although the guardian had given security for the costs and paid the expenses of the appeal, and although the

PRIVY COUNCIL, PRACTICE OF —*continued*

14 DISMISSAL OF APPEAL FOR WANT OF PROSECUTION—*concluded*

(former) infant was not served with notice of the

S C. BISTOOPRIA PUTMADAYE v NUND DHUL [13 Moore's I A, 602

15 RESTORATION OF APPEAL

62 ———— **Appeal dismissed through "unavoidable accident"**—*Acts XVI of 1845, XXIX of 1841, and XI of 1853 s 6—Costs* —Act XVI of 1845 amending Act XXIX of 1841, enacts that it is competent to the Sudder Court in the case of the

the appellant was in ignorance of the fact of the reasons of appeal not having been filed *Held* reversing the decree of the Sudder Court, that such circumstances constituted a case of "unavoidable accident" within the meaning of Act XVI of 1845, and the appeal was ordered to be re admitted on the file of pending causes In reversing the decree of the Sudder Court, the order of that Court that the costs of the application to re admit the appeal should be paid by the appellants was confirmed, but as the appellants were successful in obtaining a reversal of the decree of the Court below, the costs of the appeal in England against such decree were ordered to be paid by the respondents ANUNDMOYEE DOSSEE v POORNO CHUNDER ROY 9 Moore's I A, 26

same power as the Courts of Record and Statute have, of rectifying mistakes which have crept in by misprision or otherwise in embodying its judgments Where therefore an order had been made *ex parte* upon the appearance of the respondents alone for the dismissal of an appeal and affirmance of the judgment of the Court below which purported to be upon the hearing of the cause, the Judicial Committee held that such order must be taken simply as a

PRIVY COUNCIL, PRACTICE OF —*continued.*

15. RESTORATION OF APPEAL—*continued.*

appeal had absconded and abandoned the cause, their Lordships rescinded the order of dismissal, and restored the appeal on the terms of the appellant's paying the costs and giving access to the transcript of the proceedings in the Court below, in their hands, and undertaking to lodge the case within five months. RAJUNDER NARAIN RAE *v.* BIJAI GOVIND SINGH [2 Moore's I. A., 181

64. ———— **Appeal dismissed for want of prosecution**—*Ignorance of necessary proceedings.*—Where an appeal had been dismissed for want of prosecution, no step having been taken in it for ten years, the appeal was, on petition to the King in Council, restored, the appellant paying the costs of dismissal and restoration; it appearing that the appellant was ignorant of the proceedings necessary to be taken in England, and that he had, though after the lapse of some years, instructed a commercial house in Calcutta to prosecute the appeal, but whose agent in England becoming insolvent, no proceedings were taken to bring the case to a hearing. DEEDAR HOSSEIN *v.* ZUHOOROONNISSA . 2 Moore's I. A., 441

65. ———— *Delay in receipt by agent of appellant of the transcript.*—Leave given to restore an appeal dismissed for want of prosecution, the appellant's agent, though instructed to prevent the dismissal of the appeal, not having received the transcript until after the expiration of a year and a day from the time of the allowance of the appeal, and the respondent having in consequence thereof obtained an order of dismissal. BISSNOSOONDERY DABEE *v.* BURRODACAUNT ROY [2 Moore's I. A., 127

66. ———— *Ignorance of existence of new rules.*—Appeal restored after being dismissed for want of effectual prosecution within the time limited by the 5th rule of the Order in Council of 13th June 1853, the new rules having been only recently adopted by the Sudder Court at Calcutta, and the appellant, in ignorance of their existence, being engaged in taking steps to prosecute the appeal within the time and according to the practice previously existing. GUDADHUR PURSHAD TEWAREE *v.* SOONDERKOOMAREE . 6 Moore's I. A., 201

SETO LUCHMEECHUND *v.* SETO ZORAWUR MULL [6 Moore's I. A., 204

67. ———— *Abandonment of appeal—Stat. 8 & 9 Vict., c. 30, s. 2.*—In circumstances showing conflicting and opposite decisions by the Sudder Court upon the same question at issue between the same parties, an appeal treated under Stat. 8 & 9 Vict., c. 30, s. 2, as abandoned for non-prosecution, was restored upon terms of paying costs and undertaking to lodge cases forthwith and to lodge security or a bond in England to the amount of £500. Where an appeal has been treated as abandoned under 8 & 9 Vict., c. 30, s. 2, their Lordships have no power to grant leave to institute a new appeal; only a discretion to allow the original appeal to be restored. HURROSOONDREE DEBIAH *v.* PRAN KISHEN SINGH . 6 Moore's I. A., 491

PRIVY COUNCIL, PRACTICE OF —*continued.*

15. RESTORATION OF APPEAL—*concluded.*

68. ———— *Consolidation of dismissed appeal with another pending.*—Leave given to restore an appeal dismissed for want of prosecution, the Court below having consolidated it with another appeal in the same cause which was still pending. SUBROOP CHUNDER SIRCAR CHOWDRY *v.* RAMRUTTON MULLICK [1 Moore's I. A., 358

69. ———— *Application for restoration of case—Security for costs of appeal.*—Application for restoration of appeal acceded to in consideration of the interests of infants being involved in the case, and of the state of that part of India when the matter arose in and after 1857, on the condition of deposit of further security, and of the prosecution of the appeal within a certain time. The security in India was held to have gone by the dismissal of the appeal for default of prosecution. BIRJOBUTTEE *v.* PERTAB SINGH [3 W. R., P. C., 36 : 8 Moore's I. A., 168

70. ———— **Security on restoration of appeal**—*Deposit of costs.*—Where Government securities for the due prosecution of the appeal and costs were deposited in the registry of the Sudder Court, the Judicial Committee in restoring the appeal dispensed with the usual recognizance in England. SETO LUCHMEECHUND *v.* SETO ZORAWUR MULL [6 Moore's I. A., 204

71. ———— **Petition to restore an appeal**—*Terms under which it was restored.*—Under rule 5 of the Orders in Council of the 13th June 1893, an appeal was dismissed for want of prosecution on the 8th October 1896. The record had been received on the 15th January 1896, and since then no steps had been taken. The delay having been explained, and the cause of it considered sufficient, the appeal was restored to the file, on conditions as to costs, and on security to be given in England. RABIABAI *v.* MAHOMED ISMAIL KHAN [I. L. R., 21 Bom., 723
L. R., 24 I. A., 128

16. REMISSION OF CASE TO INDIA.

72. ———— **Refusal to consider documentary evidence not sent with record.**—The Privy Council will not act as a Court of Original Jurisdiction; therefore, where the Judge of the Court below improperly suppressed documents which were not discovered until after the transmission of appeal to Her Majesty in Council, their Lordships refused to give an opinion on the merits and remitted the case to India for reconsideration. JUVERBHAEE *v.* VURUJBHAEE . . 3 Moore's I. A., 324

73. ———— **Remand to take fresh evidence**—*Refusal of Court below to consider evidence.*—Where the lower Courts, on the ground that the defendant's title under a sanad was absolute, declined to consider evidence which the plaintiff relied on as showing that the defendant really held for him

PRIVY COUNCIL, PRACTICE OF —*continued*

16 REMISSION OF CASE TO INDIA —*concluded*

as a trustee the case was remanded by the Judicial Committee in order that such evidence might be received and considered SHERE BAHADUR SING *v* THAKURAIN DARIAO KUAR I L R 3 Calc, 645

74 ———— Reversal in former analogous case—*Case decided by High Court as involving question already decided* —The High Court dismissed an appeal from the Zillah Court on the

TEWAREE *v* LALLA BINDA LALL [12 Moore's I A, 343

75 ———— Form of decree of High Court—*General decree affirming Court below without details where lower Court merely reverses first Court* —A suit for possession and redemption in which a third party intervened on the claim that the plaintiff had conveyed to him half of the property in dispute was dismissed On appeal by the

LALA SHAM SOONDUR LAL *v* SOORAJ LAL [26 W R, P C, 48

17 PRACTICE AS TO OBJECTIONS

76 ———— Formal objections —The practice of the Privy Council has been never to favour objections merely of form MOKUDDIMS OF MOUZA KUNKUNWADY *v* ENAMDAR BRAHMINS OF MOUZA SOORPAL [7 W. R., P C, 8 3 Moore's I A, 383

77 ———— Pleadings—*Matters of form, Refusal to insist upon* —In reviewing proceedings of the Courts in India where the Hindu and Mahomedan laws are the rule, and where the forms of pleadings are wholly different from those

PRIVY COUNCIL, PRACTICE OF —*continued*

17 PRACTICE AS TO OBJECTIONS—*continued*

in use in Courts where the law of England prevails, the Privy Council will look to the essential justice of the case not considering whether matters of form have been strictly attended to GRIDHAREE SINGH *v* KOOLAHUL SINGH [6 W. R., P C, 1 2 Moore's I A, 344

78 ———— Technical objections—*Fresh grounds—Question of disputed consent to arbitration* —In the examination of such questions as whether as alleged the consent of one of the parties to an arbitration was obtained by threats, the Privy Council will look to the broad principles of justice and equity, and discourage mere technical objections and the invention of new grounds of dispute which were not even mentioned at the commencement of the suit PURVATHA VURDHAY NAUCHIAR *v* JAYAVERA RAMAKOMARA ETTYAPA NAICKER [4 W R, P C, 31

S C ZAMINDAR OF RAUTNAD *v* ZAMINDAR OF YELLIAPOORAM 7 Moore's I A., 441

79 ———— Objections on matters of practice—*Immaterial irregularities* —The Privy Council will not interfere in a case in which objections are taken to matters of practice unless they see very clearly that justice has not been done ABDOOL ALI *v* MOZUFFER HOSSEIN CHOWDRY [16 W R, P C, 23

80 ———— Pleadings, Rule of—*Presumption as to averments not traversed* —The strict rule

[2 W R., P C, 19: 9 Moore's I A, 287 Marsh., 455

81 ———— Ground for varying decree —*Duty of Appellate Court—Suits heard together, Evidence in* —It is objectionable to disturb or vary a decree properly made by the lower Court for the mere purpose of guarding against the possible error of some other tribunal in some future suit Two suits were heard together On objection made in appeal that the evidence taken in one suit (to which the objector was not a party) had been irregularly

Court when pronounced, was a correct decision of the issues then pending before it between the then parties to the suit ANUNDOMOYEE CHOWDHRAIN *v* SHEEB CHUNDER ROY [Marsh, 455: 2 W. R., P C, 19 9 Moore's I A., 287

82 ———— Objection as to suit being merely declaratory—*Special leave to appeal*—

PRIVY COUNCIL, PRACTICE OF *—continued*

17. PRACTICE AS TO OBJECTIONS—*continued.*

Technical nature of grounds of appeal.—A defendant obtained special leave to appeal to Her Majesty in Council, on the ground that the case involved questions of law of great importance to the Jain sect, of which he was a member. On the appeal coming on for hearing, he contended that the suit should have been dismissed by the Courts below as a claim for a declaration of right in respect of which no consequential relief was sought or could be given. *Held* that, considering the special grounds on which the defendants had obtained leave to appeal, the somewhat technical character of the defence he now put forward, and the general circumstances of the case, he ought not to be allowed to insist on this objection. SHEO SINGH RAI *v.* DAKHO

[I. L. R., 1 All., 688 : 2 C. L. R., 193
L. R., 5 I. A., 87

83. ——— **Objection not taken before High Court**—*Grounds of appeal.*—The Judicial Committee refused to entertain an objection taken in the grounds of appeal, which had not been taken on appeal to the High Court. FORBES *v.* MEER MAHOMED HOSSEIN

[12 B. L. R., P. C., 210 : 20 W. R., 44

84. ——— *Point not taken in lower Courts.*—A point not raised in the plaint before the District Judge nor in the High Court cannot be raised before the Judicial Committee. SOMBHU NATH SANTRA MAHAPATRA *v.* SURJA MONI DEI . . . . **1 C. W. N., 649**
[I. L. R., 25 Calc., 187
L. R., 24 I. A., 191

85. ——— *Circumstances not raised in the lower Court—Pleadings.*—In this case there were concurrent findings of facts both by the lower Court and the High Court, but it was sought to distinguish the case against two of the defendants on the ground of special circumstances connected with their holding. These circumstances were never relied upon in the pleadings, no issue was directed as to them, and there was no proper examination of the case with respect to them. *Held* that the High Court was justified in refusing to allow the appellant to raise the point. NAM NARAIN SINGH *v.* BHIM GANJHU . . . . **3 C. W. N., 249**

86. ——— *Objection as to validity of deeds.*—A plaintiff sued to set aside certain documents which he alleged to have been forged by the defendant. At the trial of the case in the Court of first instance the only issue directed to these documents was—"Are the three written agreements said to have been given by the plaintiff to the defendant genuine and valid deeds?" It was not contended by the plaintiff in that Court that the agreements had been obtained from him while he was a minor by undue influence, nor was that objection taken in the grounds of appeal against the judgment of the Court. *Held* that it was too late to take the objection for the first time in the Court of Appeal. AMEEROONISSA KHATOON *v* ABADOONISSA KHATOON

[15 B. L. R., 67 : 23 W. R., 208
L. R., 2 I. A., 87

PRIVY COUNCIL, PRACTICE OF *—continued.*

17. PRACTICE AS TO OBJECTIONS—*continued.*

87. ——— *Objection to right of action.*—The Privy Council will not entertain a purely technical objection to a party's right of action which has not been made in the Court below. BANK OF BENGAL *v.* MACLEOD **5 Moore's I. A., 1**

88. ——— *Right to sue.*—*Semble*—The right of a party to institute a suit as heir of an original grantee, not having been disputed in the Courts below cannot be questioned before the Judicial Committee. MILLS *v* MODEE PESTONJEE KHOORSHEDJEE . . **2 Moore's I. A., 37**

89. ——— *Objection of limitation—Beng Regs. II of 1805, II of 1819, III of 1828.*—An objection raised for the first time at the hearing of the appeal before the Privy Council, that the Government's right to sue was barred by Regulation II of 1805 from lapse of time, sustained, the proceedings in India before the Revenue Collector and Special Commissioner under Regulations II of 1819 and III of 1828 not being in the nature of a regular suit. DHEERAJ RAJA MAHATAR CHUND BAHADOOR *v.* GOVERNMENT OF BENGAL

[4 Moore's I. A., 466

90. ——— *Objection to order of Court in India substituting respondent for appellant on death of sole appellant.*—Pending the appeal to England, the sole appellant died, and the Sudder Court made an order substituting one of the respondents in his stead as appellant. *Semble*—It is not competent to the other respondents to object to such order at the hearing of the appeal, the proper course being to move the Sudder Court to discharge such order. KASI PERSAD NARAIN *v.* KAWALBASI KOOER . . . . **5 Moore's I. A., 146**

91. ——— *Objections to report of Commissioner under Civil Procedure Code, 1859, s. 181.*—Where a report, or supplemental report, had been made by Commissioners to whom accounts had been referred for investigation under Act VIII of 1859, s. 181, the Privy Council refused to entertain any objections thereto which had neither been brought to the notice of the first Court nor made in any of the grounds of appeal in the Courts in India. SETH GUJMULL *v.* CHAHEE KOWAR

[L. R., 2 I. A., 34

92. ——— *Objection taken without cross-appeal—Alteration of decree asked for by respondent without cross-appeal—Civil Procedure Code (1882), s. 561.*—In reference to whether the decree made against one of the respondents could be varied in his favour, he not having filed a cross-appeal, the rule prevailed that he could only be heard to support the decree, s. 561 of the Civil Procedure Code not applying in an appeal to the Privy Council. CASPERSZ *v.* KISHORI LAL ROY CHOWDHRI

[I. L. R., 23 Calc., 922
1 C. W. N., 12

93. ——— **Question of law referred to Full Bench**—*Objection by respondent without cross-appeal to answer of Full Bench.*—Where a

PRIVY COUNCIL, PRACTICE OF
—*continued*

17 PRACTICE AS TO OBJECTIONS—*concluded*

Division Bench of a High Court refers a question of law for the consideration of the Full Bench and the answer of the Full Bench is not framed as a decree or as an interlocutory order, and an appeal is brought to Her Majesty in Council it is open to the respondent

18 REVIVOR OF APPEAL

94 ———— Revivor of appeal which had abated—*Alteration of form of claim on appeal —Succession or inheritance*—Leave to revive an

L R, 21 I. A, 163

19 QUESTIONS OF FACT

95 ———— Unanimous judgment on facts—*Onus of proof*—The rule of the Appellate Court is that it will not on a question of fact reverse an unanimous judgment of the Courts in India unless the very clearest proof is shown that such decision is erroneous TARRENY CHURN BONNERJEE *v* MAITLAND 11 Moore's I A, 317

96 ———— Credibility of witnesses—*Effect of evidence*—It is not the habit of the Privy Council unless in very extraordinary cases to advise the reversal of a decision of the Courts of India merely on the effect of evidence, or the credit due to witnesses NARAGUNTY LUCHMEDAVAMAH *v* VENGAMA NAIDOO

[1 W. R, P C, 30 9 Moore's I. A., 66

JARUTOOL BUTOOL *v* HOSSEINEE BEGUM
[10 W R., P C, 10. 10 Moore's I A., 196

97 ———— *Issues of fact—Miscarriage in reception or appreciation of evidence*—It is not the practice of the Privy Council

the advantage of local experience, have had the means of seeing the witnesses under examination and

PRIVY COUNCIL, PRACTICE OF
—*continued*

19 QUESTIONS OF FACT—*continued*

of inspecting the original documents RICHARDSON *v* GOVERNMENT 1 W R, P C, 47

CHEYT RAM *v* CHOWDHRY NOWBUT RAM
[5 W. R, P C, 3 7 Moore's I. A, 207

KRIPAMOYEE DEBIA *v* ROMANATH CHOWDHRY
[2 W R., P C, 1

S C KRIPOMOYEE DEBIA *v* GRISH CHUNDER LAHOREE 8 Moore's I A, 467

GHOOLAM MOORTOOZAH KHAN *v* GOVERNMENT
[9 Moore's I. A, 456

DWARKA DOSS *v* SITA RAM 5 C L R, 430

98 ———— *Consideration of viva voce evidence*—Considering the advantages

opinion upon the whole case With reference to the lamentable disregard of truth prevailing amongst the natives of India the Privy Council held that it would be very dangerous for the Court altogether to discredit witnessess deposing *viva voce* by reason of the necessity imposed on the Court to sift the evidence of such witnesses with great minuteness and care MODHOOSOODUN SANDIAL *v* SOROOP CHUNDER SIRCAR CHOWDHRY
[7 W R, P C, 73 4 Moore's I A, 431

99 ———— *Documentary evidence—Decision on facts*—Their Lordships refused to reverse a decision of the High Court upon a question of fact in which that Court had before it the documents and the evidence of the witnesses and had an opportunity of judging of the demeanour of the witnesses JUGOJEEBUN LALL DHUDAL DEB *v* KARTICK CHUNDER BONDOPADHYA
[25 W. R., P C, 1

100 ———— *Erroneous conclusions from evidence*—*Semble*—The Privy Coun-

below was wrong in the conclusion drawn from such evidence MUSADEE MAHOMED CAZUM SHERAZEE *v* ALLY MAHOMED KHAN 6 Moore's I. A, 27

101 ———— Disputed facts—*Presumption of correctness in cases of disputed fact*—It is the practice of the Judicial Committee in a case of disputed fact when the Courts in India appear to have diligently investigated the evidence, and no palpable mistake is apparent in the appreciation by the Court below of such evidence, to affirm the decree appealed from with costs CHUNDER MONEE DEBIA CHOWDHOORAYAN *v* MUN MOHINEE DEBIA
[8 Moore's I. A., 477

PRIVY COUNCIL, PRACTICE OF —*continued.*

19. QUESTIONS OF FACT—*continued.*

102. ——— Judgment on facts—*Appeals from Non-Regulation Provinces.*—In cases from Non-Regulation Provinces, wherein the procedure is somewhat loose, and where the merits depend much on local custom and local inquiry, it is even more necessary than it is on appeals from the Civil Courts in the Regulation Provinces to act on the principle of not disturbing the judgment under appeal, unless it is substantially wrong. HYDER HOSSEIN *v* MAHOMED HOSSEIN

[14 Moore's I. A., 401: 17 W. R., 185

103. ——— Improper admission of evidence—*Sufficiency of evidence.*—Where evidence, such as hearsay, is improperly admitted, the question for the Judicial Committee is whether, rejecting that evidence, enough remains to support the finding. Disapproval was expressed by their Lordships of the reception by the lower Court of evidence which ought not to have been admitted. MOHUN SING *v.* GHURIBA

[6 B. L. R., 495: 15 W. R., P. C., 8

104. ——— Erroneous conclusion from evidence—*Hearsay evidence.*—Where the High Court founded their judgment upon evidence which did not justify the conclusion, the Judicial Committee reviewed the whole evidence, in order to ascertain whether the decree could be supported. AJODHYA PRASAD SING *v.* UMRAO SING

[6 B. L. R., 509: 15 W. R., P. C., 1
13 Moore's I. A., 519

105. ——— Evidence wrongly admitted—*Sufficiency of evidence.*—Where the Courts below had admitted evidence not properly admissible, the Judicial Committee examined the whole evidence, and being satisfied that there was, independent of that inadmissible evidence, sufficient to justify the decision of those Courts, dismissed the appeal. LALA BANSIDHAR *v.* GOVERNMENT OF BENGAL

[9 B. L. R., 264: 16 W. R., P. C., 11
14 Moore's I. A., 86

106. ——— Direct evidence as opposed to suspicion—*Adoption.*—The Sudder Ameen having held an adoption proved, the Principal Sudder Ameen on appeal reversed that decision on the facts. The case came before the High Court on special appeal, and the decision then given was appealed to England, and special leave was given by Her Majesty to appeal against the decision of the Principal Sudder Ameen. The decision of the High Court on the law was admitted to be good, but the Judicial Committee reversed the finding of the Principal Sudder Ameen on the facts. KALI CHANDRA CHOWDHRY *v.* SHIB CHANDRA BHADURI

[6 B. L. R., 501: 15 W. R., P. C., 12

107. ——— Second appeal—*Code of Civil Procedure (Act XIV of 1882), ss. 584, 585—Jurisdiction to hear a second appeal, on what matters—Secondary evidence, Question of.*—Under ss. 584 and 585 of the Code of Civil Procedure, 1882, a second appeal is confined to matters of law, usage having the force of law, or substantial defect in procedure. On an appeal to the Judicial Commissioner from a decree given on first appeal by an Appellate Court, and maintaining a finding of fact by the original Court, the only questions were (1) whether secondary evidence had been properly admitted on a case that had arisen for its admission; and (2) whether the evidence offered constituted secondary evidence of the matter in dispute, which was the making of a document. *Held* that (no special leave to appeal from the judgment of the Commissioner, the first Appellate Court, having been applied for) the facts were not open to decision on this appeal; this Committee could only do what the Judicial Commissioner on second appeal, under the above sections, could have done; and that, as the case stood, they were bound by the findings of facts of the first Appellate Court. LUCHMAN SINGH *v.* PUNA

[I. L. R., 16 Calc., 753
L. R., 16 I. A., 125

108. ——— Question in issue—*Parties—Admission—Execution of deed.*—The plaintiff claimed to have inherited estate in the possession of the defendant, who was also related to the last owner, but who set up, independently of other title, a deed of gift from the latter in his favour. It was decided in the Appellate Court that, even if this deed had been executed, it was inoperative, and on this point the decision of the first Court was maintained. An issue having been fixed as to the execution, and the plaint also showing that the execution was disputed, their Lordships declined to treat the execution as not having been in contest. ANAND KUAR *v.* TANSUKH

[I. L. R., 11 All., 396

109. ——— Failure to produce evidence at hearing—*Omission of Judge to call for record.*—At the hearing of a suit a party, though he had sufficient warning of what was necessary, did not take the proper steps to cause the production of the documentary and only admissible evidence of a material fact which had to be proved by him, and the decision was against him. The record of another proceeding would, it was said, have supplied this evidence; and an application had been previously made on which the order of the Judge was that "the matter would be decided when the case was tried, and the record would be sent for, if necessary." No further application to the Court was made, and no attempt to supply this evidence. *Held* that, if there had been, as there might have been, an oversight by the party in not calling the attention of the Judge to the above order, and in not tendering the evidence, there had been no omission on the Judge's part affording ground for appeal, and the Judicial Committee refused to interfere. CHANDICHURN SHASHMAL *v.* DURGA CHURN MIRDUA

[I. L. R., 9 Calc., 260: 12 C. L. R., 81

110. ——— Questions of boundary—*Miscarriage in conduct of decision.*—The Privy Council will never interfere with the finding of an Indian Court on a question of boundary, unless they are clearly satisfied that there has been some plain miscarriage in the conduct or decision of the case

PRIVY COUNCIL, PRACTICE OF —*continued*

19 QUESTIONS OF FACT—*concluded.*

upon which they can put their hands and make the grounds for an order reversing or varying the decree. RAMGOPAL ROY *v* GORDON, STUART & Co [14 Moore's I. A., 453: 17 W. R., 285

111. ———— *Reversal on evidence* —In a question relating to boundaries of land, the Judicial Committee on a review of the evidence reversed the concurrent decrees of the Court of first instance and the Sudder Court, but without costs RAM CHUNDER DUTT *v* CHUNDER COOMAR MUNDUL . . . 13 Moore's I. A., 181

20 CONCURRENT JUDGMENTS ON FACTS

112. ———— Presumption as to correct

decisions of the Courts below are or are not correct on matters of fact JAIMUNGAL KOERI *v* MOKHUN KORI . . . . 10 C L. R., 611

113. ———— The Privy Council, in cases depending upon facts which have received the concurring judgments of two Courts in India,

KHORSHEDJEE MANIKJEE *v*. MEHERWANJEE KHOORSHEDJEE [5 W. R., P. C, 57: 1 Moore's I. A., 431

VENCATA NILADRY ROW *v* ENOOGOONTY SOORIAH [5 W. R., P. C, 79

CHELLAYAMAL *v* MUTTIALAMAL [15 W. R., P. C, 1

RAMRUDEEGOWDA *v* DESSAI SAHEB [17 W. R., P. C, 8

JOY NARAIN GIRI *v*. SHEEB PROSHAD GIRI [19 W. R., P. C, 275

PORESH NARAIN ROY *v* WATSON & Co. [23 W. R., P. C, 451

114. ———— This case did not come strictly within the above rule, but the Privy Council observed that whereas in this case the ques-

115. ———— The Lords of the Privy Council do not, as a rule disturb the concurrent decision of both the Courts below upon a question of fact unless it very clearly appears there has been some miscarriage of justice, some mistrial, or that

PRIVY COUNCIL, PRACTICE OF —*continued*

20. CONCURRENT JUDGMENTS ON FACTS —*continued*

the conclusion is very plainly erroneous GOSAIN TOTA RAM *v* RUKINIBALLAB [3 B L. R., P. C., 34
12 W. R., P. C, 32: 13 Moore's I. A., 77

LALA SHAM SOONDUR LAL *v* SOORAJ LAL [26 W. R., P C, 48

DEVAJI GAYAJI *v*. GODABHAI GODBHAI [2 B. L. R., 85: 11 W. R., P. C, 35

116. ———— Where the Court

miscarriage in respect of the principle on which the decision rested, of a presumption to which too much weight was given, or of something as to which the Judicial Committee could see there was a principle involved which ought to be set right for the guidance of the Court in other cases GABINDSUNDUARI DEBI *v* JAGADAMBA DEBI [6 B L. R., 168: 15 W R., P. C., 5

117. ———— Provided that there has been no contravention of law or procedure, or of any principle of justice, the rule is observed by the
Cou
fere
Original Courts upon matters of fact unless very definite and explicit reasons are assigned for it Such concurrent judgments are, however, open to argument before the Committee as in this case MOUNG THA HNYEEN *v* MOUNG PAN NYO [I. L R., 28 Calc, 1
L. R., 27 I. A, 166
4 C. W. N., 808

118 ———— *Weight of evidence, Question as to* —Where both the lower Courts

[6 B. L. R., 648: 15 W. R., P. C, 23

119 ———— *Omission of reasons for affirmance of judgment on facts* —

MAZAFFAR [7 B L. R., 630: 15 W. R., P. C, 50
14 Moore's I. A., 53

120 ———— *Question of boundary* —Where there are concurrent decisions on a question of fact the Judicial Committee will not (specially on a question of fact as to boundaries)

PRIVY COUNCIL, PRACTICE OF —*continued.*

20. CONCURRENT JUDGMENTS ON FACTS —*continued.*

ordinary principles which regulate judicial proceedings. GANESWAR SING *v.* DURGA DUTT [7 B. L. R., 651

S. C. GUNESHUR SINGH *v.* DOORGA DUTT [15 W. R., P. C., 37

121. ——— *Balance of testimony.*—Where the decision of the first Court upon a question of fact has been affirmed on appeal, their Lordships will not reverse such finding on a mere balance of testimony: there must be so strong a preponderance of testimony that they can confidently pronounce it to be wrong. SARAT SUNDARI DEBI *v.* PARESNARAIN ROY [8 B.L. R., 113: 16 W. R., P. C., 9

122. ——— Question as to compromise —*Failure to show fraud or collusion.*—The Judicial Committee, reversing the finding of the Courts below, refused to set aside a compromise (confirmed by a decree of Court) by the former guardian of the plaintiff of a claim against his estate for debt after sixteen years, the plaintiff having failed to prove that the suit was fictitious, and the compromise fraudulent and collusive. LEKRAJ ROY *v.* MAHTABCHUND [10 B. L. R., 35: 17 W. R., P. C., 117 14 Moore's I. A., 393

123. ——— Question as to amount of dower—*Refusal to ascertain amount.*—The Courts below, without ascertaining the amount of the widow's dower, decreed possession of the estates to the heirs. Such decree was reversed on appeal, and the amount of dower was ascertained. BACHUN *v.* HAMID HOSSEIN 10 B. L. R., 45: 17 W. R., P. C., 113 [14 Moore's I. A., 377

124. ——— Question of dissolution of marriage.—A decree of a High Court, confirming the decree of a District Judge for dissolution of marriage, reversed so far as it affected the co-respondent and condemned him in costs. The circumstances of the case took it out of the general rule not to reverse the concurrent findings of two Courts on a question of fact. HAY *v.* GORDON [10 B. L. R., 301: 18 W. R., P. C., 480 L. R., I. A., Sup. Vol., 106

125. ——— Mixed question of law and fact.—The rule of the Judicial Committee of the Privy Council not to permit the concurrent judgments of two Courts on a question of fact to be disputed may be relaxed in a case where the question of fact is closely mixed up with questions of law. VALOO CHETTY *v.* SOORAYAH CHETTY [I. L. R., 1 Mad., 252: L. R., 4 I. A., 109

126. ——— Question as to property belonging to endowment—*Admissibility of evidence—Sthanam lands.*—A raja having made a perpetual lease of sthanam lands appertaining to the raj, one of his successors sought to set it aside on the ground that the property was devaswam, or the endowment of temples. That it was devaswam was denied; and after questions of the admissibility of evidence, the construction of documents, and the effect to be given to judgments had arisen, the fact was found in the affirmative by two Courts concurrently. Upon an examination of the evidence by the Judicial Committee it was, however, found that the plaintiff had not proved his case. VENKATESWARA IYAN *v.* SHEKHARI VARMA [I. L. R., 3 Mad., 384: L. R., 8 I. A., 143

127. ——— Question as to disputed adoption—*Reversal of concurrent Courts on fact.*—In a suit which involved a disputed question of fact as to an alleged adoption and the due execution of a will, the Courts in India, disregarding other evidence, relied solely upon the evidence of a witness examined at the instance of the first Court itself. The effect of the evidence of this witness was to show that, at the time of the adoption and execution of the will, the alleged testator was in a dying state, and although at times roused to consciousness, was, from his enfeebled mind, incapable of understanding the acts he was represented to have performed; the Courts below, however, on the evidence of this witness as to his testamentary capacity, corroborated, as they thought, by a letter of the widow of the alleged testator recognizing the adoption, and by her acquiescing in the performance of certain funeral rights of her deceased husband by the supposed adopted son, pronounced both the adoption and the will to be valid. Upon appeal, held that, although, as a general rule in a question of fact, the Judicial Committee were unwilling to disturb the judgment of the Court below, yet that, as it was the duty of the Appellate Court to weigh the evidence and probabilities, and form an independent judgment, and taking into consideration the evidence regarding the state and capacity of the alleged adopter and testator, they were of opinion that the evidence relied upon was so unsatisfactory that neither of the decrees of the Courts below could be supported, and reversed the same with costs. TAYAMMAUL *v.* SASHACHALLA NAIKER [10 Moore's I. A., 429

128. ——— Question as to authority of agent—*Document signed by agent—Objection not raised below.*—Where the sole question raised in both Courts in India was whether or not certain documents purporting to be an allowance of plaintiff's accounts by the defendant's agent were signed by the agent, as to which fact both Courts below were concurrent, the Privy Council declined to relax their rule as to concurrent judgments on facts, and to allow the defendant to raise before them the question as to the authority of the agent to bind his principal. BABOO LALL *v.* LUTTOO RAM [18 W. R., P. C., 233

129. ——— Concurrent judgments as to failure to prove title.—Where in a suit for confirmation of possession the Indian Courts agree in holding that the plaintiff has not made out his title, the Judicial Committee will not, even though the High Court may not have attended to the

PRIVY COUNCIL, PRACTICE OF
— continued

20 CONCURRENT JUDGMENTS ON FACTS
—continued

deposition of material witnesses, disturb the decision of the Court below IORAB ALLY *v* MAHOMED TURKEE [19 W. R, P C, 1

130 ———— Question as to evidence of ... n alleged ... gle heir ... with the ... Court of first instance, found that this custom had not been proved to prevail in the family On an appeal contesting this finding, it was argued, among other objections, that the High Court had not given sufficient effect to an entry in the wajib ul urz of a zamindari village, the principal one comprised in the family estate now in dispute, the last owner of that estate, who held all the shares in the village having caused an entry to be made to the effect that his eldest son should be his sole heir, the others of the family being maintained The appeal was not taken out of the rule as to the concurrent findings of two Courts, primary and appellate, on a question of fact MUHAMMAD ISMAIL KHAN *v* FIDAYAT UN NISSA [I L R, 8 All, 516

131 ———— *Wajib ul urz —Concurrent findings of Courts below* —A custom of inheritance was alleged to prevail in an Oudh clan that, if the branch of a family became extinct the other branches of it should take the estate ...

urz If there had been any principle of evidence not properly applied or documentary evidence had been referred to, on which it could be shown that the Courts below had been led into error, the case might have been re examined on this appeal, but in the absence of such ground this could not be done THAKUR HARIHAR BAKSH *v* THAKUR UMAN PARSHAD . I L. R, 14 Calc, 296 [L. R., 14 I. A., 7

132. ———— Agreement for division of family property in equal shares —Two Courts in concurrence found that there had been an agreement between two parties interested in a family fund, that it should be divided into equal four parts among ...

SHIDEVI . . . I. L. R, 13 Mad., 512

PRIVY COUNCIL, PRACTICE OF
—continued

20 CONCURRENT JUDGMENTS ON FACTS
—continued

133. ———— Findings of fact—*Concurrent findings by two Courts* —The usual course of not disturbing concurrent findings of fact may be followed notwithstanding that a part of the evidence in the suit has not been considered by the lower Court when both Courts have arrived at the same result ...

[I. L. R., 17 Calc, 882
L. R, 17 I A, 70

134 ———— Necessity of there being gift and acceptance of the adopted child — *Hindu Law—Adoption* —The Court of first instance and the Appellate Court, after observing fully upon the evidence, found that, although a ceremony of adoption had taken place, there had not in fact been a giving and taking of the child. There being no reason for departing from the ordinary course where two Courts have concurred the above finding was accepted, and it was thereupon held that there had been no adoption BIRESWAR MUKERJI *v* ARDHA CHANDER ROY SHIB CHANDER ROY *v* GOBIND MOHINI
[I. L R, 19 Calc., 452
[L R, 19 I A, 101

135 ———— Practice of abiding by concurrent decisions on fact followed ASGHAR REZA *v* MEHDI HOSSEIN I L R, 20 Calc, 560
L R., 20 I A, 38

136 ———— Inferences of fact—*Concurrent findings by two Courts below, not influenced by precisely the same considerations upon the same* ...

[L. R., 20 I. A., 95

137 ———— Findings of fact on documentary evidence apart from construction.—Against a claim for the proprietary right by inheritance brought by the nearest bandhu or cognate heir of the deceased, the defendant in possession set up his adoption by the widow under her husband's authority The Courts below had found that no such authority had been given, and that the widow, not adopting to her husband had adopted the defendant as her son The Courts below had also concurred in finding against the fact of a dattaka adoption having taken place, which would have had the effect of removing one of the plaintiff's ancestors into another family, whereby a necessary link in the succession would have been lost to the plaintiff's title had this

PRIVY COUNCIL, PRACTICE OF —*continued.*

20. CONCURRENT JUDGMENTS ON FACTS —*concluded.*

adoption been proved. As a ground for interference with these findings of fact, it was suggested that the evidence consisted, in a great measure, of documents of which the construction had been matter for decision, thus rendering the questions to be other than of fact, but it was held that they turned on the effect of the evidence afforded by the documents, and not on the construction, so that there was no reason for departing from the ordinary rule as to the concurrence of two Courts upon fact. LACHMAN LAL CHOWDHRI *v.* KANHAYA LAL MOWAR . I. L. R., 22 Calc., 609 [L. R., 22 I. A., 51

138. ——— **Effect of reception in evidence on appeal of documents rejected by first Court.**—The merits of a claim depended upon the authenticity of an anumati-patro (deed of permission to adopt) alleged to have been given to a widow by her husband. The first Court found that the instrument was not genuine. The High Court, on appeal, upheld this finding, but had considered relevant, and admitted in evidence, documents rejected by the first Court when tendered by the appellants. This reception of evidence afforded no reason for making the case an exception to the application of the rule, in the discretion of the Committee, against the disturbance of concurrent decisions upon a fact in issue below. HURRI BHUSAN MUKERJI *v.* UPENDRA LAL MUKERJI [I. L. R., 24 Calc., 1 L. R., 23 I. A., 97

139. ——— **Want of legal necessity**—*Hindu Law—Alienation by one of two co-widows.*—Two widows of the same husband, each having inherited her undivided share in the inheritance, disputed as to their rights therein. They then settled their dispute by a compromise, in which it was agreed that each had obtained absolute proprietary right in her share as a co-widow, and that division had been made between them. Having no power by this to affect the rights of the successor to the estate on their deaths, each was entitled to her share for her widow's estate only. Upon a mortgage made by the elder widow before her death, the mortgagee now claimed not only the interests of both the widows and thus to deprive the younger who had survived the other of her interests during her life, but also claimed a charge on the estate of inheritance in the land mortgaged. Against the competency of the elder widow to charge the estate of both and to bind the reversioner, both Courts below had decided. They had found that there had been no justifying necessity established by the evidence for the mortgage. These concurrent findings having been accepted by the Judicial Committee as correct in regard to the absence of necessity for the mortgage, they saw no occasion to say anything about any other questions as to the competency of the elder widow to mortgage the whole estate in the way in which she did. DHARAM CHAND LAL *v.* BHAWANI MISRAIN . . . I. L. R., 25 Calc., 189 [L. R., 24 I. A., 183 1 C. W. N., 697

PRIVY COUNCIL, PRACTICE OF —*continued.*

21. RE-HEARING.

140. ——— **Grounds for re-hearing.**—An order passed by the Judicial Committee of the Privy Council after hearing an appeal is final; and an application for a re-hearing will not be granted except upon the ground that the applicant has, by some accident, without blame or default on his own part, not been heard, and the order has inadvertently been made as if he had been heard. IN THE MATTER OF THE APPEAL OF PERTAB NARAIN SINGH *v.* SUBHAO KOOER [I. L. R., 4 Calc., 184: L. R., 5 I. A., 171

141. ——— *Irregularity in trial.*—An irregularity in a trial is no ground of complaint to the party at whose instance it was caused. The suspicion that a party who has failed to prove his case may prove more successful on a second and fuller investigation is no sufficient ground for directing a new trial. NITRASUR SINGH *v.* NUND LALL SINGH [1 W. R., P. C., 51: 8 Moore's I. A., 199

142. ——— *Laches of petitioner.*—There were four respondents in an appeal to the Privy Council. At the hearing, the appeal was allowed *ex-parte* against all the respondents. One respondent afterwards petitioned for a re-hearing, on the ground that neither he nor his agents had notice that the appeal had been entered or fixed for hearing until after it had been decided. On inquiry, it appeared that the petitioner had inaccurately described the suit to his agents as an appeal against himself only, without mentioning the names of the other respondents; and the agents, on being told at the Privy Council office that no appeal so entitled was pending, had taken no further steps. *Held* that there had been omission and neglect on the petitioner's part and on the part of his agents such as to prevent the Judicial Committee from recommending a re-hearing of the case. SWARNAMAYI *v.* SHASHI MUKHI BARMANI [2 B. L. R., P. C., 10: 11 W. R., P. C., 5 12 Moore's I. A., 244

143. ——— *Party accidentally prevented from being heard.*—In a petition for re-hearing of two appeals which had been fully heard upon their merits, and in which judgment had been given and reported to Her Majesty, and confirmed by regular orders in Council,—*Held* that, assuming a relevant case of new matter had been made out, the decision was final, and the petition must be refused. There may be exceptional circumstances which will warrant this Board, even after an order of Her Majesty in Council has been made, in allowing a re-hearing at the instance of one of the parties; but this is an indulgence with a view mainly to doing justice when by some accident, without blame, the party has not been heard, and an order has been made inadvertently as if the party had been heard. *Rajunder Narain Rae* v. *Bijai Govind Sing, 2 Moore's I. A., 181,* referred to. VENKATA NARASIMHA APPA ROW *v.* COURT OF WARDS.

PRIVY COUNCIL, PRACTICE OF *—continued*

21 RE-HEARING—*concluded.*

VENKATA RAMALAKSHMI GARU *v.* GOPALA APPA ROW. EX-PARTE GOPALA APPA ROW
[L. R , 13 I. A., 155 : I. L R., 10 Mad , 73

144. ——— *Alleged want of notice to respondent—Appeal heard ex-parte*—There is no rule, among those made by the High Court under the authority of law, that the respondent in an appeal to the Queen in Council shall

place *ex-parte* was not considered sufficient to entitle them to a re hearing thereof LALTA PRASAD *v* AZIZ UD-DIN . . I. L. R., 19 All , 209
[L. R., 24 I. A , 49

145. ——— *Infancy of party at the time of the hearing of appeal—"Res noviter"*—There may be exceptional circumstances which will warrant the Judicial Committee in allowing even after an order of Her Majesty in Council has issued upon their report, a re hearing at the instance of one of the parties But this is an indulgence with a view mainly to doing justice when by some accident, without any blame, the party has not been heard, and an order has been made, inadvertently as if he had been heard In one of two appeals in suits relating to the same estate, judgment was given by the Judicial Committee after a hearing on the merits In the other judgment was given to the same effect as in the first, it being conceded between the parties that the questions in both suits were the same After both judgments had been

LAKSHMI GARU *v.* GOLAPPA APPA ROW
[I. L. R., 10 Mad , 73
L. R., 13 I. A., 155

146 ——— *"Res noviter."*—The judgment of the Judicial Committee reported to, and confirmed by, Her Majesty in Council cannot be re opened only for the reason that new evidence is forthcoming. *In re Appa Rao, I. L. R , 10 Mad , 73*, referred to. YARLAGADDU DURGA *v.* MALLIKARJUNA . . . I. L. R., 14 Mad., 439

22 LEAVE TO BRING FRESH SUIT.

147. ———**Suit brought under misapprehension of law.**—The parties having acted under a misapprehension of the law, leave was given to bring a new suit within three years GOOROO SWAMY PERRIA WOODIA TAVER *v* ANGA MOOTOO NATCHAIR
[6 W. R., P. C , 50 : 3 Moore's I. A., 278

PRIVY COUNCIL, PRACTICE OF *—continued*

23. ENFORCING EXECUTION OF ORDER.

148. ——— **Application to enforce execution of order**—*Order for possession—Issue of peremptory order of enforcement*—Where the Court in India, having decided a suit for land in favour of *A*, put him into possession of the estate without taking security as required by Madras Regulation VIII of 1818, s 4, and on appeal by *B* the decision was reversed and *B* ordered to be put in possession, and in the meantime the Madras

Judicial Committee, on the application of *B*, issued a peremptory order to the Madras Court to carry it into execution and put *B* into possession IN RE VASSAREDDY LUTCHMEPUTTY NAIDOO
[5 Moore's I. A., 300

24 COSTS

149. ——— **Discretion as to costs**—*Appeal—Bom. Reg II of 1800, s 7*—When a discretion is vested in a Court as to costs, the Privy Council will not allow any appeal against the exercise of that discretion, because no appeal lies against a mere decree as to costs But when a Court has no discretion to exercise in the matter (as when a suit was instituted by parties who had no right to

LUCHMUN DAS NARAIN DAS
[5 W. R , P. C , 59 : 1 Moore's I. A , 470

150. ——— **Improper admission of evidence**—*Penalty on parties to appeal.*—The Privy Council, whilst lamenting the great latitude with which documentary evidence was received in India, held that it would be contrary to justice in

LALL *v.* HETNARAIN SINGH
[4 W. R , P. C , 128 : 7 Moore's I. A , 148

151. ——— **Respondent's right to uphold judgment** *Reversal of decision*—Appeal

below, and reversed the judgment, but awarded to

DAS BOOLAKI DAS
[5 W. R., P. C., 33 : 1 Moore's I. A , 351

152. ——— **Respondents in same interest.**—Where respondents were in the same

PRIVY COUNCIL, PRACTICE OF —*continued.*

24. COSTS—*continued.*

interest, but severed in their defences, only one set of costs was allowed, and that to the respondent who first entered appearance. WOOMATARA DEBIA *v.* UNNOPOORNA DEBIA . 11 B. L. R., P. C., 158 [18 W. R., 163

153. ——— Delay in suing—*Disallowance of costs.*—Case in which the Privy Council affirmed the decision of the Sudder Court; but as there had been delay in suing, and as the case was attended with a considerable degree of suspicion, refused to the respondent before it all costs, and decreed further that the cost of the appeal to the Sudder Court should be disallowed. ULRUK SINGH *v.* BENY PERSAD . . . 5 W. R., P. C., 77

154. ——— Delay in appealing by which costs were incurred—*Set-off of costs.*—Where, in a suit to have accounts re opened, the Court at Calcutta found that the accounts ought to be opened, and referred the suit to the master, and the defendant did not appeal at once from this interlocutory order, but proceeded in the master's office in respect of the matters included in the accounts, but before the general report was made by the master he appealed to England from such interlocutory decree,—the Judicial Committee, in reversing the decree, ordered him to pay the costs of the proceedings in the master's office and remitted the cause to the Court below, with directions that the costs payable to the defendant on the dismissal of the bill, and the costs payable by him consequent on his proceedings in the master's office, should be set off one against the other, and the balance paid to the party entitled to the same. MCKELLAR *v.* WALLACE . . . 5 Moore's I. A., 372

155. ——— Slight modification of decree—*Alteration in rate of interest.*—Where, in lieu of interest at 5 per cent. on a loan made to a guardian of a minor in a transaction which was set aside, the Privy Council made an order for 6 per cent. interest,—*Held* not to be such a modification of the decree of the Court below as was sufficient to deprive the respondent of the costs of appeal. LALLA BUNSEEDHUR *v.* BINDESEREE DUTT SINGH [10 Moore's I. A., 454

156. ——— Leave to appeal granted on condition that appellant paid respondents' costs if directed to do so—*Costs given at hearing against respondents.*—Special leave to appeal had been granted on terms that the appellant should be liable to pay the respondents' costs in any event, if directed so to do. Costs were, however, directed to be paid by the respondents. BENI RAM *v.* KUNDAN LAL . . . . I. L. R., 21 All., 496 [L. R., 26. I. A., 58 3 C. W. N., 502

157. ——— Evidence—*Costs—Co-sharers.*—One of two co-sharers by ancestral title in the under-proprietary right in certain villages obtained in 1870 decrees against the talukhdar for sub-settlement, and getting possession had his name entered in the khewat. The other co sharer remained entitled to claim that this possession was held partly for him. The present suit was brought upon two agreements, purporting to have been made in 1870. between the two co sharers, while proceedings to obtain the above decrees were pending, to the effect that, whereas both had claims against the talukhdar, one only was to sue him, the other paying half of the costs and being entitled to receive half of what might be decreed. The Judicial Committee upon the evidence concluded that the Appellate Court, attributing too much to certain omissions and acts on the plaintiff's part which were more or less explained, had erred in reversing the decree of the first Court. which maintained the agreements, depriving the plaintiff of his costs in that Court only. MUHAMMAD YUSUF *v.* MUHAMMAD HUSAIN [I. L. R., 16 Calc., 62

158. ——— Appeal dismissed on grounds different from the reasons given by lower Court—*Dismissal without costs.*—Where an appeal was dismissed on wholly different grounds than those which the lower Court had given for its decision, it was dismissed without costs. FISCHER *v.* KAMALA NAICKER [3 W. R., P. C., 33 : 8 Moore's I. A., 170

159. ——— Misstatement in petition.—Where special leave to appeal to the Privy Council is granted upon a petition in which material misstatements are made, objection should be taken by the respondent by preliminary motion to rescind the leave to appeal, or at any rate before the hearing of the appeal, when called on, has been entered on. Where it was not clear that the material misstatements in the petition had been made with an intention to deceive, and the objection to the appeal was only taken at a late stage of the hearing, the Judicial Committee declined to dismiss the appeal, but refused the appellant the costs of the appeal. RAM SABUK BOSE *v.* KAMINEE KOOMAREE DOSSEE [14 B. L. R., 394

S. C. RAM SABUK BOSE *v.* MONMOHINI DOSSEE [L. R., 2 I. A., 71 : 23 W. R., 113

160. ——— *Petition for special leave to appeal.*—An Order in Council granting leave to appeal is liable at any time to be rescinded with costs, on its appearing that the petition upon which the order has been granted contains any misstatement or any concealment of facts which ought to have been disclosed. Even if there has been no intention to mislead, a material misstatement having been made, the order is still liable to be rescinded; and to maintain it to clear the case of bad faith is not sufficient. *Mohan Lall Sukul* v. *Bebee Dass, 8 Moore's I. A., 193,* referred to and followed. Of three grounds on which special leave to appeal had been obtained, two had been correctly stated, but with the third was connected an error in the petition to which objection was taken at the hearing. On its appearing that there had been no intention to mislead, the appeal was heard and allowed; but, in regard to the above, without costs. *Ram Sabuk*

PRIVY COUNCIL, PRACTICE OF —continued

24 COSTS—continued

Bose v. Monmohini Dossee, L R 2 I A, 71, referred to MUSSOORIE BANK v. RAYNOR
[I. L R, 4 All, 500: L. R., 9 I. A, 70

161 ———— Appeal brought contrary to agreement not to appeal —A fixed sum *nomine expensarum* was given to each respondent in lieu of costs, where an appeal was preferred contrary to an agreement not to appeal and the proceedings had been stayed AMIR ALI v. INDURJIT KOER
[9 B L R, 460
14 Moore's I A, 203

162 ———— Suit for damages valued unnecessarily high—*Decree for smaller amount* —There being no grounds for a claim for damages amounting to the appealable sum of R10 0 0 and the amount actually recovered falling far short of that sum, the Court directed the costs below to be apportioned according to the ordinary course in the se Courts and gave neither party costs of the appeal MUDHUN MOHUN DOSS v. GOKUL DOSS
[10 Moore's I A, 563 · 5 W. R., P C, 91

163 ———— Charges by respondent of [illegible]

in India and upon appeal to England were, upon the *reversal of the decree of the Sudder Court, ordered to* be paid by the respondents NANA NARAIN RAO v. HUREE PUNTH BHAO 9 Moore's I A, 98

164 ———— Costs of respondents—*Printed cases—Ex parte hearing* —The respondents in four appeals which were consolidated and heard as one filed their printed case, and did not [illegible]

165 ———— Taxation of costs—*Costs of appeal from India—Unnecessary expenses* —In taxing the costs of an appeal from India, the Privy Council will disallow all such costs and expenses as may have been unnecessarily occasioned by the inclusion, in the transcript sent from India of matters which have been improperly introduced therein TARAKANT BANNERJEE v. PUDDOMONEY DOSSEE
[5 W. R, P C., 63 · 10 Moore's I A, 476

166 ———— *Irrelevant* [illegible]

PRIVY COUNCIL, PRACTICE OF —continued.

24. COSTS—concluded

S C RAJA OF PITTAPUR v. ROW BUCHI SITTAYA GARU L R, 12 I A, 16

BISHENMUN SINGH v. LAND MORTGAGE BANK OF INDIA
[I L R., 11 Calc, 244 L R., 12 I A, 7

25 CRIMINAL CASES

167. ———— Felony —*Semble*—No appeal lies in cases of felony to the Queen in Council, from any of the dominions of the Crown of Great Britain which are governed by the law of England QUEEN v. EDULJEE BYRAMJEE
[3 Moore's I A, 468

168 ———— Irregularity in trial causing injustice—*Prerogative of Crown* —There is no right of appeal to the Privy Council in criminal cases In a petition for leave to appeal against a conviction and sentence of the Sudder [illegible]

that this was *primâ facie* a cause of great grievance yet the consequences of allowing appeals in criminal cases would be such as to justify their Lordships in [illegible] of her discre- [illegible] the petition

[illegible] O S, 61
1 W R, P. C, 13 · 9 Moore's I. A, 168

169 ———— Refusal of leave to appeal —*General rule as to refusal of leave to appeal in criminal cases—Misdirection of a jury not of itself a ground* —Although in very special and exceptional circumstances leave to appeal to Her Majesty in Council may be granted in a criminal case no countenance was given to the view that an appeal would be allowed merely on the ground that the Judge trying the case had misdirected the jury There was no reason to believe that there had been any misdirection by the Judge, or that he had, as he was alleged by the petitioner to have done, misconstrued, in charging the jury, a section of the Penal Code Not only on the latter ground, but on the broader ground above stated, the petition was rejected IN THE MATTER OF MACCREA I L. R., 15 All., 310
[L. R., 20 I. A., 90

170 ———— *Refusal of leave to appeal from a conviction and sentence—Alleged misdirection to a jury—Penal Code (Act XLV of* [illegible]

from convictions in criminal cases the petitioners

PRIVY COUNCIL, PRACTICE OF —*concluded.*

25. CRIMINAL CASES—*concluded.*

case was not one in which leave should be granted. BAL GANGADHAR TILAK *v.* QUEEN-EMPRESS
[I. L. R., 22 Bom., 528
L. R., 25 I. A., 1

PROBATE.

See CASES UNDER APPEAL—PROBATE.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE—DECREE WITHOUT CERTIFICATE.
[I. L. R., 4 Calc., 645

See CIVIL PROCEDURE CODE, 1877, s. 50.
[I. L. R., 6 Bom., 73

See CASES UNDER COSTS—SPECIAL CASES—PROBATE.

See CASES UNDER COURT FEES ACT, SCH. I, CL. 11.

See EXECUTOR I. L. R., 20 Bom., 227
I. L. R., 21 Bom., 400
I. L. R., 27 Calc., 683

See LETTERS OF ADMINISTRATION.
[11 W. R., 413
1 Hyde, 67
I. L. R., 16 Mad., 71
I. L. R., 19 Bom., 123

See WILL—ATTESTATION . 3 N. W., 32
[I. L. R., 1 Calc., 150
13 B. L. R., 392

See WILL—FORM OF WILL.
[2 B. L. R., A. C., 79 : 10 W. R., 417
2 Ind. Jur., N. S., 6

——— Application for—

See DOMICILE . I. L. R., 4 Calc., 106

See JURISDICTION—TESTAMENTARY AND INTESTATE JURISDICTION 1 Mad., 59
[8 W. R., 3
I. L. R., 20 Bom., 233
I. L. R., 21 Bom., 335

PROBATE—*continued.*

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 19 Calc., 48
I. L. R., 17 Mad., 379

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION.

See WILL—FORM OF WILL.
[I. L. R., 4 Calc., 721
I. L. R., 24 Calc., 784

——— Second grant of—

See COURT FEES ACT, SCH. I, CL. 11.
[I. L. R., 3 Calc., 733

1. POWER OF HIGH COURT TO GRANT, AND FORM OF.

1. ——— **Power of High Court**—*Testator having no assets within jurisdiction—British European-born subject.*—The High Court granted probate of a will of a British European-born subject who had no assets within the local limit of the ordinary civil jurisdiction of the Court. IN THE GOODS OF REED . . . 1 Ind. Jur., N. S., 20

2. ——— *Testator dying out of jurisdiction with effects within it—Act XXVII of 1860.*—Where a Hindu testator died out of the jurisdiction of the Court, but left effects within it, it was competent to the Court to grant probate, there having been no certificate applied for in the Zillah Court under Act XXVII of 1860. IN THE GOODS OF TARACHAND COONDOO CHOWDHRY
[1 Ind. Jur., N. S., 10 : Bourke, Test., 3

3. ——— *Act XIII of 1875—Rule 4 of Rules of High Court, 22nd June 1875*—Act XIII of 1875 does not empower the High Court to grant probate limited to property in any province or presidency, in cases where an unlimited grant had been made extending only to property in another province or presidency before the passing of the Act. *Per* MACPHERSON, J.—Rule 4 of the Rules of 22nd June 1875, as to grants of probate, only applies to grants of the class mentioned in rule 1, *i.e.*, only to cases in which the application for probate is made after 1st April 1875, and not to cases in which the application was made before that date. IN THE GOODS OF SHAMACHURN MULLICK. IN THE MATTER OF THE PETITION OF RAJRANEE DOSSEE
[I. L. R., 1 Calc., 52 : 24 W. R., 206

4. ——— *Form of probate—Limited probate—Succession Act (X of 1865), ss. 179, 226.*—Probate limited to part of the estate cannot be granted in cases where, under s. 179 of the Succession Act (X of 1865), the whole estate is vested in the executor. IN RE THAKER MADHAVJI
[I. L. R., 6 Bom., 460

5. ——— *Form of probate—Probate in cases not governed by the Succession Act—Probate to take effect throughout India—Limited probate—Probate duty—Cutchi Memon Mahomedan—Succession Act (X of 1865), s. 331—Hindu Wills Act, s. 2—Act XXVII of 1860, s. 18.*—In cases not governed by the Indian Succession Act (X of 1865), probates and letters of administration

PROBATE—*continued*

1 POWER OF HIGH COURT TO GRANT, AND FORM OF—*concluded*

granted by the High Court of Bombay in respect of Hindus Mahomedans and other persons not usually designated as British subjects take effect only and

probate duty is only payable on the amount of such debts Cutchi Memons are not Hindus within the meaning of s 2 of the Hindu Wills Act (XXI of 1870) and therefore probate to take effect throughout India cannot be granted in the case of a will of a Cutchi Memon testator Cutchi Memons are Mahomedans to whom Mahomedan law is to be applied except when an ancient and invariable special custom to the contrary is established IN RE ISMAIL [I. L R., 6 Bom, 452

See AHMEDBHOY HUBIBHOY *v* VULLEEBHOY CASSUMBHOY I L R, 6 Bom, 703

2 JURISDICTION IN PROBATE CASES.

6 ——— Facts giving jurisdiction—*Succession Act s 244—Property in possession of*

of the Judge should have been in the possession of the testator at the time of his death RUN BAHADUR SINGH *v* RAJ RUP KOOER [4 C L R, 498

7 ——— Will made before Hindu Wills Act—*Hindu Wills Act (XXI of 1870) s 2—District Judge Power of*—The only powers conferred on mofussil Courts being in respect of wills made on or after the 1st day of September 1870 probate of a will made by a Hindu prior to that date cannot be granted by a mofussil District Court LUCHMAN BHARTI *v* DUKHARAN BHARTI [6 C L R., 138

8. ——— Will of Mahomedan—*District Judge Power of*—A District Court has no jurisdiction to admit the will of a Mahomedan to probate FATIMUNISSA BEGUM *v* HAMZA ALI [6 C L R., 391

9 ——— Will of Hindu woman of immoveable property in mofussil—*District Judge Power of—Execution in Bombay—Property in mofussil—Hindu Wills Act (XXI of 1870) s 2—Probate Act (V of 1881), ss 2 and 83—Code of Civil Procedure (Act XIV of 1882), s 177*—*Held* that the District Judge of Thana had jurisdiction to grant probate of a will executed on 28th October 1881 by a Hindu woman in the town of Bombay devising immoveable property situated in Thana Where the caveator refuses to answer a question s. 177 of the Code of Civil Procedure (Act XIV of 1882) the provisions of which are extended to proceedings before the District Judge by s 83 of Act V of 1881, will not justify the Judge in dispensing

PROBATE—*continued*

2 JURISDICTION IN PROBATE CASES—*continued*

with the proof of the will set up and passing a decree in favour of the petitioner The Court of appeal will reverse such a decree if passed PAVJI RANCHOD NAIK *v* VISHNU RANCHOD NAIK [I L R., 9 Bom, 241

H.
(F
for
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to entertain applications for the grant of probate or letters of administration in respect of wills of Hindus made before the 1st September 1870 that is to say, wills of Hindus to which the Hindu Wills Act (XXI of 1870) did not apply KRISHNA KINKUR ROY *v* RAI MOHUN ROY [I L R., 14 Calc., 37

11. ——— Application for probate where on appeal from District Court the

12 ——— Will executed at Baroda—*Probate and Administration Act (V of 1881), ss 56 and 57—Testator subject of the Baroda State—Disposition of immoveable property in British India—Jurisdiction of Courts in British India*—Under s 56 of the Probate and Administration Act (V of 1881) a District Judge has jurisdiction to grant probate of a will executed out of British India by a person who is not a British subject if the testator had at the time of his death moveable or immoveable property within the jurisdiction of the Judge The discretion vested in a Judge by s 57 of that Act does not extend to a case where there is no Court of concurrent jurisdiction in India to which application for probate can be made The validity of a will which purports to dispose of immoveable property in British India must be tested by the rules applicable to the execution of wills in British India BHAURAO DADAJIRAO *v* LAKSMIBAI [I. L. R., 20 Bom, 607

13 ——— Transfer of a probate case by the District Judge in whose Court it was instituted to that of a Subordinate Judge—*The Bengal North-Western Provinces, and Assam Civil Courts Act (XII of 1887) s 23 sub s 2 cl (d)—Probate and Administration Act (V of 1881) s 52*—An application was made for probate of the will of a deceased testator in the Court of the District Judge who transferred the case to that of the Subordinate Judge The opposite party *inter alia* objected that the Subordinate Judge had no jurisdiction to try the case *Held* that the case came within the scope of s. 23 sub-s 2, cl (*d*) of the Bengal North Western Provinces and Assam Civil Courts Act (XII of 1887) and therefore the

PRIVY COUNCIL, PRACTICE OF —*concluded*.

25. CRIMINAL CASES—*concluded*.

case was not one in which leave should be granted. BAL GANGADHAR TILAK *v.* QUEEN-EMPRESS
[I. L. R., 22 Bom., 528
L. R., 25 I. A., 1

PROBATE.

See CASES UNDER APPEAL—PROBATE.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE—DECREE WITHOUT CERTIFICATE.
[I. L. R., 4 Calc., 645

See CIVIL PROCEDURE CODE, 1877, s. 50.
[I. L. R., 6 Bom., 73

See CASES UNDER COSTS—SPECIAL CASES—PROBATE.

See CASES UNDER COURT FEES ACT, SCH. I, CL. 11.

See EXECUTOR I. L. R., 20 Bom., 227
I. L. R., 21 Bom., 400
I. L. R., 27 Calc., 683

See LETTERS OF ADMINISTRATION.
[11 W. R., 413
1 Hyde, 67
I. L. R., 16 Mad., 71
I. L. R., 19 Bom., 123

See WILL—ATTESTATION . 3 N. W., 32
[I. L. R., 1 Calc., 150
13 B. L. R., 392

See WILL—FORM OF WILL.
[2 B. L. R., A. C., 79: 10 W. R., 417
2 Ind. Jur., N. S., 6

——— Application for—

See DOMICILE . I. L. R., 4 Calc., 106

See JURISDICTION—TESTAMENTARY AND INTESTATE JURISDICTION 1 Mad., 59
[8 W. R., 3
I. L. R., 20 Bom., 233
I. L. R., 21 Bom., 335

PROBATE—*continued*.

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 19 Calc., 48
I. L. R., 17 Mad., 379

See PRACTICE—CIVIL CASES—PROBATE AND LETTERS OF ADMINISTRATION.

See WILL—FORM OF WILL.
[I. L. R., 4 Calc., 721
I. L. R., 24 Calc., 784

——— Second grant of—

See COURT FEES ACT, SCH. I, CL. 11.
[I. L. R., 3 Calc., 733

1. POWER OF HIGH COURT TO GRANT, AND FORM OF.

1. ——— **Power of High Court**—*Testator having no assets within jurisdiction—British European-born subject.*—The High Court granted probate of a will of a British European-born subject who had no assets within the local limit of the ordinary civil jurisdiction of the Court. IN THE GOODS OF REED . . . 1 Ind. Jur., N. S., 20

2. ——— *Testator dying out of jurisdiction with effects within it—Act XXVII of 1860.*—Where a Hindu testator died out of the jurisdiction of the Court, but left effects within it, it was competent to the Court to grant probate, there having been no certificate applied for in the Zillah Court under Act XXVII of 1860. IN THE GOODS OF TARACHAND COONDOO CHOWDHRY
[1 Ind. Jur., N. S., 10: Bourke, Test., 3

3. ——— *Act XIII of 1875—Rule 4 of Rules of High Court, 22nd June 1875*—Act XIII of 1875 does not empower the High Court to grant probate limited to property in any province or presidency, in cases where an unlimited grant had been made extending only to property in another province or presidency before the passing of the Act. *Per* MACPHERSON, J.—Rule 4 of the Rules of 22nd June 1875, as to grants of probate, only applies to grants of the class mentioned in rule 1, *i.e.*, only to cases in which the application for probate is made after 1st April 1875, and not to cases in which the application was made before that date. IN THE GOODS OF SHAMACHURN MULLICK. IN THE MATTER OF THE PETITION OF RAJRANEE DOSSEE
[I. L. R., 1 Calc., 52: 24 W. R., 206

4. ——— *Form of probate—Limited probate—Succession Act (X of 1865), ss. 179, 226.*—Probate limited to part of the estate cannot be granted in cases where, under s. 179 of the Succession Act (X of 1865), the whole estate is vested in the executor. IN RE THAKER MADHAVJI
[I. L. R., 6 Bom., 460

5. ——— *Form of probate—Probate in cases not governed by the Succession Act—Probate to take effect throughout India—Limited probate—Probate duty—Cutchi Memon Mahomedan—Succession Act (X of 1865), s. 331—Hindu Wills Act, s. 2—Act XXVII of 1860, s. 18.*—In cases not governed by the Indian Succession Act (X of 1865), probates and letters of administration

PROBATE—*continued*

1 POWER OF HIGH COURT TO GRANT, AND FORM OF—*concluded*

granted by the High Court of Bombay in respect of Hindus Mahomedans, and other persons not usually designated as British subjects take effect only and can only be granted for the purpose of recovering debts and securing debtors paying the same except so far as is otherwise provided in Act XXVII of 1860, and probate duty is only payable on the amount of such debts. Cutchi Memons are not Hindus within the meaning of s 2 of the Hindu Wills Act (XXI of 1870) and therefore probate to take effect throughout India cannot be granted in the case of a will of a Cutchi Memon testator Cutchi Memons are Mahomedans to whom Mahomedan law is to be applied except when an ancient and invariable special custom to the contrary is established IN RE ISMAIL [I L R, 6 Bom, 452

See AHMEDBHOY HURIBHOY *v* VULLEEBHOY CASSUMBHOY I L R, 6 Bom, 703

2 JURISDICTION IN PROBATE CASES.

6 ——— **Facts giving jurisdiction**—*Succession Act s 244—Property in possession of testator at his death—District Judge, Power of*—

...

of the Judge should have been in the possession of the testator at the time of his death RUN BAHADUR SINGH *v* RAJ RUP KOOER [4 C L R, 498

7 ——— **Will made before Hindu Wills Act**—*Hindu Wills Act (XXI of 1870), s 2—District Judge Power of*—The only powers conferred on mofussil Courts being in respect of wills made on or after the 1st day of September 1870 probate of a will made by a Hindu prior to that date cannot be granted by a mofussil District Court LUCHMAN BHARTI *v* DUKHARAN BHARTI [6 C L R, 138

8 ——— **Will of Mahomedan**—*District Judge Power of*—A District Court has no jurisdiction to admit the will of a Mahomedan to probate FATIMUNISSA BEGUM *v* HAMZA ALI [6 C L R., 391

9 ——— **Will of Hindu woman of immoveable property in mofussil**—*District Judge Power of—Execution in Bombay—Property in mofussil—Hindu Wills Act (XXI of 1870) s 2—Probate Act (V of 1881), ss 2 and 83—Code of Civil Procedure (Act XIV of 1882), s 177*—*Held* that the District Judge of Thana had jurisdiction to grant probate of a will executed on 28th October 1881 by a Hindu woman in the town of Bombay devising immoveable property situated in Thana Where the caveator refuses to answer a question s. 177 of the Code of Civil Procedure (Act XIV of 1882) the provisions of which are extended to proceedings before the District Judge by s 83 of Act V of 1881, will not justify the Judge in dispensing

PROBATE—*continued*

2 JURISDICTION IN PROBATE CASES—*continued*

with the proof of the will set up and passing a decree in favour of the petitioner The Court of appeal will reverse such a decree if passed RAVJI RANCHOD NAIK *v* VISHNU RANCHOD NAIK [I L R., 9 Bom, 241

10 ... Hi... (V...

for letters of administration—Since the passing of Act V of 1881 the District Courts have jurisdiction to entertain applications for the grant of probate or letters of administration in respect of wills of Hindus made before the 1st September 1870 that is to say, wills of Hindus to which the Hindu Wills Act (XXI of 1870) did not apply KRISHNA KINKUR ROY *v* RAI MOHUN ROY [I L R., 14 Calc, 37

11. ——— **Application for probate where on appeal from District Court the High Court finds that the will was proved**—Where on appeal from the District Court it was found by the High Court that a will was proved—*Held* that a subsequent application for probate should be made to the District Court BAYABAI *v* SARASVATIBAI I L R., 17 Bom, 686

12 ——— **Will executed at Baroda**—*Probate and Administration Act (V of 1881), ss 56 and 57—Testator subject of the Baroda State—Disposition of immoveable property in British India—Jurisdiction of Courts in British India*—Un... tion Act (V... to grant pr... India by a p... testator had ... immoveable property within the jurisdiction of the Judge The discretion vested in a Judge by s 57 of that Act does not extend to a case where there is no Court of concurrent jurisdiction in India to which application for probate can be made The validity of a will which purports to dispose of immoveable property in British India must be tested by the rules applicable to the execution of wills in British India BHAURAO DADAJIRAO *v* LAKSHMIBAI [I. L. R., 20 Bom., 607

13 ——— **Transfer of a probate case by the District Judge in whose Court it was instituted to that of a Subordinate Judge**—*The Bengal North Western Provinces, and Assam Civil Courts Act (XII of 1887) s 23 sub s 2 cl (d)—Probate and Administration Act (V of 1881) s 52*—An application was made for probate of the will of a deceased testator in the Court of the District Judge who transferred the case to that of the Subordinate Judge The opposite party *inter alia* objected that the Subordinate Judge had no jurisdiction to try the case *Held* that the case came within the scope of s. 23 sub-s 2, cl (d) of the Bengal North Western Provinces and Assam Civil Courts Act (XII of 1887) and therefore the

PROBATE—*continued.*

2. JURISDICTION IN PROBATE CASES —*concluded.*

Subordinate Judge had jurisdiction to try it. KUNJO BEHARI GOSSAMI *v.* HEM CHUNDER LAHIRI [I. L. R., 25 Calc., 340

3. APPLICATION FOR PROBATE, AND PROCEDURE.

14. ——— Minor—*Special citation—Probate and Administration Act (V of 1881), ss. 50, 83—Service of summons—Code of Civil Procedure (Act XIV of 1882), ss. 443, 647.*—Where executors applied for probate and there was living a minor widow entitled to maintenance and residence under the will,—*Held* that a special citation should issue upon the widow and be served personally on her and on her father with whom she resided. IN THE GOODS OF AMRITA LAL MULLICK . I. L. R., 27 Calc., 350

15. ——— *Service of notice on minor Appointment of guardian ad litem.*—If an application is made for the probate of a will which affects the interest of a minor, the proper course is to serve the minor with a notice and have a proper guardian *ad litem* appointed for him. REBELLS *v.* REBELLS . . . . 2 C. W. N., 100

16. ——— Withdrawal of application before proceeding became contentious—*Right of applicant to propound will in opposition to application for grant of letters of administration—Succession Act, s. 261—Effect of withdrawal of previous application for probate of same will without leave to apply again—Civil Procedure Code, s. 373.*—Where a person applied for probate of a will, but withdrew the application before the proceedings became contentious,—*Held* that he was entitled as caveator to propound the same will in opposition to an application for grant of letters of administration to the estate of the deceased. *Held* further that, though the provisions of the Civil Procedure Code are applicable to suits under Act X of 1865, s. 261, still, in the present case, the application for probate had been withdrawn before the proceedings became contentious, and that therefore s. 373, Civil Procedure Code, was not applicable. PAKIAM PILLAI *v.* INNASI FERNAND . I. L. R., 19 Mad., 458

4. OF WHAT DOCUMENTS GRANTED.

17. ——— Document partly testamentary—*Gift, Deed of.*—If one part of a document is testamentary in its character, it may be presumed that the remainder, if the language is capable of that construction, is also intended to be testamentary. Under such circumstances, where there is nothing inconsistent with the supposition that the arrangements made therein are to take effect from the death of the person executing it, the document ought to be admitted to probate as a will. IN THE MATTER OF KOMOLA KANT BISWAS . . . . 4 C. L. R., 401

18. ——— Probate of part of a will—*Probate and Administration Act (V of 1881), s. 25.*—Probate can be granted of a portion only of a will to the extent to which the contents are proved where the other portion is lost; and there is nothing in s. 25 of the Probate and Administration Act (V of 1881) to prohibit such a grant of probate. *Sugden* v. *Lord St. Leonards, L. R., 1 P. D., 154,* referred to. KEDAR NATH MITTER *v.* SAROJINI DASI [I. L. R., 26 Calc., 634 3 C. W. N., 617

19. ——— Document in form of will passing no property and only appointing guardians—*Probate and Administration Act (V of 1881), ss. 2, 4.*—A document in the form of a will, which was presented for probate, dealt with no property, the petition stating that the family of which the testator had been managing member was undivided, and that the testator's property had devolved by survivorship on his sons and nephews. The document, however, appointed persons to manage the family business during the minority of the said minors. *Held* that it was not a document of which probate could be granted. IN RE BUKTHAWAR MULL SOWCAR . . I. L. R., 23 Mad., 133

20. ——— *Nuncupative will of a Mahomedan—Probate and Administration Act (V of 1881), ss. 3, 24, 25, 26, 62 - Succession Act (XV of 1865), s. 244, and Ch. IX.*—Probate may be granted of a nuncupative will. IN THE MATTER OF THE WILL OF MAHOMED ABBA. IN RE MARIAMBAI . . . I. L. R., 24 Bom., 8

5. TO WHOM GRANTED.

21. ——— Nephew—*Brother—Hindu will.*—In this case the High Court directed probate of a will executed by a Hindu in favour of a nephew (the son of an elder brother) to be granted to the nephew, instead of to a brother; the property being of small value, and consisting of several small holdings, and the widow of the deceased being a girl of very immature age, whereas the nephew had been brought up by him and was the object of his special affection. CHUNDER SHIKUR MULLICK *v.* SHAM CHAND MULLICK . . . . . 18 W. R., 395

22. ——— Executor by implication—*Direction in will to get in and distribute estate.*—Where *A*, under the terms of a will, although not expressly appointed an executor, was directed to receive and pay the testator's debts and to get in and distribute his personal estate,—*Held* that *A* must be taken to have been appointed under the will an executor by implication, and therefore was entitled to probate. IN THE MATTER OF MONOHUR MOOKERJEE . I. L. R., 5 Calc., 756: 6 C. L. R., 223

23. ——— *Administration with will annexed—Succession Act (X of 1865), s. 182*—A Hindu died leaving a will whereby he bequeathed all his property whatever (including debts) to two of his sons, who now applied for probate of the will on the ground that they were appointed executors by implication. *Held* that the sons were not entitled to probate of the will. EX-PARTE VITTAL DOSS . . . I. L. R., 15 Mad., 360

PROBATE—*continued.*

5 TO WHOM GRANTED—*continued.*

24. ——————— *Succession Act, s 182—Hindu Wills Act (XXI of 1870)*—Probate granted of the will of a Hindu to his widow and heiress, who was universal legatee under the will, as executor by necessary implication, there being no executor mentioned in the will IN THE GOODS OF RADHICA MOHAN SETT 7 B. L. R., 563

25. ——————— *Universal legatee not entitled to probate—Letters of administration with the will annexed—Probate and Administration Act (V of 1881), s 19*—A universal legatee is not entitled to probate but only to letters of administration with the will annexed *In the goods of Radhica Mohan Sett, 7 B L R, 563,* not followed IN THE GOODS OF SHOSHEE BHUSAN BANNERJEE [I. L. R., 19 Calc., 582

two years of age) and in the testator's name the

[illegible] that she alone to the

[illegible] Bom., A. C., [illegible]

27 ——————— *Probate and Administration Act (V of 1881), ss 35, 43, 62—Executrix—Letters of administration with will annexed*—A petitioner prayed for a grant of probate of her deceased son's will. No executrix had been appointed therein, but the petitioner was directed [illegible] she should pay certain

28 ——————— *Probate and Administration Act (V of 1881)—Discretion of Court as to refusal to grant probate—Executor.*—Where, on application for probate by a person [illegible]

PROBATE—*continued.*

5 TO WHOM GRANTED—*concluded.*

the applicant is not a fit and proper person to be appointed executor HARA COOMAR SIRCAR *v.* DOORGAMONI DASI I. L. R., 21 Calc., 195

29 ——————— *Executor without means to pay fees—Application by executor for probate in formâ pauperis—Civil Procedure Code (1882), s 647*—Where an executor is not in possession of the property of his testator and cannot get possession of it, and where he has not himself the means of paying the necessary fees he may be allowed to petition for and, if entitled thereto, to obtain probate *in formâ pauperis* IN THE MATTER OF THE WILL OF DAWUBAI . I. L. R., 18 Bom., 237

30. ——————— *Probate and Administration Act (V of 1881), s 9—Application for probate by an executor—Discretion of* [illegible]

referred to PRAN NATH GHOSE *v.* JADO NATH BHATTACHARJI . . I. L. R., 20 All., 189

6 PROOF OF WILL

31 ——————— Evidence of execution of will—*Hindu Wills Act, 1870—Procedure*—It is incumbent on persons propounding a will for the purpose of obtaining probate or letters of administration under the Hindu Wills Act to produce all the evidence which the circumstances of the case indicate as proper and necessary to prove the execution of the will TARA CHARN CHUCKERBUTTY *v.* DEB NATH ROY . . 10 C. L. R., 550

32. —— [illegible]
ledge of [illegible]
and of the [illegible]
it should [illegible]
understood [illegible]
signed KUPPAYAMMAL *v.* AMMANI AMMAL [I. L. R., 22 Mad., 345

33 ——————— Evidence.—Probate is rightly granted where the Judge believes the witness who [illegible]

the will does not apply, unless surrounding circumstances excite suspicion SHAMA CHARN KUNDU *v.* KHETTROMONI DASI . I. L. R., 27 Calc., 521 [4 C. W. N., 501

34. ——————— Genuineness of will—*Appearance and signatures—Probate, Application for—Probate and Administration Act (V of 1881)*—The High Court, considering it to have been proved by the evidence that the alleged testator was incapable, by reason of illness, of signing the will as firmly as it

PROBATE—*continued.*

6. PROOF OF WILL—*concluded.*

purported to be signed, found that the signatures were not genuine, and reversed the decree of the first Court which had granted probate. On appeal there was no view of the signatures, neither party having applied to have the originals transmitted, or to have photographs taken of them. But their Lordships found that the evidence did not warrant the conclusion that on the day on which the will purported to have been executed the testator physically and mentally was unable to execute it; but that there was sufficient evidence to establish the genuineness of the will and the capacity of the testator to make it, and that the evidence for the defence was not sufficient to destroy the petitioner's case on either of these points. BAMASUNDARI DEBI *v.* TARASUNDARI DEBI . . I. L. R., 19 Calc., 65 [L. R., 18 I. A., 132

35. — Sufficiency of proof of will —*Proof of execution of will.*—Having regard to the fact that a grant of probate is not irrevocable, and to the importance of a deceased testator's estate being represented as speedily as possible, *primâ facie* proof of the execution of his will is sufficient to warrant the grant of a probate when the application for such probate is unopposed. IN THE MATTER OF THE PETITION OF NOBODOORGA . . . 7 C. L. R., 387

36. ——— Proof of inofficious will—*Knowledge of testator as to nature of his acts in making will.*—Where a will is inofficious in character, it is incumbent on the parties propounding it to prove it not only affirmatively, but completely, and by circumstances showing not only that the testator signed the will, but that he knew what he was doing, that he was making a will, and that he did all that he did with his eyes open. SARODA SOONDUREE DOSSIA *v.* MUDDUN MOHUN SHAHA . . 24 W. R., 162

37. ——— Internal evidence in will—*Grant of probate unopposed—Ground for refusal of probate.*—Where an application for probate was unopposed, although a notice in the nature of a citation had been issued to the testator's widow, the Judge was held not to have been justified in rejecting the application merely upon internal evidence contained in the will. SHUSTEE CHURN PATUCK *v.* AUKHIL CHUNDER SEN . . . . 23 W. R., 103

38. ——— Evidence of acknowledgment by testator—*Ground for granting probate.*—The fact that a contested will bears an endorsement stating that it was acknowledged by the testator before the Registrar, does not warrant a Judge in granting probate without any other evidence in support of the will, even though the caveator does not produce any evidence to impeach the will. OBHOY CHURUN MUSTAFI *v.* UMA CHURUN MUSTAFI [1 C. L. R., 362

And *see* CASES UNDER PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

7. ADMINISTRATION BONDS.

39. ——— Practice as to taking bond—*Bond, Form of—Succession Act (X of 1865), s. 256—Practice.*—The Indian Succession Act, s. 256, requires that an administration bond should be taken in every case. It may, however, be varied, by special order of the Court, in the case of a limited or special administration and follow the English form. IN THE GOODS OF GUMBOY . I. L. R., 26 Calc., 407

PROBATE—*continued.*

7. ADMINISTRATION BONDS—*concluded.*

40. ——— Succession Act, s. 256—*Bond when probate is granted.*—A bond is not to be taken from a person to whom probate is granted under the Succession Act. ANONYMOUS [3 Mad., Ap., 10

41. ——— Succession Act, ss. 3 and 256.—It having been the uniform practice of the Court to grant probate without taking a bond from executors named in the will,—*Held* that it was unnecessary to depart from the practice, notwithstanding the words of ss. 3 and 256 of Act X of 1865. RUN BAHADUR SINGH *v.* RAJ RUP KOER [4 C. L. R., 498

Contra, IN THE MATTER OF THE PETITION OF JUGGODISHARI DEBI [I. L. R., 7 Calc., 84 : 8 C. L. R., 397

8. AMENDMENT OF ERROR IN PROBATE.

42. ——— Amendment allowed—*Will—Succession Act (X of 1865), s. 232.*—Amendment of error in probate allowed. IN THE GOODS OF WHITE . . . . I. L. R., 4 Calc., 582

9. OPPOSITION TO, AND REVOCATION OF, GRANT.

43. ——— Opposition to grant—*Succession Act, s. 261—Civil Procedure Code, 1859, s. 172—Proof of will.*—Where a will is contested, the proceedings should take, as nearly as may be, the form of a regular suit, as if brought by the party propounding the will; and where a Judge granted a probate, it was held to be a serious defect with reference to Act XXIII of 1861, s. 38, and Act VIII of 1859, s. 172, that he took down only memoranda of the evidence, and not their testimony in the language in ordinary use in proceedings before the Court. SARODA SOONDUREE DOSSIA *v.* MUDDUN MOHUN SHAHA . . . . . 24 W. R., 162

44. ——— Probate Act, 1881, s. 50—*Hindu widow—Interest—Revocation of probate—Locus standi.*—Where a will has been proved summarily, proof in solemn form *per testes* will not, as a rule, be required on the application of a person who had had notice, or had been aware of the previous proceedings before the grant of probate issued, and had then abstained from coming forward. The widow of a Hindu testator who has died leaving sons has sufficient interest to call upon the executor to prove the will in solemn form *per testes*. BRINDA CHOWDHRAIN *v.* RADHICA CHOWDHRAIN [I. L. R., 11 Calc., 592

45. ——— Succession Act, s. 261—*Procedure—Contested cases of application for probate of will.*—In cases where a will is

PROBATE—*continued*

9 OPPOSITION TO AND REVOCATION OF GRANT—*continued*

contested the Court is bound to consider not only whether the alleged will was executed by the testator but whether the will is valid or invalid and whether probate of the will ought to be granted Every consideration which ought to induce the Court to refuse probate of the will must be taken into account. *Saroda Soonduree Doss a v Muddun Mohun Shaha 24 W R 162* cited ANNODA SUNDARI DABI *v* JUGUT MONI DABI 6 C L R, 176

46 ———— *Procedure*—

L R 4 Calc 1 2 C L R 422 followed *Komul Lochun Dutt* v *Nilrutton Mundle I L R 4 Calc 360 4 C L R 175* commented on. NANHU KOER *v* SOMIRUN THAKUR 8 C L R. 287

47 ———— *Question of title*

See TEEN COWREE DOSSEE *v* HURREEHUR MOOKERJEE 8 W R, 308

48 ———— *Person having interest in estate—Person disputing right of testator to deal with property as his own—Probate and Administration Act (V of 1881) s 69*—A person

oppose the grant of probate *Kamona Soondary Dassee* v *Hurro Lall Shaha I L R 8 Calc 570* dissented from *Behary Lall Sandyal* v *Juggo Mohun Gossain I L R 4 Calc 1 2 C L R 422* and *Nanhu Koer* v *Somirun Thakur 8 C L R 287* followed in principle ABHIRAM DASS *v* GOPAL DASS I L R 17 Calc, 48

49 ———— *Interest entitling person to apply for revocation—Hindu law—Inheritance—Succession to property of degraded and outcaste woman—Right of her husband's family in her property acquired while degraded*—In an application for revocation of probate of the will of A which had been granted to D it appeared that A was a Hindu widow who many years ago left her husband's family dwelling house and became a woman of the town that she had lived under the protection of D for 30 years that when she came to D she had no property but that all the property she left had been acquired by her while a degraded and

PROBATE—*continued*

9 OPPOSITION TO AND REVOCATION OF GRANT—*continued*

outcaste state *Held* that the applicant, as her husband's sister's son had no interest in her estate entitling him to maintain the application The general rule that the tie of kindred between a woman's natural family and herself ceases when she

BEWAH I L R., 21 Calc, 697

50 ———— *Application to revoke probate—Jurisdiction of Civil Court—Right of suit to revoke probate*—A grant of probate

tion Persons who seek to contest a will must prove an interest to entitle them to a *locus standi* in Court but the want of interest is an objection which should be taken at the earliest stage of the proceedings There is nothing in the Indian Succession Act to deprive a District Court as a Court of Probate of jurisdiction to hear and determine an application to

[2 N W 268

51 ———— *Probate and Administration Act (V of 1881) ss 50 69—Revocation of probate—Party interested in applying for such revocation—Interest whether claim for maintenance is such an interest as entitles the claimant to apply for revocation*—Where one of the two widows of the adoptive father of the testator who was entitled to maintenance out of her husband's estate applied for revocation of the probate of the Will—*Held* that the right to maintenance cannot be affected by the will in question whatever the provisions of that will may be The Court may look at the will to see if it affects the claim to maintenance The applicant for revocation of probate has no such interest in the estate as would entitle her to make the application under s. 50 of the Probate and Administration Act *Brinda Chowdhrain* v *Kadumbinee Chowdhrain I L R 11 Calc 492* distinguished *Abhiram Das* v *Gopal Das I L R 17 Calc 48* and *Rahamtullah Sahib* v *Rama Ram I L R 17 Mad 373* followed GARADINI DASSI *v* PRATAP CHANDRA SHAHA [4 C W N 602

52 ———— *Succession Act s 261—Procedure*—As to procedure in opposing grants of probate see s 261 of the Succession Act and KALEE TARA DOSSIA *v* NOBIN CHUNDER KUR [21 W R., 84

PROBATE—*continued.*

6. PROOF OF WILL—*concluded.*

purported to be signed, found that the signatures were not genuine, and reversed the decree of the first Court which had granted probate. On appeal there was no view of the signatures, neither party having applied to have the originals transmitted, or to have photographs taken of them. But their Lordships found that the evidence did not warrant the conclusion that on the day on which the will purported to have been executed the testator physically and mentally was unable to execute it; but that there was sufficient evidence to establish the genuineness of the will and the capacity of the testator to make it, and that the evidence for the defence was not sufficient to destroy the petitioner's case on either of these points. BAMASUNDARI DEBI *v.* TARASUNDARI DEBI . . I. L. R., 19 Calc., 65 [L. R., 18 I. A., 132

35. — Sufficiency of proof of will —*Proof of execution of will.*—Having regard to the fact that a grant of probate is not irrevocable, and to the importance of a deceased testator's estate being represented as speedily as possible, *primâ facie* proof of the execution of his will is sufficient to warrant the grant of a probate when the application for such probate is unopposed. IN THE MATTER OF THE PETITION OF NOBODOORGA . . . 7 C. L. R., 387

36. — — Proof of inofficious will—*Knowledge of testator as to nature of his acts in making will.*—Where a will is inofficious in character, it is incumbent on the parties propounding it to prove it not only affirmatively, but completely, and by circumstances showing not only that the testator signed the will, but that he knew what he was doing, that he was making a will, and that he did all that he did with his eyes open. SARODA SOONDUREE DOSSIA *v.* MUDDUN MOHUN SHAHA . . 24 W. R., 162

37. ——— Internal evidence in will—*Grant of probate unopposed—Ground for refusal of probate.*—Where an application for probate was unopposed, although a notice in the nature of a citation had been issued to the testator's widow, the Judge was held not to have been justified in rejecting the application merely upon internal evidence contained in the will. SHUSTEE CHURN PATUCK *v.* AUKHIL CHUNDER SEN . . . . 23 W. R., 103

38. ——— Evidence of acknowledgment by testator—*Ground for granting probate.*—The fact that a contested will bears an endorsement stating that it was acknowledged by the testator before the Registrar, does not warrant a Judge in granting probate without any other evidence in support of the will, even though the caveator does not produce any evidence to impeach the will. OBHOY CHURUN MUSTAFI *v.* UMA CHURUN MUSTAFI [1 C. L. R., 362

And *see* CASES UNDER PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.

7. ADMINISTRATION BONDS.

39. ——— Practice as to taking bond —*Bond, Form of—Succession Act (X of 1865), s. 256—Practice.*—The Indian Succession Act, s. 256, requires that an administration bond should be taken in every case. It may, however, be varied, by special order of the Court, in the case of a limited or special administration and follow the English form. IN THE GOODS OF GUNROY . I. L. R., 26 Calc., 407

PROBATE—*continued.*

7. ADMINISTRATION BONDS—*concluded.*

40. ——— *Succession Act, s. 256—Bond when probate is granted.*—A bond is not to be taken from a person to whom probate is granted under the Succession Act. ANONYMOUS [3 Mad., Ap., 10

41. ——— *Succession Act, ss. 3 and 256.*—It having been the uniform practice of the Court to grant probate without taking a bond from executors named in the will,—*Held* that it was unnecessary to depart from the practice, notwithstanding the words of ss. 3 and 256 of Act X of 1865. RUN BAHADUR SINGH *v.* RAJ RUP KOER [4 C. L. R., 498

Contra, IN THE MATTER OF THE PETITION OF JUGGODISHARI DEBI [I. L. R., 7 Calc., 84 : 6 C. L. R., 397

8. AMENDMENT OF ERROR IN PROBATE.

42. ——— Amendment allowed—*Will—Succession Act (X of 1865), s. 232.*—Amendment of error in probate allowed. IN THE GOODS OF WHITE . . . . I. L. R., 4 Calc., 582

9. OPPOSITION TO, AND REVOCATION OF, GRANT.

43. ——— Opposition to grant—*Succession Act, s. 261—Civil Procedure Code, 1859, s. 172—Proof of will.*—Where a will is contested, the proceedings should take, as nearly as may be, the form of a regular suit, as if brought by the party propounding the will; and where a Judge granted a probate, it was held to be a serious defect with reference to Act XXIII of 1861, s. 38, and Act VIII of 1859, s. 172, that he took down only memoranda of the evidence, and not their testimony in the language in ordinary use in proceedings before the Court. SARODA SOONDUREE DOSSIA *v.* MUDDUN MOHUN SHAHA . . . . . 24 W. R., 162

44. ——— *Probate Act, 1881, s. 50—Hindu widow—Interest—Revocation of probate—Locus standi.*—Where a will has been proved summarily, proof in solemn form *per testes* will not, as a rule, be required on the application of a person who had had notice, or had been aware of the previous proceedings before the grant of probate issued, and had then abstained from coming forward. The widow of a Hindu testator who has died leaving sons has sufficient interest to call upon the executor to prove the will in solemn form *per testes.* BRINDA CHOWDHRAIN *v.* RADHICA CHOWDHRAIN [I. L. R., 11 Calc., 592

45. ——— *Succession Act, s. 261—Procedure—Contested cases of application for probate of will.*—In cases where a will is

PROBATE—*continued*

9. OPPOSITION TO, AND REVOCATION OF, GRANT—*continued*

contested, the Court is bound to consider, not only

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probate of the will must be taken into account. *Saroda Soonduree Dossia* v *Muddun Mohun Shaha*, *24 W R*, *162*, cited ANNODA SUNDARI DABI *v* JUGUT MONI DABI . . . 6 C. L. R., 176

46 ——————— *Procedure—Question as to power of disposition—Succession Act, s 234.*—Upon a *bonâ fide* application for probate of a will, it is not the province of the Court to which the application is made to go into questions with reference to the power of the testator to make a disposition of the property of which the will purports to dispose *Behary Lall Sandyal* v *Juggo Mohun Gossain, I L. R, 4 Calc., 1 2 C L R, 422*, followed. *Komul Lochun Dutt* v *Nilrutton Mundle, I L R, 4 Calc, 360; 4 C L R, 175* commented on. NANHU KOER *v* SOMIRUN THAKUR . . . 8 C. L. R., 287

47. ——————— *Question of title —R*

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See TEEN COWREE DOSSEE *v* HUREEHUR MOOKERJEE . . . 8 W. R, 308

48 ——————— *Person having in*

[illegible]

422, and *Ninhu Koer* v. *Somirun Thakur, 8 C. L R, 287*, followed in principle ABHIRAM DASS *v* GOPAL DASS . I. L. R., 17 Calc, 48

49 ——————— *Interest entitling person to apply for revocation—Hindu law—Inheritance—Succession to property of degraded and outcaste woman—Right of her husband's family in her property acquired while degraded.*—In an application for revocation of probate of the will of *K*, which had been granted to *D*, it appeared that *K* was a Hindu widow, who many years a o left her husband's family dwelling house and became a woman of the town, that she had lived under the protection of *D* for 35 years, that when she came to *D*, she had no property, but that all the property she left had been acquired by her while in a degraded and outcaste state. *Held* that the applicant, as her husband's sister's son, had no interest in her estate entitling him to maintain the application The general rule, that the tie of kindred between a woman's natural family and herself ceases when she

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degraded. IN THE GOODS OF KAMINEYMONEY BEWAH . . . I. L. R., 21 Calc, 697

50 ——————— *Application to revoke probate—Jurisdiction of Civil Court—*

[illegible]

out of which such grant issued, and it must be contested before the Court sitting as a Court of Probate, and not in the exercise of its ordinary civil jurisdiction. Persons who seek to contest a will must prove

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deprive a District Court, as a Court of Probate, of jurisdiction to hear and determine an application to

[illegible]

[illegible] W., [illegible]

51 ——————— *Probate and Administration Act (V of 1881), ss 50, 69—Revocation of probate—Party interested in applying for such revocation—"Interest" whether claim for maintenance is such an as entitles the claimant to apply for revocation.*—Where one of the two widows of the adoptive father of the testator, who was entitled to maintenance out of her husband's estate, applied for revocation of the probate of the Will,—*Held* that the right to maintenance cannot be affected by the will in question, whatever the provisions of that will may be. The Court may look at the will to see if it affects the claim to maintenance. The applicant for revocation of probate has no such interest in the estate as would entitle her to make the application under s 50 of the Probate and Administration Act *Brinda Chowdhrain* v *Radhica Chowdhrain, I L. R, 11 Calc, 492* distinguished *Abhiram Das* v *Gopal Das, I L R, 17 Calc 48*, and *Rahamtullah Sahib* v *Rama Ram, I L. R, 17 Mad 373*, followed GARABINI DASSI *v* PRATAP CHANDRA SHAHA [4 C W. N, 602

52 ——————— *Succession Act, s 261—Procedure.*—As to procedure in opposing grants of probate, see s 261 of the Succession Act, and KALEE TARA DOSSIA *v* NOBIN CHUNDER KUR [21 W. R., 81

PROBATE—*continued.*

9. OPPOSITION TO, AND REVOCATION OF, GRANT—*continued.*

53. ——— *Right to oppose grant of probate.*—A person who is not the next of kin, and who has no interest in the estate of a testator, has no right to oppose the grant of the probate or dispute the validity of the will. IN THE MATTER OF MEE TSEE . . . . 15 W. R., 351

54. ——— *Application for revocation of probate—Jurisdiction—Interest of applicant in the estate—Reversioner—Special citation—Succession Act (X of 1865), ss. 235, 244, 250.*—The test of jurisdiction made use of in applications for grant of probate may be also applied to cases in which a revocation of probate is demanded, *viz.*, whether or no the deceased, at the time of his death, had his fixed place of abode, or had some property, moveable or immoveable, situate within the jurisdiction of the particular District Judge to whom the application is made. A presumptive reversioner to property with which a will deals has a sufficient interest in the property to entitle him to maintain a suit in respect of such property; and on the authority of *Nobeen Chundra Sil v. Bhobo Soonduri Dabee, I. L. R., 6 Calc., 460,* he is entitled to maintain a case for the revocation of probate. In every case in which probate of a Hindu's will is applied for, a special citation should be served upon those persons whose interests are directly affected by the will. IN THE MATTER OF THE PETITION OF HURRO LALL SHAHA. KAMONA SOONDURY DASSEE *v.* HURRO LALL SHAHA

[I. L. R., 8 Calc. 570: 10 C. L. R., 409

55. ——— *Creditors of alleged heir—Hindu testator—Succession Act, s. 250—Caveat.*—A Hindu testator died leaving *B*, alleged to be his adopted son, and *C*, who would be his heir in default of adoption. On application made by *B* for probate of the will after the usual notices, the creditors of *C* came in and opposed the grant of probate. *Held*, under the Succession Act, as made applicable by the Hindu Wills Act, that the creditors were not parties having any interest in the estate of the deceased, and therefore were not entitled to oppose the grant of probate. IN THE MATTER OF THE PETITION OF DESPUTTY SINGH. BAIJNATH SAHAI *v.* DESPUTTY SINGH

[I. L. R., 2 Calc., 208: 25 W. R., 489

56. ——— *Proceedings to revoke probate—Purchaser or assignee of next-of-kin—Succession Act, ss. 188, 242.*—The grant of probate is the decree of a Court which no other Court can set aside, except for fraud or want of jurisdiction. Where it has been alleged that probate has been wrongly granted, the proper course to be pursued is to apply to the Court which granted the probate to revoke the same. Procedure upon such application discussed. *Semble*—A person interested by assignment in the estate of the deceased may, where a will has been set up and proved at variance to his interests, apply for the revocation of probate of the will so set up. KOMOLLOCHUN DUTT *v.* NILRUTTUN MUNDLE

[I. L. R., 4 Calc., 360: 4 C. L. R., 175

57. ——— *Person having interest in estate—Mortgagees—Application to revoke or withdraw probate.*—Mortgagees of the estate of a deceased person have an interest in such estate entitling them to intervene and be heard in opposition to an application made to withdraw probate. KASHI CHUNDRA DEB *v.* GOPI KRISHNA DEB

[I. L. R., 19 Calc., 48

58. ——— *Caveat—Interest of attaching creditor—Next-of-kin—Mortgagee—Succession Act (X of 1865), s. 234, illus. (b), s. 242—20 & 21 Vict., c. 77, s. 61.*—*A*, a judgment-creditor, attached certain property as belonging to *B*, his debtor. *B* was the next-of-kin of *C*, deceased. The widow of *C* applied for probate of an alleged will of her husband. On caveat entered by *A*,—*Held* that he had such an interest as entitled him to oppose the grant. *D* held a mortgage from *B*, executed subsequently to *C*'s death, of other property, which the widow also alleged formed part of her husband's estate. On caveat entered by *D*,—*Held* also that he had such an interest as entitled him to oppose the grant. *Per* FIELD, *J.*—Under s. 242 of the Succession Act, any person who can show that he is entitled to maintain a suit in respect of property over which probate would have effect possesses a sufficient interest to entitle him to enter a caveat and oppose the grant. IN THE MATTER OF THE PETITION OF BHOBOSOONDURI DABEE. NOBEEN CHUNDER SIL *v.* BHOBOSOONDURI DABEE

[I. L. R., 6 Calc., 460

59. ——— *Person claiming interest in the estate of the deceased—Interest sufficient to support application to revoke probate—Revocation of probate—Probate and Administration Act (V of 1881), s. 69.*—Where the heir *ab intestato* of a deceased person has entered into a contract to sell the property of the deceased, and has received the greater part of the consideration-money, the purchaser from such heir is a person claiming to have an interest in the estate of the deceased within the meaning of s. 69 of the Probate and Administration Act, and is entitled, upon a will being set up and proved at variance with his interest, to apply for revocation of the probate of the will so set up. *Komollochun Dutt v. Nilrutlun Mundle, I. L. R., 4 Calc., 360,* followed. MUDDUN MUHUN SIRCAR *v.* KALI CHURN DEY

[I. L. R., 20 Calc., 37

60. ——— *Application for order revoking probate—Succession Act (X of 1865), s. 243—Locus standi of attaching creditor of next-of-kin to apply for revocation.*—A will on the evidence was held duly proved. An application for revocation of probate was made by a judgment-creditor who had attached his debtor's right, title, and interest in family estate, whereof a one-fourth share would, but for this will, which made other dispositions, have been inherited by such debtor. Whether such an attaching creditor can oppose the grant of probate, or apply to have it revoked, is a matter of

PROBATE—*continued.*

9 OPPOSITION TO, AND REVOCATION OF, GRANT—*continued.*

grave doubt, at least, in a case which is not founded on the ground that the probate has been obtained in fraud of creditors *Baijnath Sahai* v *Deputty Singh, I L R, 2 Calc., 208,* referred to, and *Komollochun Dutt* v *Nilrutten Mundle, I L R, 4 Calc, 360* distinguished NILMONI SINGH DEO v UMANATH MOOKERJEE NILMONI SINGH v BHOYHA-RINI DEBI

[I L R, 10 Calc, 19: 13 C. L. R, 314 L R, 10 I. A, 80

Affirming the decision of the High Court, which held
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NILMONEY SING UMANATH MOOKHOPADHYA v NILMONEY SING I. L. R, 6 Calc, 429

61 ———————— *Caveat — Mortgagee—Attaching creditor—Fraud* —A mortgaged certain property to B, who obtained a decree on his mortgage on the 20th of August 1881 In execution of this decree, B, on the 5th of September 1881, attached the mortgaged property and obtained an order for sale On the 14th of September 1881, the wife of the mortgagor applied for probate of the will of one T D, the mother of the mortgagor, who had died on the 16th of May 1881 The testatrix by her will, left all her property to the mortgagor's wife *The mortgaged property was included in the property*

Held
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...c., 413

62 ———————— *Interest in testator's estate—Defendant in suit for probate of will — Legatee — Creditor of testator Proof of former will* —In a suit brought to obtain probate of a will, the defendant, before he can contest the will, must show that he has some interest in the testator's estate The fact of being a legatee under the will, or a creditor of the testator, does not amount to such an interest But proof of a former will of the testator in which the defendant is interested is a sufficient interest to contest the will set up RAHAMTULLAH SAHIB v RAMA RAU I. L R, 17 Mad., 373

63 ———————— *Will by a Hindu widow in respect of property inherited from her deceased husband — Invalid will — Ground for refusing probate* —A Court is not justified in refusing to grant probate of a will because the testator had no power to dispose of some or even all of the property he purported to deal with BABOT PARSHOTAM KALU v BAI MULI . I. L R, 18 Bom, 749

PROBATE—*continued.*

9 OPPOSITION TO, AND REVOCATION OF, GRANT—*continued*

64. ———————— *Issue raised as to testator's title to property purporting to be dealt with by the will—Practice* —It is not the duty of a Court entertaining an application for grant of probate to consider any issue as to the title of the testator to the property with which the will propounded purports to deal, or as to what disposing power the testator may have possessed over such property *Behary Lall Sandyal* v *Juggo Mohun Gossain I L R, 4 Calc, 1, Hormusji Navroji* v *Rai Dhanbaiji, I*

D, 76, and *Annoda Sundari Dasi* v *Jugutmani Dabi, 6 C L R, 176,* distinguished BIRJ NATH DE v CHANDAR MOHUN BANERJI

[I L R., 19 All, 458

65 ———————— *Probate, Nature and effect of—Act V of 1881, ss 16 and 50* —S a
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applied for letters of administration, and issued a citation to the appellant H N. H entered a caveat No further proceedings were taken and the matter

66. ———————— *Probate and Administration Act (V of 1881), ss 55, 83—Application for revocation of probate, whether a civil suit or a miscellaneous proceeding* —S 83 of the

poses of costs and pleader's fees) as a regular civil suit, but is a miscellaneous proceeding, and pleader's fees should be fixed on that footing PRATAP CHANDRA SHAHA v KALI BHANJAN SHAHA

[4 C. W. N., 600

GARABINI DASSI v PRATAP CHANDRA SHAHA

[4 C. W. N., 602

PROBATE—*continued.*

9. OPPOSITION TO, AND REVOCATION OF, GRANT—*continued.*

67. ——— Revocation of grant—*Succession Act (X of 1865), s. 234—Practice—Review in testamentary matters.*—S. 234 of the Succession Act (X of 1865) applies to Hindus, and an application to revoke probate of the will of a Hindu may be made under that section. When once probate in solemn form has been granted, no one who has been cited or has taken part in the proceedings, or who was cognizant of them, can afterwards seek to have it cancelled. *Quære*—Whether a review may not be granted. The practice in India in testamentary matters previously to Act V of 1881 was the same as that of the Ecclesiastical Court in England, except so far as that practice might be inconsistent with the Civil Procedure Code. IN THE MATTER OF PITAMBER GIRDHAR . . . I. L. R., 5 Bom., 638

68. ——— *Removal of mohunt claiming under a will—Succession Act, s. 234.*—By his will the mohunt of an akra, or religious endowment, appointed *A* to be the malik of the properties comprised in the endowment, and to receive the dues and pay the debts, and to do everything necessary connected therewith, and provided that, if any act was done prejudicial to any of those purposes, or to any property set apart therefor, or contrary to the Hindu practice and religion or usages, the property should vest in such disciple of his who should be competent and virtuous. *A* obtained probate of the will, and entered upon the properties mentioned therein. *Held* that the Court had not power, under s. 234 of the Succession Act, to revoke the probate upon the ground that *A* had, since he took charge of the office, taken to an immoral course of conduct, and in consequence had been excluded from the community of mohunts. The proper course to take for depriving such a person of his office would be to bring a suit under the Religious Endowment Act, or any other suit, for a declaration that he had disqualified himself, and if in that suit a decree was obtained and duly certified to the Court which granted probate, that Court would, no doubt, direct the revocation of the probate. IN THE MATTER OF THE PETITION OF MOHUN DASS. MOHUN DASS *v.* LUTCHMUN DASS

[I. L. R., 6 Calc., 11: 6 C. L. R., 265

69. ——— *Procedure—Succession Act (X of 1865), s. 234—Onus probandi.*—Upon a petition under s. 234 of the Succession Act, praying that the probate of a will alleged to have been made by the petitioner's husband should be revoked upon the grounds that no citation was duly published; that the petitioner was a minor, living under the care of the person to whom probate had been granted, and had no opportunity of understanding his *malâ fides* and improper acts, and that the will was a forgery, the District Judge held that the burden of proof in respect of the whole case was on the petitioner, and dismissed her petition. *Held* that the District Judge ought to have given the petitioner an opportunity of proving that she had no knowledge of the previous proceedings. If satisfied that she had no such knowledge, then he should have ordered a new trial as to the factum of the will, when the person propounding it would have to prove it in the ordinary way. IN THE MATTER OF THE PETITION OF DINTARINI DEBI. DINTARINI DEBI *v.* DOIBO CHUNDER ROY

[I. L. R., 8 Calc., 880: 11 C. L. R., 190

70. ——— *Succession Act (X of 1865), s. 234—Just cause—Revocation of probate—Citation upon the heirs of the deceased without citing minor.*—If a will, which affects the interest of an infant, be admitted to probate without the infant being cited, when he attains his majority, he is entitled to require the executor to prove the will in his presence; and the absence of citation upon the infant would be just cause within the meaning of s. 234 of the Succession Act for revoking the probate, as the grant was made without citing parties who ought to have been cited. REBELLS *v.* REBELLS . . 2 C. W. N., 100

See IN THE GOODS OF GUNGA BISSEN MUNDRA

[2 C. W. N., 607

71. ——— *"Just cause" for revocation—Probate and Administration Act (V of 1881), s. 50.*—The mere absence of a special citation in proceedings in which probate of a will is granted is not, where the person to whom a citation has not been issued is otherwise aware of the proceedings, a "just cause" for revocation of probate as making the proceedings substantially defective within the meaning of s. 50 of the Probate Act, even where such person is a minor. NISTARINY DABYA *v.* BRAHMOMOYI DABYA . I. L. R., 18 Calc., 45

72. ——— *Ground for revocation of probate—Probate and Administration Act (V of 1881), s. 50, expl. (4)—Just cause—"Mismanagement by executor."*—Mismanagement by the executor of an estate is not, under s. 50, expl. 4, of the Probate and Administration Act, a just cause for revoking the probate. *Held* therefore that the order of revocation made by the District Judge for that cause was made without jurisdiction, and must be set aside. The words "just cause," as explained in s. 50 of the Probate and Administration Act, are not illustrative merely, but exhaustive. ANNODA PROSAD CHATTERJEE *v.* KALLIKRISHNA CHATTERJEE

[I. L. R., 24 Calc., 95

73. ——— *Right to have proceedings re-opened and grant revoked—Person cognizant of proceedings and not objecting—Caveator.*—A party cognizant of proceedings in an action for probate or letters of administration and not objecting to the grant is not, as a rule, entitled to have the matter re-opened and the grant revoked. In this case he was allowed to re-open the case under certain circumstances and upon certain conditions IN THE GOODS OF BHUGGOBUTTY DASI

[I. L. R., 27 Calc., 927
4 C. W. N., 757

74. ——— *Succession Act, s. 187—Power of executors or administrators.*—

PROBATE—*continued*

9 OPPOSITION TO AND REVOCATION OF, GRANT—*concluded*

Semble—S 187 of the Succession Act not being made applicable to wills of Hindus made before 1st September 1870, that is, to wills of Hindus to which the Hindu Wills Act did not apply, it is not obligatory on executors or legatees under them to take out probate or letters of administration in order to establish their rights in a Court of justice KRISHNA KINKUR ROY *v* RAI MOHUN ROY

[I L R, 14 Calc, 37

75. ———— *Executor, Power of, before Hindu Wills Act—Evidence Act (I of 1872), s 41—Probate Act (V of 1881), ss 2, 149*—S 41 of the Evidence Act is applicable to probates granted prior to the passing of the Hindu Wills Act GRISH CHUNDER ROY *v* BROUGHTON

[I. L. R., 14 Calc., 861

76 ———— *Succession Act (X of 1865), s 187—Hindu Wills Act (XXI of 1870), s 2—Probate and Administration Act (V of 1881), Chs II to XII—Probate or administration to wills of Hindus executed before 1st September 1870*—S 187 of the Succession Act, which, by s 2 of the Hindu Wills Act was made applicable to wills executed subsequent to the 1st September 1870 has not been incorporated in Act V of 1881, and although it is competent to a Court to grant probate or letters of administration in respect of wills antecedent to the 1st September 1870 still it is not obligatory upon executors or persons claiming probate or administration to obtain such probate or letters of administration before they can establish their right in respect to any property subject to such wills KRISHNA KINKUR ROY *v* PANCHURAM MUNDUL

[I. L. R., 17 Calc, 272

10 EFFECT OF PROBATE

77 ———— Appointment of executors—*Validity and contents of will*—Probate is only conclusive as to the appointment of executors and the validity and contents of the will HORMUSJI NAVROJI *v* BAI DHANBAIJI

[I. L. R, 12 Bom., 164

78 ———— Executor, Position of—*Will of Hindu—Evidence of title*—Grant of probate of ... upon the executor, itself Probate is a decree of the ... ely, between the parties and in privity to the suit in which the decree is made SHARO BIBI *v* BALDEO DAS

[1 B L R., O C., 34

79. ———— *Liability of person acting as executor of forged will*—Government promissory notes belonging to the estate of a deceased Hindu were endorsed over, without consideration, by *A* (who had taken out probate of a forged will and was acting under the same as executor) to *B*, who received the same *bonâ fide*, but without due inquiry; and on obtaining a renewal of the same, endorsed the renewed paper back to *A* for the purpose of enabling him to raise money thereon, believing that *A* had a right to do so *Held* that *A* was liable to account to the representatives of the deceased for the value of the said promissory notes as assets of the deceased come into his hands. The property in the moveable estate of a Hindu does not pass to his executor as such JAYKALI DEBI *v* SHIBNATH CHATTERJEE

2 B. L R, O C, 1

80 ———— Evidence of will *Will—Evidence—Hindu Wills Act (XXI of 1870)—Succession Act (X of 1865), ss 180, 242*—The effect of the Hindu Wills Act, which makes (among others) ss 180 and 242 of the Succession Act applicable to ...

... L R., 208

81. ———— Probate as giving person right to sue under will—*Succession Act, s 187—Suit for land claimed under will*—Where the first Court decreed a suit for possession of land claimed under a will, the lower Appellate Court was held to have done right in reversing the decision on the ground that the plaintiff had not taken out probate under Act X of 1865 s. 187 The "probate" intended by s 187 is a copy of the will certified and sealed by a Court of competent jurisdiction and it may be taken out by a legatee MUN MOHUN GHOSSAL *v* PURESHNATH ROY

22 W. R, 174

82 ———— Probate as giving right to sue under will—*Probate Act (V of 1881) ss 92, 154—Probate when necessary in cases of Hindu and Mahomedan will—Executor—Act XXVII of 1860—Right of one out of three executors to carry on a suit—Succession Act (X of 1865) s 187—Hindu Wills Act (XXI of 1870)*—Previously to the passing of the Probate Act (V of 1881), executors appointed by such wills as fell within the Hindu Wills Act (XXI of 1870) acquired the same estate and interest in the property of their deceased testator, with the same restrictions in representing the estate in a Court of justice, as obtained under English law. All the sections of the Succession Act (X of 1865) ...

... is that probate is necessary in case of such Hindu wills as fall within the Hindu Wills Act But the omission from Act V of 1881 (which applies to all ...

... taking out probate ... in cases, however, falling within the provisions of Act XXVII of 1860, debtors have

PROBATE—*continued.*

10. EFFECT OF PROBATE—*continued.*

still the right (under s. 2 of that Act) of insisting upon a plaintiff executor taking out probate. Where *A*, one of three executors of a Mahomedan will, none of whom had taken out probate, desired to carry on a suit originally instituted by their testator to recover a share of an estate, all the other parties to the suit being desirous that the suit should be dismissed,—*Held* that *A*, under s. 92 of the Probate Act (V of 1881), being only one of three executors, could not carry on the suit without first taking out probate of the testator's will. *Held* further that *A*, being an executor, had a right to carry on the suit and get in the assets of his testator in order to meet possible claims on the estate. The other parties to the suit who were beneficially interested in the estate, and who desired that the suit should terminate, had the remedy in their hands by putting the executor in funds to discharge the debts. MOOSA *v.* ESSA

[I. L. R., 8 Bom., 241

83. ———— **Necessity of probate**—*Probate and Administration Act, 1881—Mahomedan will.*—An executor of the will of a deceased Mahomedan, since the 1st April 1881, the date of the coming into force of the Probate and Administration Act (V of 1881), cannot claim to represent the estate of his testator until he has taken out probate. FATMA *v.* ESSA

[I. L. R., 7 Bom., 266

84. ———— *Guardian appointed under a will—Whether probate is a condition precedent to certificate of guardianship under Guardians and Wards Act (VIII of 1890).*—It is not incumbent on a person who has been appointed guardian of a minor under a will to take out probate as a condition precedent to his obtaining a certificate of guardianship under Act VIII of 1890. PATHAN ALIKHAN BADLUKHAN *v.* BAI PANIBAI

[I. L. R., 19 Bom., 832

85. ———— *Will made by Hindu—Suit by legatee for legacy—Hindu Wills Act, 1870.*—Save where the Hindu Wills Act, 1870, is in force, it is not obligatory on a person claiming under the will of a Hindu to obtain probate of the will before instituting his claim. *Krishna Kinkur Roy* v *Panchuram Mundul, I. L. R., 17 Calc., 272*, and *Thakurain* v. *Ram Charan, Weekly Notes, All. (1895), 87*, followed. KANHAIYA LAL *v.* MUNNI

[I. L. R., 18 All., 260

86. ———— **Effect of probate of Parsi will before Succession Act**—*Probate in 1866—Act XXVII of 1860—Construction of will—Executrix also trustee—Suit against executrix—Representation of the estate—Civil Procedure Code, s. 437.*—The will of a Parsi testator in Bombay affecting lands in the mofussil, made before the 1st January 1866, when the Indian Succession Act (X of 1865) came into force, and proved subsequently,—*viz.*, on the 25th day of January 1866,—but before Act XXIV of 1867 came into operation, is governed by Act XXVII of 1860. *Held* that such probate has the same effect as probate in respect of the property of British subjects, but for the purpose only of collecting debts. It did not confer a title on the executrix to represent the testator's estate, except for the above-mentioned limited purpose, or to exercise the usual powers of an executrix where the testator's intention, to be gathered from the whole of the will, was to vest his property with the entire management of, and control over, it in a series of persons in succession as trustees, the first of whom was the executrix. *Held* also that, having regard to s. 437 of the Code of Civil Procedure, the persons acting as such trustees in succession under the said will adequately represented all persons beneficially interested in the estate in all suits relating to it ARDESIR JEHANGIR FRAMJI *v.* HIRABAI . . **I. L. R., 8 Bom., 474**

PROBATE—*concluded.*

10. EFFECT OF PROBATE—*concluded.*

87. ———— **Hindu will made outside Bombay relating to property situate partly within and partly outside Bombay**—*Will—Hindu Wills Act (XXI of 1870)—Succession Act (X of 1865), s 179—Probate and Administration Act (V of 1881), s. 4—Probate of such will, Effect of—Representation of the estate—Parties to suit.*—One *L* died at Surat in 1878 possessed of ancestral property situate partly in Bombay and partly in Surat district. He left a widow *B*, and a minor son *M*. At his death he made a will bequeathing his property to his son, and appointing certain executors to manage the property during the son's minority. The son died in 1877, leaving a minor widow, *M G*. In 1879 one of the executors obtained probate of *L's* will from the High Court. In 1884 a suit was filed, on behalf of the minor *M G*, against her mother-in-law *B* to recover possession of the property covered by the will of *L*. One of the defences to this suit was that the property in dispute had vested in the executor, who had obtained probate of the will, and that, as the defendant held the estate under the executor, the suit was not maintainable without impleading the executor. *Held* that the executor was not a necessary party to the suit. S. 179 of the Indian Succession Act (X of 1865) as incorporated into the Hindu Wills Act (XXI of 1870) did not apply so far as it related to property outside Bombay. The property in dispute was situate in the Surat district. It was joint ancestral property. On the father's death, it vested in the son by survivorship, and on the son's death it vested in the son's widow, the plaintiff, in the present suit. Under the provisions, therefore, of the Probate and Administration Act (V of 1881), s. 4 (if that Act can be held to operate at all in the mofussil before a notification is issued under s. 2), the estate could not vest in the executor, as it had passed by survivorship to another person long before the Act came into operation. BAI HARKOR *v.* MANEKLAL RASIK DAS

[I. L. R., 12 Bom., 621

PROBATE AND ADMINISTRATION ACT (V OF 1881).

See ADMINISTRATOR-GENERAL'S ACT, 1874, s. 31 . . **I. L. R., 21 Calc., 732**
[I. L. R., 22 Calc., 788
L. R., 22 I. A., 107

See CASES UNDER LETTERS OF ADMINISTRATION.

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*continued*

See CASES UNDER PROBATE

———— s 3

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL [I L. R., 24 Calc, 30

———— s 12

See RES JUDICATA—ESTOPPEL BY JUDGMENTS I. L R, 21 Bom, 563

———— ss 18 to 23, 37, 44, 45, 46, 83 and 86—*Debutter property, Administration in respect of—Idol—'Beneficiary" Trustee with power of appointment—Administration Grant of letters of, to idol's property where probate has been previously granted of will dedicating the property*—A testatrix by her will dedicated certain immoveable property to the sheba of an idol and appointed an executrix whom she also constituted shebait and to whom she gave power to appoint the next shebait The executrix died without having made any such appointment and thereupon an application was made by the sister's son of the testatrix for letters of administration with a copy of the will annexed to be granted to him with respect to the debutter property *Held* that s 45 of the Probate and Administration Act authorized such a grant to be made inasmuch as no shebait having been appointed there still remained some portion of the estate of the testatrix to be administered *Held* also that the idol, being the *cestui que trust* was a 'beneficiary" within the meaning of that term as used in s 37 of the Act and that as it could not undertake the management of the estate under that section administration might be original grant in respect of the debutter property might have been made to him. RANJIT SING *v* JAGANNATH PROSAD GUPTA. GUNGADHUR DASS RAI *v* JAGANNATH PROSAD GUPTA [I L. R, 12 Calc, 375

———— s 19

See RES JUDICATA—ESTOPPEL BY JUDGMENT I. L. R., 20 Calc, 888

———— s 34

See ADMINISTRATION SUIT FOR [1 C W N, 336

———— s. 50

See CASES UNDER WILL—EXECUTION

———— s. 53

See APPEAL—PROBATE [I. L R., 21 Calc, 539

———— ss 59, 83

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R, 20 Calc, 888 [I L. R., 21 Bom., 563

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*continued*

———— s 62

See RES JUDICATA—ESTOPPEL BY JUDGMENT I L R., 16 Mad, 380

———— s 82

See EXECUTOR I. L. R., 27 Calc, 683

———— s 86

See APPEAL—PROBATE [I L R, 17 Calc, 48 I L R., 21 Calc, 539 I L. R, 27 Calc 5

See LETTERS PATENT HIGH COURT N W P CL. 10 I. L. R, 17 All., 475

———— s 90

See EXECUTOR [I L R, 23 Calc., 580, 903 I. L R, 23 Bom, 342 3 C W N, 403

See LETTERS PATENT HIGH COURT CL. 15 [I. L. R., 23 Calc., 580 I. L. R, 24 Calc, 350

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT. I L. R, 23 Calc, 446

1 ———— and s 40—*Letters of administration—Effect of transfer of immoveable property by a Hindu widow with the Judge's sanction on obtaining letters of administration—Legal necessity—Fraudulent representation*—An alienation made with the permission of the District Judge by a Hindu widow who had obtained letters of administration in respect of the estate is valid as an absolute alienation under s 90 of the Probate and Administration Act (V of 1881) irrespective of the existence of legal necessity KAMIKHYA NATH MUKERJEE *v* HARI CHARN SEN [I. L R, 26 Calc, 607

2 ———— ———— *Letters of administration—Administratrix Application by for leave to mortgage—Estate fully administered*—Application by the widow and administratrix for leave to mortgage certain premises left by the deceased The estate had been fully administered and there were no debts or legacies of the deceased to be paid *Held* that applications of this nature should not be granted unless it is necessary for the purposes of administration and not when the estate has been fully administered That the estate having been administered the widow was in possession as heiress and she can sell or mortgage for purposes for which a widow is entitled to sell or mortgage under the law, and no leave of Court is necessary IN THE GOODS OF NURSING CHUNDER BYSACK 3 C W N, 635

———— s 92

See EXECUTOR I L. R., 27 Calc, 683

1 ———— s 98—*Act VI of 1889, s 15 amending Act V of 1881—Construction of Act—Meaning of the words 'an account"*—The

PROBATE AND ADMINISTRATION ACT (V OF 1881)—*concluded.*

provisions of s. 98 of the Probate and Administration Act that an executor shall, within one year from the grant of probate or letters of administration "or within such further time as the Court may from time to time appoint, exhibit an account of the estate" mean that one account is to be exhibited and not a series of accounts from time to time; the words "from time to time appoint" relating to an extension of the period within which an account is to be exhibited. MOHESH CHANDRA BHUTTACHARJEE *v.* BISWA NATH BHUTTACHARJEE . . I. L. R., 25 Calc., 250 [1 C. W. N., 646

2. ——————— *Sanction to prosecute, without finding if omission to file accounts is intentional or accounts intentionally false—Jurisdiction of District Judge to call for accounts after revocation of probate.*—N was executor to an estate. The probate was revoked. He had not filed an account during his executorship. After the revocation of the probate, he was ordered to submit accounts. He failed to do so within the time appointed. Sanction was given to prosecute him under s. 98, cl. (*c*), of Act V of 1881. The accounts were subsequently filed, whereupon the Court kept the order in abeyance, but after examination of the accounts and suspecting its genuineness, the Court restored the sanction for prosecution. *Held* that the Judge was not right in making the order depend on the examination of the accounts themselves, and that the Judge ought not to have made an order sanctioning the prosecution under s. 176 without an enquiry whether the omission to produce the accounts was intentional, or the accounts filed were intentionally false. NABA CHANDRA CHOWDHURY *v.* TRIPURA CHARAN CHOWDHURY [2 C. W. N., 597

——— s. 104.

See ADMINISTRATOR-GENERAL'S ACT, 1874. [I. L. R., 25 Calc., 54

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES. [I. L. R., 22 Mad., 194

——— s. 131.

See SUCCESSION ACT, s. 96. [I. L. R., 16 Calc., 549

PROBATE AND ADMINISTRATION ACT AMENDMENT ACT (VI OF 1889).

——— s. 14.

See EXECUTOR I. L. R., 23 Bom., 342

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . . I. L. R., 23 Calc., 446

PROBATE DUTY.

See CASES UNDER COURT FEES ACT, SCH. I, CL. 11.

PROCEDURE (CIVIL).

See CASES UNDER VARIOUS SECTIONS OF THE CIVIL PROCEDURE CODE.

See CASES UNDER THE HEADING IN RESPECT OF WHICH THE PARTICULAR PROCEDURE IS REQUIRED.

PROCEDURE (CRIMINAL).

See CASES UNDER VARIOUS SECTIONS OF THE CRIMINAL PROCEDURE CODES.

See CASES UNDER THE HEADING IN RESPECT OF WHICH THE PARTICULAR PROCEDURE IS REQUIRED.

"PROCEEDINGS," MEANING OF—

See CIVIL PROCEDURE CODE, 1882, s. 3 (1877, s. 3) . I. L. R., 3 Calc., 662 [I. L. R., 8 Bom., 287

See GENERAL CLAUSES CONSOLIDATION ACT, s. 6 I. L. R., 3 Calc., 662, 727 [3 C. L. R., 208, 391 I. L. R., 8 Bom., 340 9 C. L. R., 281 I. L. R., 13 Calc., 86 I. L. R., 16 Calc., 267

PROCEEDS OF SALE.

See SALE-PROCEEDS.

PROCESS.

See COURT FEES ACT, 1870, s. 20. [I. L. R., 17 Calc., 281

——— Non-payment of fees for—

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER. [I. L. R., 16 Mad., 452

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO I. L. R., 16 Mad., 234

——— Payment of fees for—

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE-HOLDER. [I. L. R., 22 Calc., 827 I. L. R., 23 Calc., 196, 374 I. L. R., 20 Bom., 179 I. L. R., 22 Bom., 722 I. L. R., 22 All., 358

——— Resistance to—

See CONTEMPT OF COURT—CONTEMPTS GENERALLY . 2 B. L. R., F. B., 21

——— Service of—

See COMPANY—WINDING UP—GENERAL CASES . I. L. R., 11 Bom., 241

See CASES UNDER SUMMONS, SERVICE OF.

PROCESS—*continued*

1. ——— **Cost of service of process**—*Act XXIII of 1861, s 2—Civil Procedure Code, 1877, 1882, s 93—Talabana*—A plaintiff in the Munsif's Court filed a list of witnesses, but failed to deposit talabana, or cost of the service of summons, for their attendance The Court failed to fix a time for the service of talabana The processes were not served, and the Court dismissed the suit because the plaintiff had produced no evidence in support of his claim. *Held*, under Act XXIII of 1861, s 2 the lower Court should first have fixed a time for the deposit of talabana Case remanded LALA PRASADI LAL v LALA AMBIKA PRASAD 3 B.L R., Ap, 25

S C PURSHADEE LALL v UMBIKA PERSHAD LALL [11 W R., 290

2 ——— **Substituted service** *Native woman of rank*—Where by the custom of India the respondent being a Hindu woman of rank, could not be personally served with an order of revivor, the Judicial Committee allowed service to be substituted on her dewan or chief servant CLARK v ROUPLALL MULLICK CLARK v DOORGAMONEY DOSSEE [2 Moore's I A., 263

3 ——— **Sufficiency of service**—*Act VIII of 1859, s 239—Service of prohibitory order, Sufficiency of*—Where service of the prohibitory order was effected by affixing it to the wall of the dwelling-house of the person on whom it was intended to serve it,—*Held* it was not a sufficient service under s 239 of Act VIII of 1859 It ought to have been served by delivery or by registered letter GOBIND CHUNDER DUTT v KHERODE CHUNDER MITTER 10 B. L. R, Ap, 12

4 ——— *Attachment—Private alienation*—Where an attachment of land was made by written order under s 235 of Act VIII of 1859, the conditions in s 239 had to be fulfilled in order to render any private alienation of the property attached null and void under s 240 INDRA CHUNDRA BABU v AGRA AND MASTERMAN'S BANK [1 B L R, S N, 20

S C INDRO CHUNDER BABOO v DUNLOP [10 W. R., 264

NUR AHMAD v ALTAF ALI I L R, 2 All, 58

5 ——— *Service on attorney's clerk*—Service upon an attorney's clerk of an order direct to be served upon an attorney is not good service PMRITLALL SALIGRAM v KIDD [2 Hyde, 116

6. ——— *Service on pleader—Order under s 165, Civil Procedure Code, 1859*—An order under s 165 of the Civil Procedure Code, requiring a party to a suit to attend and give evidence, might be served on such party's pleader and not necessarily personally SHIVRUDRAPPA v. KASHINATH VISHNU . . . 6 Bom., A. C., 141

7. ——— *Service of notice on pleader*—Service upon a respondent's pleader is good service upon himself, so far as notice of the appeal is concerned ISHUR DUTT MUNDUL v. SHIB PERSHAD THAKOOR 15 W. R., 290

PROCESS—*concluded*

8 ——— **Service in foreign territory**—*Service of notice of appeal—Civil Procedure Code, 1859, s 60*—Where a respondent resides in [illegible]

to show that he is at present or has recently been residing there SONATUN BUKSHEE v GOPAL CHUNDER SHAMUNTO 15 W R., 31

9. ——— [illegible] —F[illegible] Suf[illegible] for [illegible] respo[illegible], the Court refused to allow him the opportunity to have a fresh summons issued and served Where the party serving a notice of appeal finds the [illegible]

10 ——— **Inability to trace party for purpose of service**—*Service of notice of appeal—Civil Procedure Code 1859 s 57*—Where an appellant to the High Court was unable to serve notice on the plaintiff (respondent) because of in[illegible]

analogy to the procedure in respect to summons under s 57 of the Code of Civil Procedure BEDHOO KOOLANEE v BONOMALEE GURAIN [11 W. R, 496

11 ——— **Proof of service**—*Return of service of notice*—The return of service of notice with the name of the officer who effected the service on the back of it is *primâ facie* evidence of the service of the notice LOOTF ALI v ABOO BIBEE [15 W. R., 203

MOOKOONDONATH BHADOORY v SHIB CHUNDER BHADOORY . . . 19 W. R, 102

12 ——— **Service of notice of appeal**—*Civil Procedure Code, 1882 ss 79, 80, 82—Respondent's refusal to sign acknowledgment of service—Ex parte decree against respondent*—Where a respondent refused to sign the acknowledg[illegible]

Held that, under the circumstances there was no due service of the notice, and that the appeal was wrongly decided *ex parte* MARUTI v VITHU [I. L. R., 16 Bom., 117

PROCESSION.

——— in public road.

See JURISDICTIONS OF CIVIL COURT—PROCESSIONS I. L. R., 24 Calc., 524
[I. L. R., 18 Bom., 693

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY . 1 Mad., 50
[I. L. R., 2 Bom., 457
I. L. R., 5 Mad., 304
I. L. R., 6 Mad., 203
I. L. R., 18 Bom., 693
I. L. R., 24 Calc., 524

——— Powers of police in dealing with—

See MADRAS POLICE ACT, s. 21.
[I. L. R., 17 Mad., 37

PROCLAMATION.

See CASES UNDER ABSCONDING OFFENDER.

See FORFEITURE OF PROPERTY.
[2 Ind. Jur., N. S., 124

of sale.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY—GENERAL CASES.

——— Right of Government to withdraw—

See FOREST ACT, ss. 75 AND 76.
[I. L. R., 18 Bom., 670

PRODUCTION OF DOCUMENTS.

See CASES UNDER CIVIL PROCEDURE CODE, ss. 138, 139.

See CASES UNDER CONTEMPT OF COURT—PENAL CODE, s. 175.
[I. L. R., 13 Mad., 24

See INTERROGATORIES.
[I. L. R., 23 Calc., 117

See PLAINT—REJECTION OF PLAINT.
[2 Bom., 391: 2nd Ed., 369

See CASES UNDER PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

1. ——— Summons to produce document—*Civil Procedure Code, 1859, ss. 152, 153—1882, ss. 163, 164—Verbal order to pleader to produce.*—A written summons distinctly describing the nature of the document required must be issued on a party to a suit required to produce a document. A verbal order to his pleader is not sufficient, and is not such a summons as is contemplated by law. DOORGAMONEE DOSSEE *v.* BENODE MONEE DOSSEE
[W. R., 1864, 164

2. ——— Production of documents with plaint—*Ground for non-production.*—

PRODUCTION OF DOCUMENTS—*continued.*

Plaintiffs must, on the presentation of their plaints, produce in Court the originals of the document relied on by them in support of their claim. When a plaintiff can satisfy the Court at the hearing that some document on which he desires to rely was not presented with the plaint, because he was ignorant of its existence at the time, the Court will probably allow it to be received as evidence. CAMPBELL *v.* KEITH
[1 Hyde, 287

S. C. RITCHIE, STEWART & CO. *v.* GLADSTONE, WYLLIE & CO. . . 1 Ind. Jur., O. S., 125

See MAHABEER DOSS *v.* LALLA DOSS 1 W. R., 12

3. ——— *Civil Procedure Code, 1859, s. 39.*—Under s. 39 of the Civil Procedure Code, 1859, the plaintiff was bound to produce, at the time the plaint is filed, all the documents on which he relied. PREMSOOKH CHUNDER *v.* RAJ KISTO MITTER . . . . . 1 Hyde, 145

S. C. ANONYMOUS . . 1 Ind. Jur., O. S., 14

4. ——— Where a plaintiff sues upon title-deeds as evidence of his claim, he is bound to file them with his plaint, or else have them ready to produce at the time of the first hearing; otherwise he is bound to show good cause for not having done so. LEKHRAJ ROY *v.* MUTTY MADHUB SEN . . . . . 14 W. R., 95

5. ——— *Civil Procedure Code (Act XIV of 1882), ss. 58, 62, 63, 64—Rejection of plaint after being registered with copy extract from account books annexed—Omission to produce books of account for verification—Penalty for non-production of books.*—On the 14th April 1897 a plaint was presented, and was numbered and registered as a suit. Annexed to it was a copy of an extract from the plaintiff's account books. The matter was adjourned to the 2nd June 1897 for the production of the account books, in order that the copy might be compared and verified. On that day neither the plaintiff nor his pleader appeared with the books, whereupon the Subordinate Judge rejected the plaint, holding that no summons could be issued unless the copy extract annexed to the plaint was found to be correct. *Held* (reversing the order) that, the plaint having been registered on the 14th April, summonses ought to have been issued on the 2nd June. There was no provision in the Civil Procedure Code (Act XIV of 1882) justifying the rejection of the plaint. The penalty which the plaintiff incurred for not producing his original accounts was that prescribed in s. 63, *viz.*, not being able to put in that account without the special leave of the Judge. GOPAL GUNDAPA NAIK *v.* VISHNU KRISHNA NAIK . . I. L. R., 22 Bom., 971

6. ——— *Civil Procedure Code, 1859, s. 39—Document given to witness to refresh his memory.*—A document given to a witness as a script to refresh his memory is not "received in evidence" within the meaning of s. 39 of Act VIII of 1859, and need not therefore have been produced when the plaint was filed. RAMJI MADAUJI *v.* RANGAYYA CHETTI . . . 1 Mad., 168

PRODUCTION OF DOCUMENTS
—continued

7 ———————— *Civil Procedure Code 1859 s 39*—The plaintiff sued to recover certain jewels and one of her witnesses being examined by her counsel with reference to a list of the jewels which was in his possession the defendant's counsel objected to the document being referred to at all as it had not been filed with the plaint in compliance with s 39 of Act VIII of 1859 *Held* that s 39 of Act VIII of 1859 referred only to promissory notes bills of exchange and such documents as are in their nature the very essence of the case KAMENEE DOSSEE v HURROMONEY DOSSEE
[Bourke, O C, 91 Cor, 151

MANOORAM SHAW v HURRYPERSAUD ROY
[Bourke, O C, 162

8 ———————— *Civil Procedure Code (Act XIV of 1882) ss 59 140—Madras High Court Rules Nos 39 43 44 and 47*—A defendant is entitled under the High Court Rules to be furnished with a copy of documents sued on which are deposited with the plaint MAHOMED ABDUL AZIZ v SUBBA NAIDU I L R, 21 Mad, 490

9 ———————— *Discretion to* [illegible]

10 ———————— *Reception of docu* [illegible]

documents clears the defect of their not having been tendered with the plaint GOSAIN TOTA RAM v PURINIBALLAB
[3 B L R, P C, 34 12 W R, P C, 32
13 Moore's I A, 77

ATTA OOLLAH MUNDLE v SUKEEOODDEEN TURUPDAR W R, 1864, 271

11. ———————— *Civil Procedure Code 1882 ss 59 63—Appeal—Rejection of documents admitted by lower Court*—Certain documents having been allowed by the District Munsif to be filed by the plaintiff during the trial of a suit the [illegible]

by the lower Court the Appellate Court was bound to consider them MINAKSHI v VELU
[I. L R., 8 Mad, 373

12 ———————— *Civil Procedure Code 1882 ss 59 63*—*Held* that the refusal to admit in evidence a registered certificate of sale under s 63 of the Code of Civil Procedure 1882 on the ground that it had not been produced with the plaint as required by s 59 of the Code, was improper, there having been no doubt of its existence at the date of suit DEVIDAS JAGJIVAN v PIRJADA BEGAM
[I. L R., 8 Bom, 377

PRODUCTION OF DOCUMENTS
—concluded

13 ———————— *Second certificate* [illegible]

Court of first instance ought to have received the evi[illegible] pre[illegible] [illegible] 247

14 ———————— *Omission to put copy on record*—In a suit brought on a promissory note where the note was produced when the plaint [illegible]

omission and there being no application made to withdraw the suit was dismissed—*Held* that the Judge ought to have received a note in evidence which was produced in Court by the plaintiff when the plaint was presented (s 39 of the Civil Proce[illegible]

to its original place on the register and be tried by one of the Judges of the Court THOMPSON v JEHANGIR HORMASJI 3 Bom, O C, 66

15 ———— *Dismissal of claim for non compliance with Civil Procedure Code*—The Judge's decision disallowing a claim because the provisions of s 39 of Act VIII of 1859 had not been complied with was held to be incorrect under the circumstances EX PARTE RAYACHAND AMICHAND 2 Bom, 369

16 ———————— *Civil Procedure Code s 174—Court's jurisdiction to punish a witness for refusing to produce a document—Procedure—Indian Penal Code (Act XLV of 1860) s 175—Criminal Procedure Code (Act X of 1882) s 480*—A witness was summoned to produce a document in Court in connection with a certain suit He attended the Court but did not produce the document stating on oath that it was not in his possession. But this statement was disbelieved, and the Court fined him R75 under s. 174 of the Code of Civil Procedure (Act XIV of 1882) *Held* that the fine was illegally levied The jurisdiction of the Court to punish under s 174 of the Civil Procedure Code exists only in the case of a witness who, not having attended on summons has been arrested and brought before the Court The case of a witness who having a document will not produce it is provided for by s. 175 of the Penal Code (Act XLV of 1860) and s 480 of the Code of Criminal Procedure (Act X of 1882) IN RE PREMCHAND DOWLATRAM
[I. L R., 12 Bom, 63

PROFITS, SUIT FOR—

See Co-sharers—Suits by Co-sharers with respect to the Joint Property—Miscellaneous Suits.
[I. L. R., 3 All., 186
23 W. R., 286
I. L. R., 16 All., 28, 333
I. L. R., 17 All., 423
I. L. R., 22 All., 334
I. L. R., 20 All., 73

See Cases under Jurisdiction of Revenue Court—N.-W. P. Rent and Revenue Cases.

See Cases under Mesne Profits.

See N.-W. P. Rent Act, s. 7.
[I. L. R., 1 All., 659

See N.-W. P. Rent Act, s. 94.
[I. L. R., 1 All., 512

See N.-W. P. Rent Act, s. 208.
[I. L. R., 2 All., 239
I. L. R., 8 All., 61

See Pre-emption—Profits of Land.
[I. L. R., 19 All., 261

See Special or Second Appeal—Small Cause Court Suits—Profits of Land.
[I. L. R., 21 Bom., 248

"PROJAH," MEANING OF—

See Lease—Construction.
[22 W. R., 398

PROMISSORY NOTES.

See Cases under Evidence—Civil Cases—Secondary Evidence—Unstamped or Unregistered Documents.

See Government Promissory Note.
[13 B. L. R., 359
15 W. R., 267
I. L. R., 5 Calc., 654
I. L. R., 24 Bom., 65

See Hindu Law—Contract—Promissory Note . . 3 B. L. R., O. C., 130

See Cases under Jurisdiction—Causes of Jurisdiction—Cause of Action—Negotiable Instruments.

See Negotiable Instruments, Summary Procedure on.

See Negotiable Instruments Act, s. 13.
[I. L. R., 17 Mad., 85

PROMISSORY NOTES—*continued.*

See Onus of Proof—Documents relating to Loans, Execution of, and Consideration for.
[I. L. R., 20 Bom., 367

See Pleader—Remuneration.
[I. L. R., 14 Mad., 63
I. L. R., 16 Mad., 278
I. L. R., 17 Mad., 306

See Stamp Act (XXXVI of 1860).
[1 Ind. Jur., O. S., 124
1 Mad., 152

See Stamp Act, 1862, s. 22.
[2 B. L. R., O. C., 165
5 B. L. R., 103
1 Ind. Jur., N. S., 107

See Stamp Act, 1862, sch. A, cl. 1.
[6 Bom., A. C., 107

See Stamp Act, 1862, sch. A, cl. 10.
[3 Bom., O. C., 9
2 Ind. Jur., N. S., 203

See Stamp Act, 1869, s. 3, art. 25.
[I. L. R., 3 All., 260, 581
21 W. R., 1

See Stamp Act, 1869, s. 24.
[24 W. R., Cr., 1

See Stamp Act, 1869, s. 28.
[7 Bom., O. C., 180
21 W. R., 446
13 B. L. R., Ap., 33
I. L. R., 4 Mad., 296
7 N. W., 124
7 Mad., 361

See Stamp Act, 1869, s. 39.
[I. L. R., 3 All., 115

See Stamp Act, 1879, s. 3, cl. 4.
[I. L. R., 8 Bom., 297
I. L. R., 8 Mad., 37
I. L. R., 17 All., 211

See Stamp Act, 1879, s. 3, cl. 10.
[I. L. R., 13 All., 66

See Stamp Act, 1879, s. 34.
[I. L. R., 8 Calc., 645
I. L. R., 3 Mad., 251
I. L. R., 12 Bom., 443
I. L. R., 13 Bom., 449, 669
I. L. R., 22 Mad., 337

——— Issue of—

See Company—Powers, Duties, and Liabilities of Directors.
[1 B. L. R., O. C., 14

——— Payable by instalments.

See Cases under Limitation Act, 1877, art. 75.

——— Payable on demand.

See Consideration . 7 Bom., O. C., 9

See Interest—Cases under Act XXXII of 1839 . . 1 B. L. R., O. C., 41

PROMISSORY NOTES—*continued*

See CASES UNDER LIMITATION ACT, 1877, ART 73 (1871 ART 72)

——— registered under s 52, Act XX of 1866

See MERGER 1 B L R, O. C, 35

——— Suit on—

See ASSIGNMENT OF CHOSE IN ACTION [I L R., 1 Mad., 150; 4 Mad., 176; I. L. R., 1 All, 732

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE [I. L R, 17 Mad., 108

See COMPANY—WINDING-UP—DUTIES AND POWERS OF LIQUIDATORS [I L R., 18 Mad., 498

See CONTRACT—WAGERING CONTRACTS [I L R, 22 Bom, 899

See CONTRACT ACT, s 23—ILLEGAL CONTRACTS—GENERALLY [I. L R., 20 Mad, 84

See HUSBAND AND WIFE [8 B L R, 372

See LETTERS OF ADMINISTRATION [I. L R, 17 Mad, 147

See MAJORITY ACT s 3 [I. L. R., 17 Calc, 944; 8 C L R, 419; I L R, 21 Bom, 281

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS I. L. R, 17 Mad., 262

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND [I. L R, 3 Calc., 539

1 FORM OF

1. ——— **Document without express promise to pay** —A document is not a promissory note if it does not contain an express promise to pay GOVIND GOPAL *v* BALWANTRAO [I. L. R., 22 Bom, 986

2. ——— **Document proposing to borrow on certain conditions**—*Stamp Act, 1879—Proposal—Contract Act (IX of 1872) s 4*—A letter containing a request to borrow a certain sum of money promising that the same should be repaid with interest on a certain day is not liable to stamp duty It is not a promissory note, but a mere proposal under s. 4 of the Indian Contract Act (IX of 1872) DHONDBHAT NARHARBHAT *v* ATMARAM MORESHVAR I L R., 13 Bom, 669

NARAYANASAMI MUDALIAR *v* LOKAMBALAMMAL [I L R, 23 Mad, 156 note

3 ——— **Acknowledgment** —The plaintiff sued on two documents signed by the defendant, in one of which a sum of R 03 was stated to be

PROMISSORY NOTES—*continued*

1 FORM OF—*continued*

"due to you and payable on the 16th July," and in the other a sum of R515 was mentioned for which I give you this writing the whole amount of which will be paid up in full on the 3rd of August" *Held* to be not mere acknowledgments but promissory notes MANICK CHUND *v* JOMOONA DOSS [I L R., 8 Calc, 645

4. ——— **Uncertain agreement** —*Held* that the following instrument was so vague and indefinite in its terms that it could not be regarded as a promissory note I *J M C*, d hereby pro-

[illegible]

1876' CARTER *v* AGRA SAVINGS BANK [I L R., 5 All, 562

[illegible] e to [illegible] never [illegible] not [illegible] instru-*ment—Paper Currency Act (XX of 1882) s 25—Negotiable Instruments Act (XXVI I of 1881) ss 4 and 13* —The plaintiffs brought a suit on an alleged promissory note of the defendants for R2 1.5. The note was in Gujarati in the form of an account on a loose sheet of paper After reciting that the defendant had borrowed the said sum of R2 1.5 on personal security and that interest was to run thereon at a specified rate the document continued as follows 'The same (i e the sum borrowed with interest) are payable whenever dhani the owner or lender) may

[illegible]

Act and there was no objection to a suit founded upon it JETHA PARKHA *v* RAMCHANDRA VITHOBA [I. L. R, 16 Bom, 689

6 ——— **Proposal for a loan** —*Contract Act (IX of 1872) s 2—Stamp Act s 3* A letter, reciting a request for a loan, calling on the addressee to pay the amount to the bearer of the letter and continuing 'this sum I shall repay with interest and get back this letter I request you will not neglect to pay the amount on the strength of this letter" is a promissory note and not a mere proposal for a loan CHANNAMMA *v* AYYANNA I. L. R, 16 Mad, 283

[illegible]

PROMISSORY NOTES—*continued.*

1. FORM OF—*concluded.*

executed on . . . by . . . to . . . The amount which I have this day received from you in cash is R700. This sum I am bound to pay you. Therefore, adding to this sum interest at 8 annas per cent. per mensem, I am liable to pay. This is the account in this manner executed with my consent." *Held* that the document was not a promissory note, and was admissible in evidence. TIRUPATHI GOUNDAN *v.* RAMA REDDI [I. L. R., 21 Mad., 49

8. ———— **Contract or obligation.**—A promissory note was held to be a "contract or obligation" under s. 16 of the Regitration Act of 1861 for the purposes of limitation. PYARI CHAND MITTER *v.* FRAZER . . 6 B. L. R., Ap., 40

S. C. OFFICIAL ASSIGNEE *v.* FRAZER [14 W. R., O. C., 51

See LESLIE *v.* PUNCHANUN MITTER [6 B. L. R., 668 15 W. R., O. C., 1

9. ——— **Necessity of delivery of note** —*Making of note.*—The making of a promissory note is altogether the act of the maker, and delivery to the promisee is requisite to render it complete. WINTER *v.* ROUND . . 1 Mad., 202

2. EXECUTION.

10. ———— **Evidence as to execution**—*Probabilities.*—Case in which it was held on the evidence and a discussion of surrounding probabilities that the first Court was in error in finding that a promissory note sued on had been executed by the defendant. HURRICHURN BOSE *v.* MONINDRA NATH GHOSE . . . . L. R., 19 I. A., 4

3. CONSIDERATION.

11. ———— **Note given in payment of loss on wagering contract**—*Act XXI of 1848—Bom. Act III of 1865.*—A promissory note which has for its consideration a debt due on a wagering contract is not binding in the hands of the original payee. TRIKAM DAMODHAR *v.* LALA AMIRCHAND [8 Bom., A. C., 131

12. ———— **Note given partly for "balance of bets and lotteries"**—*Lottery Act (V of 1844).*—The defendant agreed with the plaintiff to take the plaintiff's mare "Bridesmaid" on "racing terms,"—all winnings to be divided equally between them, and the plaintiff to have the option of claiming a one-fourth share of any lottery in which she might be bought by or on account of the defendant; the plaintiff to keep and train "Bridesmaid" for R60 a month. Subsequently, the plaintiff agreed to keep and train, for a like sum for each horse, five horses belonging to the defendant. The defendant having been posted as a defaulter, the plaintiff, at the defendant's request, advanced certain sums to the Secretary of the Calcutta Races to enable the defendant's horses to run. As security for the repayment of such advances, and of a sum of R4,456-6 which had become due to the plaintiff, and which included an item of R1,149 for "balance of bets and lotteries," and a smaller sum in respect of certain tickets in the "Secundra Raffle," the defendant gave to the plaintiff a letter of hypothecation of his five horses, whereby it was agreed that in case of the defendant's default the plaintiff should be at liberty to sell the horses. The defendant made default, and the plaintiff advertised the horses for sale. On the same day the defendant wrote and gave to the plaintiff a letter, stating that, in consideration of the plaintiff's withdrawing the advertisement, and withholding the sale for a certain period, he would give the plaintiff a promissory note for the balance of his claim. A note for R7,000 was accordingly given by the defendant to the plaintiff. In the account delivered by the plaintiff to the defendant, he had by mistake overcredited the defendant with R744 in an item headed "cash received from the Secretary of the Calcutta Races, balance of racing account," and under which was included the following item: "*I. O. U.*, deducted from lottery account, R480." On receiving information of the error, the defendant gave the plaintiff another promissory note for R744. In an action on the notes brought under Act V of 1866, the plaintiff obtained a decree, which was set aside on the defendant's application, and leave was given to him to appear and defend. Written statements were then filed on the plaintiff's application. *Held* by MACPHERSON, *J.*, that the two promissory notes were given as security for the whole of the plaintiff's claim: that the items for "balance of bets and lotteries" and for the "Secundra Raffle" being rendered illegal by the Lottery Act (V of 1844), part of the consideration for the notes was illegal, and no action was maintainable upon them. His Lordship therefore dismissed the plaintiff's suit. On appeal, held by COUCH, *C.J.*, that the promissory note for R7,000 was not vitiated by the R1,149 being part of the consideration for it: although that portion of the latter sum which was won by lotteries was obtained by an illegal transaction, it was not illegal for the defendant to receive the money, and, having done so, to pay the plaintiff his share or to promise to do so. But the money paid in respect of the "Secundra Raffle," being money paid in execution of an illegal purpose, was an illegal consideration which disentitled the plaintiff to recover on the note. *Held* further that the note for R744 was given upon good consideration. All the facts of the case being stated in the plaintiff's written statement, the Court might allow the plaint to be amended, and frame an issue as to what amount was due to the plaintiff in respect of the consideration for the note for R7,000. *Held* by MARKBY, *J.*, that both notes were good, inasmuch as the promise contained in them did not spring from, nor was it the creature of, the original illegal agreement, but was a separate agreement. JOSEPH *v.* SOLANO [9 B. L. R., 441: 18 W. R., 424

4. ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES.

13. ———— **Endorsement to a third person for purpose of allowing him to sue**—*Assignment of negotiable instrument.*—There is

PROMISSORY NOTES—*continued*

4 ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES—*continued.*

14. —— Benami transaction—*Right of benamidar to sue on note* —The payee and holder of a promissory note is not debarred from suing on it by reason of the fact that a third person is really interested in it BOJJAMMA *v.* VENKATARAMAYYA [I L R, 21 Mad., 30

15. —— —— *Minor's suit by another next friend—Right to sue on note not endorsed* —An infant sued by his next friend to

the absence of an endorsement GURUMURTI *v.* SIVAYYA I. L R, 21 Mad, 391

16 —— Assignment of promissory note by endorsement—*Negotiable Instruments Act (XXVI of 1882), s 8—Right of suit—Benami*

17. —— Suit by endorsee against maker—*Endorsement of overdue note* —In a suit by

goods to be supplied by the defendant to the payee, that the money was paid and the promissory note sued on was made and delivered as an acknowledgment of the receipt of the money and as a security for what should be due to the maker in respect of ... of ... d a ... the plaintiff of these facts ... was

subject to the then state of the accounts between the payee and the defendant. COMMUNDUN MOHIDEEN SAIB *v.* OREE MEERAH SAIB . 7 Mad, 271

18 —— Endorsement of note overdue—*Note on demand—Re-endorsement* —Before a promissory note on demand can be treated as overdue in the hands of an endorsee, there must be some evidence of demand The re endorsement of a discharged promissory note cannot revive the liability of the maker *Commundun Mohideen Saib v Oree Meerah Saib, 7 Mad, 275,* followed The fact that the endorsee of a promissory note becomes one of the

LALL LALLAH . . I. L. R., 5 Mad, 108

19. —— Receipt endorsed on note—*Presumption of payment* —Though a receipt on the back of a bill of exchange or promissory note *primâ facie* imports that the bill or note has been paid, yet the receipt is capable of being explained, and if it appears that the bill or note has not been paid and that another bill or note was substituted for it, the Court will not be justified in concluding that the party who gave up the note in that way meant that the debt secured by the note was to be considered to have been paid. STEWART *v* DELHI AND LONDON BANK 17 W. R., 201

20 —— Suit to recover money due on a promissory note by assignee of rights of payee not being endorsee—*Negotiable Instruments Act, 1881, ss 8, 9* —*K* executed a promissory note on demand for R6 000 in favour of *S* in 1882 In 1884 *S* by an agreement in writing assigned all her property, including the promissory note, to *M*, but did not endorse over the promissory note to *M* *M* assigned his rights in the promissory note to a bank in payment of a debt In a suit by *M*

21 —— Suit by assignee by invalid endorsement—*Claim also on the original debt in respect of which note was given—Maintainability of suit* —The purchaser of the assets of a bank in liquidation, which assets included a debt due by defendants to the late bank and a promissory note given in respect of that debt sued defendants on the promissory note as well as on the original debt in respect of which the note had been given The note had not been endorsed until after the bank had been wound up and had ceased to exist and the endorsement had been held to be invalid *Held* that plaintiffs were entitled to

22 —— Bill of exchange—*Endorser of note or bill, Rights of—Right to securities deposited of endorser paying the holder of note or bill—Surety.*—The same rule is applicable to the endorser of a promissory note that applies to the endorser of a

PROMISSORY NOTES—*continued.*

4. ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES—*continued.*

Bank, L. R., 6 Ap. Cas., 1, referred to. Promissory notes made by an agent, acting for himself and for his principal, were secured by the deposit of title-deeds of property, belonging to the principal, in the hands of a bank which discounted the notes, and the latter were paid at maturity by an endorser. *Held* that the endorser was entitled to a transfer of the deeds to him as security, without further assent from the owner. *Held* also that he was entitled to have them transferred to him on the ground that, as a fact, the agent, acting within the principal's authority, had agreed that, in consideration of his paying the amount of the notes to the holder, he should have this security, the bank assenting. AGA AHMED ISPAHANI *v.* CRISP . . . I. L. R., 19 Calc., 242
[L. R., 19 I. A., 24

23. ——— Liability of maker, Discharge of —*Failure to present note at due date.—Semble*—The maker of a promissory note is not discharged by the holder's failure to present it at due date. RAMAKISTNAYYA *v.* KASSIM
[I. L. R., 13 Mad., 172

24. ——— Promissory note not presented for payment at maturity—*Negotiable Instruments Act (XXVI of 1881) ss. 64, 66—Effect of non-presentment.*—*Held* that the non-presentment for payment at maturity of a promissory note, the presentment of which is required by s. 66 of the Negotiable Instruments Act, 1881, has not the effect of relieving from liability the maker of the note. *Farzand Ali v. Agra Savings Bank, Weekly Notes, All., 1896, 201,* and *Ramakistnayya v. Kassim, I. L. R., 13 Mad., 172,* followed. PHUL CHAND *v.* GANGA GHULAM . . I. L. R., 21 All., 450

25. ——— Effect of an invalid endorsement of a promissory note by payee *Negotiable Instruments Act (XXVI of 1881), s. 46—Note recovered by, but not re-indorsed to, the payee.*—The defendant gave plaintiff a promissory note payable on demand. The plaintiff endorsed the note to a third party, a creditor of his, who sued the defendant on the note on his refusal to pay. The defendant pleaded that it had been agreed between the payee and himself that the note should not take effect until the payee had performed certain conditions which remained unperformed. The suit was accordingly dismissed. The plaintiff thereupon paid the endorsee and took back the note, which, however, was not re-indorsed, and instituted the present suit against the defendant, who pleaded that the property in the note was not vested in the original plaintiff so as to enable him to maintain the suit. On the decease of the plaintiff before the trial, his sons were substituted as plaintiffs *Held* that, although the property in a promissory note payable to order on demand passes by endorsement and delivery (Act XXVI of 1881, s. 46), the endorsement in this case had been declared invalid in the suit referred to, and must therefore be treated as cancelled, and consequently the property in the note was vested in the plaintiff at the date of the suit so as to enable him to maintain it. MARIMUTHU PILLAI *v.* KRISHNASAMI CHETTI
[I. L. R., 17 Mad., 197

26. ——— Assignment by payee of all his property including the promissory note —*Negotiation Absence of endorsement—Negotiable Instruments Act (XXVI of 1881), ss. 8 and 9.*—A promissory note payable to payee or order cannot be negotiated by the mere assignment by the payee of all his property including the note. *Pattat Ambadi Marar v. Krishnan, I. L. R., 11 Mad., 29,* followed. ABBOY CHETTI *v.* RAMACHANDRA RAU
[I. L. R., 17 Mad., 461

27. ——— Contemporaneous collateral agreement consistent with the terms of the promissory note—*Right of suit under Ch. XXXIX, Civil Procedure Code.*—The plaintiffs advanced money to defendant for the supply of certain goods. On defendant's failure to supply the goods, plaintiffs pressed for repayment, and a promissory note payable on demand for the amount due was executed; at the same time an agreement was entered into by defendant to liquidate the amount due on the promissory note by fortnightly consignments, the consignment to be made within fourteen days of the date of the promissory note. On defendant's failure to send the consignments as promised, a suit was brought under Ch. XXXIX, Civil Procedure Code. *Held* that the suit was rightly filed under Ch. XXXIX; that the agreement to liquidate the amount due by fortnightly consignments was a collateral undertaking consistent with the existence of the note containing an absolute promise to pay: that such collateral agreement was no answer to the suit on the promissory note; and that the plaintiff was entitled to a decree. SIMON *v.* MAHOMED SHERIFF . I. L. R., 19 Mad., 368

28. ——— Promissory note by member of an undivided Hindu family—*Liability of other member—Negotiable Instruments Act (Act XXVI of 1881), ss. 4, 26, 27.*—The maker of a promissory note (executed in plaintiff's favour), being a member of an undivided Hindu family, had borrowed from plaintiff the money represented by the note and purchased therewith land for the benefit of the family, which consisted of himself (the maker of note), an uncle, and the sons of the uncle. The uncle had always recognized the debt as a family debt, and the land purchased with the money borrowed had, in a subsequent division of property, been allotted to the uncle and his sons, who had also agreed with the maker of the note that they would discharge the debt. On a suit being brought against the maker of the note, as well as the uncle and his sons, —*Held* (*per* SHEPHARD and SUBRAHMANIA AYYAR, JJ. (DAVIES, J., dissenting), that all the members of the undivided family were liable. *Per* SUBRAHMANIA AYYAR, J.—Even assuming that the maker of the note was not the manager of the family, he was the agent of his co-parceners when buying the land and raising the loan, and his acts as such agent bound the uncle who expressly assented to them;

PROMISSORY NOTES—*concluded*.

4 ASSIGNMENT OF, AND SUITS ON, PROMISSORY NOTES—*concluded*

promissory note (as this suit was) no such representation could be alleged unless the persons said to be represented appeared by name on the face of the document, (2) where the name of only one person appears on a promissory note and he does not purport to make it on behalf of any one but himself none but the maker can be held liable to discharge it KRISHNA AYYAR *v* KRISHNASAMI AYYAR
[I. L. R., 23 Mad, 597

PROPERTY.

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT

See CASES UNDER JOINT PROPERTY AND JOINT FAMILY PROPERTY

——— at disposal of Government.

See RIGHT OF SUIT—PROPERTY AT DISPOSAL OF GOVERNMENT
[I L R., 19 Bom, 668

See TREASURE TROVE
[I. L R, 19 Bom, 668

——— decreed to plaintiff, Order for production of—

See EXECUTION OF DECREE—MODE OF EXECUTION—GENERALLY, ETC
[3 N. W, 319

——— Description of—

See CASES UNDER REGISTRATION ACT, s 21

——— Divesting of—

See CASES UNDER HINDU LAW—ADOPTION —EFFECT OF ADOPTION

See CASES UNDER HINDU LAW—INHERITANCE DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE

See CASES UNDER HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

See WILL—CONSTRUCTION
[I. L. R., 4 Calc., 420
1 Ind. Jur., N. S., 375
I. L. R., 6 All., 583
I. L. R., 15 Mad., 448

PROPERTY—*concluded*

——— found on accused.

See CRIMINAL PROCEDURE CODES, s 517
[I. L. R, 24 Calc, 499
1 C. W. N., 438, 561

——— in different districts

See JURISDICTION SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS

——— Injury or obstruction to enjoyment of—

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY

See CASES UNDER RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY

——— in the soil.

See FISHERY, RIGHT OF 24 W. R., 200
[W R., 1864, 63
I L R., 9 Calc, 183
I. L. R, 10 Calc, 50
1 W R., 79
Marsh., 334: 2 Hay, 568

See OWNERSHIP, PRESUMPTION OF—
[I. L R., 9 Mad., 175, 285

See SANAD I L R., 1 Bom, 523

——— not in esse, Pledge of—

See STAMP ACT, 1869, s 3
[I. L R, 2 Calc, 58

——— on which duty has been paid in England

See COURT FEES ACT SCH 1, CL. 11
[I L. R., 4 Calc, 725

——— on which there is a mortgage or incumbrance

See COURT FEES ACT SCH 1, CL 11
[8 B L R, Ap, 43
6 N W, 214
I. L R., 1 Bom, 118

——— Restitution of, Order for—

——— *Execution of decree—Possession under decree—Reversal of decree—Restitution of property after reversal of decree—Mesne profits—Civil Procedure Code s 244*—A Court reversing a decree under which possession of property has been taken has power to order restitution of the property taken possession of, and with it any mesne profits which may have accrued during such possession MOOKOOND LALL PAL CHOWDHRY *v* MAHOMED SAMI MEAH . [I. L. R., 14 Calc, 484

——— seized by police

See CRIMINAL PROCEDURE CODES, s 523.
[I. L. R., 17 Bom, 748
I. L. R., 22 Calc 781

——— subject to a trust.

See COURT FEES ACT, SCH I ART 11.
[6 B L. R., Ap, 138
11 B. L R., Ap., 39
14 B. L. R., 184
7 B. L R., 57
I. L. R., 20 Calc., 575

PROPRIETARY RIGHT.

See BOUNDARY . . 8 W. R., 343
[9 W. R., 426

Proprietary right—*Mofussil Courts—Legal and equitable rights to property.*—In mofussil Courts in this country there is no distinction between legal right and equitable right to property. There is but one kind of proprietary right not divisible into parts or aspects. SEEDEE NAZEER ALI KHAN *v.* OJOODHYA RAM KHAN. MUNSOOR ALI KHAN *v.* OJOODHYA RAM KHAN . 8 W. R., 399

PROSECUTION.

See ABATEMENT OF PROSECUTION.
[4 Mad., Ap., 55

Commencement of—

See CASES UNDER COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

Revival of—

See CASES UNDER COMPLAINT—REVIVAL OF COMPLAINT.

See UNDER REVISION CRIMINAL CASES—DISCHARGE OF ACCUSED.

See REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RETRIAL.

Withdrawal from—

See PUBLIC PROSECUTOR.
[I. L. R., 8 All., 291

PROSPECTUS.

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.
[I. L. R., 1 Bom., 320

PROSTITUTE.

See MAHOMEDAN LAW—GUARDIAN.
[I. L. R., 1 All., 598

Suit for rent of lodgings let to—

See LANDLORD AND TENANT—TENANCY FOR IMMORAL PURPOSES.
[9 B. L. R., Ap., 37

1. Registration of prostitutes—*Act XIV of 1868, ss. 11 and 21—Jurisdiction of Magistrates to entertain pleas of irregularity in the registry—Possession of registry ticket.*—Under Act XIV of 1868, the police are not empowered to put a woman on the register of "common prostitutes" against her will. The penalty prescribed by s. 11, Act XIV of 1868, for disobedience of any of its rules is for a "woman who voluntarily registers herself as a common prostitute." A Magistrate has authority to hear any objection urged by a woman charged with disobedience of the rules under Act XIV of 1868 against the legality of her registry, or that she is not a common prostitute. The possession of a registry ticket is not sufficient evidence of being a common prostitute. IN THE CASE OF LAKHIMANI RAUR . . . . 3 B. L. R., A. Cr., 70

S. C. QUEEN *v.* LUKHIMONEE RAUR
[12 W. R., Cr., 55

2. — *Act XIV of 1868, ss. 11, 21—Rules 13 and 27 passed under the Act—Magistrate, Competency of—Jurisdiction.*—Any woman desirous of ceasing to carry on the business of a common prostitute is, under the provisions of the Contagious Diseases Act, 1868, absolutely entitled to have her name removed from the register; and any rule, or portion of a rule, purporting to have been framed under the provisions of that Act which places any obstacle in the way of her doing so is *ultra vires*, and therefore void. Where a woman is prosecuted before a Magistrate under s. 11 of Act XIV of 1868, she is not precluded from pleading that she has ceased to be a common prostitute, and that she has taken steps, under s. 21 and the rules framed thereunder, for the removal of her name from the register; and the Magistrate is competent to entertain such a defence. EMPRESS *v.* NISTAR RAUR
[I. L. R., 6 Calc., 163: 7 C. L. R., 197

PROSTITUTION.

Obtaining possession or disposal of minor for purposes of—

See CASES UNDER PENAL CODE, ss. 372, 373.

PROTECTOR OF LABOURERS.

See BENGAL ACT VI OF 1865.
[3 B. L. R., A. Cr., 39

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887).

See MUNSIF, JURISDICTION OF.
[I. L. R., 20 Mad., 155

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL.

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS.

s. 15.

See VALUATION OF SUIT—SUITS.
[I. L. R., 24 Calc., 661

s. 16.

See MUNSIF, JURISDICTION OF.
[I. L. R., 19 Mad., 477

See REFERENCE TO HIGH COURT—CIVIL CASES . I. L. R., 21 Calc., 249

s. 17.

See CIVIL PROCEDURE CODE, 1882, s. 108.
[2 C. W. N., 693

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887)—*concluded*

———— s 23

See MUNSIF, JURISDICTION OF
[I. L R, 23 Calc, 425

———— s 24

See APPEAL—ORDERS
[I. L. R., 15 Mad, 89

———— s 25

See DISTRICT JUDGE JURISDICTION OF
[I L R, 24 Bom, 311

See JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT
[I L R, 13 All., 533

See LETTERS PATENT, HIGH COURT, N. W P, cl 10 I. L. R, 15 All, 373

See CASES UNDER REVISION—CIVIL CASES—SMALL CAUSE COURT CASES.

———— ss 25 and 27

See LETTERS PATENT, HIGH COURT, cl 15.
[I. L R., 17 Mad, 100
I. L R., 23 Mad, 169

———— s 33

See SUBORDINATE JUDGE, JURISDICTION OF . I. L R., 14 Bom, 371

———— s 35.

See MUNSIF, JURISDICTION OF
[I. L R., 19 Mad., 445

See TRANSFER OF CIVIL CASE—GENERAL CASES . . I. L R, 13 All, 324
[I L R, 23 Bom, 382

———— sch. II, cl. 6

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS
[I L. R, 14 All, 30

PROVOCATION.

See CASES UNDER CULPABLE HOMICIDE

PUBLIC BODY.

———— Delegation of powers to—

See PORTS ACT, s 6 I L R, 17 Mad, 118

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880).

See APPEAL—ORDERS
[I. L R., 22 Calc, 419

See LIMITATION ACT, 1877, s 14
[I. L R, 20 Calc, 234

See LIMITATION ACT 1877, ART 12
[I. L. R., 23 Calc., 775
L. R., 23 I. A, 45

See REVIEW—POWER TO REVIEW
[I. L. R., 22 Calc, 419

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880)—*continued*

1 ———— s. 2—*Bengal Act VII of 1868, s 8—Certificate of sale—Evidence of sufficiency of service of notice of sale—Act XI of 1859—S 2 of*

Act VII of 1868 to a sale certificate granted under s 19 of Bengal Act VII of 1880 so as to make such a certificate conclusive evidence of the sufficiency of the service of the notices of sale under the last-named Act PULIN CHANDRA ROY v AKBAR HOSSEIN
[I. L. R, 21 Calc, 350

BHOLA NATH MAITI v MAHINUDDIN MOHOMED
[I L R, 21 Calc, 350 note

2 ———— and s 7—*Bengal Act VII of 1868 s 8—Certificate of sale—Evidence of suffici-*

under s 7 of Bengal Act VII of 1880 for arrears of rent alleged to be due to an estate under the Court of Wards, but it is limited in its application to the two descriptions of certificates of title therein referred

Maiti v Mohinuddin Mahomed, I. L R, 21 Calc, 350 note, approved BISHAMBER HALDER v BONOMALI HALDER . . I L R., 26 Calc., 414
[3 C. W N, 233

3 ———— and ss 8, 10, 19—*Beng Act VII of 1868, s 2—Sale for arrears of road cess—Suit to set aside sale—Ground for setting aside sale under certificate—Act XI of 1859, s 33—Civil Procedure Code, ss 290, 311, 312*—Neither the provisions of s 33 of Act XI of 1859 nor those of s 2, Bengal Act VII of 1868, affect the jurisdiction of the Civil Court to entertain a suit to set aside a sale under a certificate on any of the

infringed. The words "in respect of sales in execution of decrees" in s 19 of Bengal Act VII of 1880 do

to the certificate becoming absolute and acquiring the force and effect of a final decree, does not come into operation unless the notice required by s. 10 is actually served The only remedy of a judgment-debtor where property has been sold in execution of a

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880)—*continued.*

certificate issued under Bengal Act VII of 1880, and who has sustained substantial injury by reason of a material irregularity in publishing or conducting the sale, is by way of an appeal under s. 2 of Bengal Act VII of 1868. The effect of s. 2 of Bengal Act VII of 1880 is that Act XI of 1859, and Bengal Act VII of 1868, and Bengal Act VII of 1868 are to be considered as if the provisions contained in them were contained in our Act so far as such incorporation is consistent with the terms of the incorporating Act. By the force therefore of s. 2 of the Act of 1880, the provisions of s. 2 of the Act of 1868 are applicable to a sale under an execution issued upon a certificate made under the Act of 1880. Bengal Act VII of 1880 is an Act for the recovery of all kinds of public demands, and therefore applies to cases of road or other public cesses. SIDHESWARI SINGH *v.* PANCHDEO LAL . I. L. R., 14 Calc., 1

4. —— and s. 8—*Beng. Act VII of 1868, s. 2—Suit to set aside certificate and sale for arrears of cesses—Absence of notice—Appeal.*—No suit will lie to set aside the sale of a property sold in execution of a certificate issued by the Collector for arrears of cesses, where it is found by the Court that there was no substantial injury at the time of the sale. The only remedy of the judgment-debtor, whose property has been sold, is by way of an appeal to the commissioner under s. 2 of Bengal Act VII of 1868. *Sidheswari Singh v. Panchdeo Lal, I. L. R., 14 Calc., 1,* followed. TROYLUCKHO NATH MOZUMDAR *v.* PAHAR KHAN . . I. L. R., 23 Calc., 641

5. —— —— *Beng. Act VII of 1868, s. 2—Sale in execution of certificate under Public Demands Recovery Act—Appeal to commissioner to set aside sale.*—In an appeal to the commissioner under s. 2 of Bengal Act VII of 1868 to set aside a sale in execution of a certificate under the Public Demands Recovery Act (VII of 1880),—*Held* that s. 2 of Bengal Act VII of 1868 applied to a sale under Act VII of 1880, and the appeal to the commissioner was rightly made under that section. *Sidheswari Singh v. Panchdeo Lal, I. L. R., 14 Calc., 1,* followed. GURESSAR SINGH *v.* GONESH DASS [I. L. R., 25 Calc., 789

6. —— —— and s. 20—*Act XI of 1859, s. 31—Limitation.*—S. 2 of the Public Demands Recovery Act (Bengal Act VII of 1880) does not make the provision of limitation in s. 31 of Act XI of 1859 applicable to the execution of a decree annulling a sale under s. 20 of Bengal Act VII of 1880. MAHOMED ABDUL HYE *v.* GAJRAJ SAHAI . . . I. L. R., 25 Calc., 283 [2 C. W. N., 89

—— —— s. 6 (b) and s. 10—*Suit to set aside certificate—Mode of service of notice.*—Although no special provision is made in Bengal Act VII of 1880 as to the manner of service of the notice prescribed in s. 10, it is not to be presumed that the Legislature intended that service of a less effectual character should be sufficient than it has expressly provided for similar processes under the Civil Procedure Code. Before therefore a service under Bengal Act VII of 1880 can be effected by posting it on the residence of the party on whom it is wished to serve it, it must be shown that some attempt has been made to effect personal service, and that such personal service, for reasons stated, could not be had. In such a case, when the fact of service of notice is denied, the onus lies on the party alleging service to prove it. RAKHAL CHANDRA RAI CHOWDHURY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . . . I. L. R., 12 Calc., 603

—— ss. 7, 8.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY. [I. L. R., 18 Calc., 125

—— s. 7 and s. 10—*Sale for arrears of cesses—Collector's certificate, Effect of, after notice of it.*—According to the true construction of s. 7 of Bengal Act VII of 1880, there is no foundation for a sale thereunder, until a certificate has been made by the Collector strictly in the manner prescribed therein, specifying the sum due and the person from whom it is due. *Held* that such certificate, when duly made, has, after service of notice thereof under s. 10, the effect of a decree so far as regards the remedies for enforcing it. BAIJNATH SAHAI *v.* RAMGUT SINGH [I. L. R., 23 Calc., 775 L. R., 23 I. A., 45

1. —— s. 8 (b), cl. 3, and s. 10—*Certificate, Suit to set aside—Amount not "due."*—Where rent was payable jointly to certain wards of Court, and another proprietor whose guardianship under the Court of Wards had ceased, and the Collector issued a certificate, under Bengal Act VII of 1880, for a proportionate share of the rent due to the wards,—*Held* that, there being no right at law to claim any separate share of the rent, there was no sum "due," and therefore, under s. 8 of the Act, the certificate was invalid and must be cancelled. GIRJANATH ROY CHOWDHRY *v.* RAM NARAIN DAS [I. L. R., 20 Calc., 264

2. —— —— and s. 12—*Suit to set aside certificate and sale—Limitation.*—A certificate was issued under the Public Demands Recovery Act (Bengal Act VII of 1880), and notice under s. 10 of the Act was served on the 12th December 1895. The debtor objected under s. 12 on the ground that no arrears were due, but the objection was overruled, on his failure to produce evidence, on the 7th August 1895, and the sale took place on the 10th August 1895. In a suit brought on the 8th August 1896 to set aside the certificate and the sale,—*Held* that the terms of s. 8, cl. (*b*), providing the limitation of one year from the date of service of notice are peremptory, and in no way controlled by the provisions of s. 12, and the suit in respect of the certificate was therefore barred by limitation. *Held*, also that, if the certificate cannot be cancelled, the sale held in execution of it also cannot be cancelled. RAJBUNS SAHAI *v.* KAMESHAR PROSAD [I. L. R., 26 Calc., 172

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880)—*continued*

——— s. 9.

See SALE FOR ARREARS OF REVENUE — SETTING ASIDE SALE — IRREGULARITY [1 C. W. N., 516

——— s. 10

See CESS . I. L. R., 19 Calc., 783

See SALE FOR ARREARS OF REVENUE — SETTING ASIDE SALE — IRREGULARITY [I. L. R., 18 Calc., 125 1 C. W. N., 516

1. ——— *Act XI of 1859, ss 5, 17 — Sale for arrears of revenue, Notification of — Attachment under certificate procedure* — Where a notice under s 10 of Bengal Act VII of 1880 was served, and a certificate issued by the Collector for default of payment of road-cess of a revenue paying estate, and the Government revenue being in arrears, no notification under s 5 of Act XI of 1859 was issued and the estate was subsequently sold for arrears of Government revenue, — *Held* that the sale was valid, and ss 5 and 17 of Act XI of 1859 did not apply, the certificate issued by the Collector being not an attachment as contemplated by s 5 *Ram Narain Koer v Mahabir Pershad Singh, I L R, 13 Calc, 208,* referred to RIPOO MURDAN SINGH *v.* RAM REKHA LAL [I. L. R., 20 Calc., 325

2 ——— *Bengal Act VII of 1868, ss. 2 and 8 — Notice — Sale for arrears of — Certificate of Sale* — A sale for arrears of public demands recoverable under Bengal Act VII of 1880 cannot be supported unless the certificate, upon which execution is taken out, is in strict compliance with the Act The notice under s 10 of the said Act must be issued by the Collector in whose office the certificate is required to be filed Even supposing [illegible] the [illegible] ved VII was of sale, moreover, cannot be conclusive evidence that the certificate in execution of which the property was sold was a certificate duly issued in accordance with the law UZIRALI MOLLAH *v.* KARTICK CHUNDER GHOSH 2 C. W. N., 363

3 ——— and s 23 — *Attachment under certificate procedure* — The certificate and notice referred to in s 10 Bengal Act VII of 1880 are executive acts and an attachment, which is the result of these acts is not a judicial, but an executive proceeding The meaning of s 23 of that Act which lays down that a Collector "in the discharge of his functions shall be deemed to be a person acting judicially within the meaning of Act XVIII of 1850" is that for the purpose of protecting him from personal liability, his action is to be regarded as judicial RAM NARAIN KOER *v.* MAHABIR PERSHAD SINGH . I. L. R., 13 Calc., 208

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880)—*continued*

——— s. 19.

See SALE FOR ARREARS OF REVENUE — SETTING ASIDE SALE — IRREGULARITY [I. L. R., 18 Calc., 125

——— *Certificate procedure — Civil Procedure Code (Act XIV of 1882), ss 311, 312* — A suit will lie in a Civil Court to set aside a sale held under Bengal Act VII of 1880 where the sale proclamation is issued against the whole sixteen annas of the estate, but a sale held only of a portion thereof The effect of s 19 of that Act is, that it relates to the practice and procedure in respect of sales that is, to the practice and procedure of executing Courts in the carrying out of sales RAM LOGAN OJHA *v.* BHAWANI OJHA [I. L. R., 14 Calc., 9

——— ss 21 and 22 — *Sale in execution of a certificate under the Act — Procedure — Satisfied certificate — Act XI of 1859* — The Collector, having received a report from the Tehsildar that arrears of road cess (Bengal Act IX of 1880) were due in respect of villages took proceedings purporting to be in pursuance of Bengal Act VII of 1880 In the certificate of unpaid demand, the names of the persons described as debtors were those not of the present proprietors but of former proprietors and the copy and notice were addressed to them *Held* by the High Court that the procedure laid down by Bengal Act VII of 1880 must be strictly followed, and it is therefore absolutely incumbent on the Courts when considering the validity of sales under that Act to rigidly require an exact compliance with the formalities prescribed therein by the Legislature Where a certificate is issued in respect of a demand under the Act, upon payment of such demand, it becomes the duty of the Collector, under s. 22, to enter satisfaction upon the certificate, and also in the register kept under s 21 A sale in execution of a satisfied certificate, or of a certificate not duly made under the Act, is absolutely void *Abdul Hye v Nawab Pat, B L R Sup Vol, 911* and *Lala Mobaruk Lal v Secretary of State for India, I. L R, 11 Calc 200* followed. *Mohan Ram Jha v. Baboo Shib Dutt Singh, 8 B. L. R 235,* referred to *Semble* — Demands in respect of cess under Bengal Act VII of 1880 are not on the same footing as revenue demands to which Act XI of 1859 applies and therefore the procedure prescribed by Act XI of 1859 for the recovery of the latter is not applicable to the recovery of the former GUJRAJ SAHAI *v.* SECRETARY OF STATE FOR INDIA I. L. R., 17 Calc., 414

Held on appeal by the Privy Council affirming the decision of the High Court, that even if the certificate and the proceedings following it had been duly authenticated and intimated to the present proprietor, which had not been the case they could not affect his right of property in the villages, inasmuch as the Act only authorizes the attachment and sale of the property of the persons who are described as debtors This of itself was a ground for cancelling

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880)—*concluded.*

the sale. Their Lordships also concurred in the view taken by the High Court that there was no evidence showing that the certificate had been duly signed, and were of opinion that the High Court had rightly found payment of the arrears before the sale. MAHOMED ABDUL HAI *v.* GUJRAJ SAHAI [I. L. R., 20 Calc., 826
L. R., 20 I. A., 70

PUBLIC DOCUMENTS.

See CASES UNDER EVIDENCE ACT, s. 74.

PUBLIC DUTIES.

——— Enforcement of—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[I. L. R., 17 Calc., 329
I. L. R., 21 Calc., 348

PUBLIC FUNCTIONS.

See PENAL CODE, s. 186.
[I. L. R., 22 Calc., 286, 596
I. L. R., 23 Calc., 896
1 C. W. N., 74

PUBLIC HEALTH, OFFENCE AFFECTING—

1. ——— Penal Code, s. 269—*Travelling in a train while suffering from cholera.*—*K*, knowing that he was suffering from cholera, entered a train as a passenger without informing the railway company's servants of his condition. *M*, knowing of *K*'s condition, bought *K*'s ticket and travelled with him. *Held* that *K* was properly convicted under s. 269 of the Penal Code of negligently doing an act which was, and which he had reason to believe was, likely to spread infection of a disease dangerous to life, and *M* of abetment of *K*'s offence. QUEEN-EMPRESS *v.* KRISHNAPPA . . . I. L. R., 7 Mad., 276

2. ——— *Communicating syphilis by the act of sexual intercourse—Cheating.*—A prostitute who, while suffering from syphilis, communicates the disease to a person who has sexual intercourse with her, is not liable to punishment under s. 269 of the Indian Penal Code (Act XLV of 1860), "for a negligent act and one likely to spread infection of any disease dangerous to life." QUEEN EMPRESS *v.* RAKHMA . I. L. R., 11 Bom., 59

3. ——— *Negligent act—Refusal to allow person suffering from infectious disease to be removed to a hospital.*—Where a mother refused to allow her daughter suffering from smallpox to be removed to a hospital in accordance with an order made by the District Magistrate, unless she accompanied her, and was convicted of an offence under s. 269 of the Penal Code by the District Magistrate,—*Held* that no unlawful or negligent act had been committed within the meaning of s. 269 of the Penal Code. CAHOON *v.* MATHEWS . . I. L. R., 24 Calc., 494
[1 C. W. N., 274

PUBLIC HIGHWAY.

See PUBLIC ROAD, HIGHWAY, ETC.

PUBLIC NUISANCE.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

PUBLIC OFFICER.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—SALARY I. L. R., 24 Calc., 102

See COLLECTOR . I. L. R., 3 All., 2

See OFFICIAL TRUSTEE.
[I. L. R., 7 Calc., 499
I. L. R., 12 Mad., 250

See STAMP ACT, SCH. I, ART. 22.
[I. L. R., 19 All., 293

——— Money lent to—

See SUBORDINATE JUDGE, JURISDICTION OF . . I. L. R., 22 Bom., 170

——— Notice of suit—*Civil Procedure Code, 1882, s. 424—Talukhdari settlement officer managing estate under Act XXI of 1881—Broach and Kaira Encumbered Estates Act.*—The plaintiff sued for a declaration that he was entitled to succeed, on his father's death, to a talukhdari estate to the exclusion of defendant 1, who, he alleged, was a supposititious child set up by his step-mother to defeat the plaintiff's right of inheritance. It appeared that defendant 1 had obtained a decree against the plaintiff's father establishing his legitimacy and declaring him entitled to receive maintenance out of the estate in question. In accordance with that decree, the talukhdari settlement officer (defendant 2), who was manager of the estates under the Broach and Kaira Encumbered Estates Act (XXI of 1881), paid defendant 1 an allowance of R200 a month on account of his maintenance, which allowance, the plaintiff alleged, was illegal and wrongful. The defendants contended that the suit was bad, because notice had not been given to the talukhdari settlement officer as required by s 424 of the Civil Procedure Code (Act XIV of 1882). *Held*, following *Shahebzadee* v. *Fergusson, I. L. R., 7 Calc., 499*, and *Bhau Balapa* v. *Nana, I. L. R., 3 Bom., 343*, that although the talukhdari settlement officer acting as manager under XXI of 1881 was a "public officer," yet the suit was maintainable without giving the talukhdari settlement officer the notice required by s. 424 of the Code of Civil Procedure, as it was not a suit arising out of acts done by him in his official capacity. SARDARSINGJI *v.* GANPATSINGJI
[I. L. R., 14 Bom., 395

——— Offer of bribe to—

See ACCOMPLICE.
[I. L. R., 14 Bom., 331
I. L. R., 27 Calc., 144, 925

PUBLIC OFFICER—*concluded*

——— Suit against—

See Civil Procedure Code s 424.
[13 C L R, 195
I L R, 24 Calc, 584
I L R., 20 Bom., 697
I L R., 25 Calc, 239

See Subordinate Judge Jurisdiction of I L R 15 Bom, 441
[I L R, 21 Bom 754, 773
I L R., 22 Bom, 170

PUBLIC PLACE

See Penal Code s 159
[I L R., 17 All, 166

PUBLIC POLICY

——— Agreements contrary to—

See Bengal Excise Act (VII of 1878)
[I L R, 16 Calc, 436

See Cases under Champerty

See Cases under Contract Act s 23—Illegal Contracts—Against Public Policy

See Costs—Taxation of Costs
[I. L R., 17 Mad., 162

See Executor I L R, 22 Calc, 14

——— Custom contrary to—

See Hindu Law—Custom—Endowments I L R., 14 Bom, 90

See Hindu Law—Custom—Immoral Customs I L R., 1 Mad, 168, 356

See Hindu Law—Marriage—Validity or otherwise of Marriages
[I. L R, 17 Bom., 400

PUBLIC PROSECUTOR

See Criminal Proceedings
[8 Bom, Cr, 126

——— Discretion of—

See Witness—Criminal Cases—Examination of Witnesses — General Cases I L R., 7 All, 904
I L R., 16 All, 84

——— Government pleader—*Withdrawal from prosecution—Criminal Procedure Code 1882 s 494*—*Held* by the Full Bench that a person appointed by the Magistrate of the district under s 492 of the Criminal Procedure Code to be Public Prose

PUBLIC RECORD

See Cases under Evidence Act s. 35.

PUBLIC ROAD HIGHWAY, STREET, OR THOROUGHFARE

See Bengal Municipal Act 1864
[I L R., 2 Calc, 425

See Bengal Municipal Act 1864 s 10
[I. L R., 20 Calc., 732

See Bombay District Municipal Act 1873 s 17 I L R., 12 Bom, 490
[I. L. R, 20 Bom., 146

See Land Acquisition Act 1870 ss 13 and 24 I. L. R, 25 Calc., 194
[L. R., 24 I. A., 177

See Ownership Presumption of
[I L R, 7 All., 362

See Res Judicata — Estoppel by Judgment I. L. R., 20 Calc, 732

——— Allowing water to remain on—

See Bombay District Municipal Act 1873 s 54 I. L. R, 20 Bom, 83

——— Encroachment on

See Limitation Act art 149
[I L R., 19 Mad., 154

——— Obstruction to, or nuisance on—

See Bench of Magistrates
[I. L R., 13 Mad, 142

See Bengal Municipal Act 1884 s 217
[I L R., 17 Calc., 684

See Bombay District Municipal Act 1873 s 42 I. L. R, 19 Bom., 212

See Declaratory Decree Suit for—Orders of Criminal Courts
[I. L R, 17 Bom., 293

See Cases under Jurisdiction of Civil Court—Magistrate's Orders Interference with

See Jurisdiction of Civil Court—Processions I L R, 24 Calc, 524
[I. L. R., 18 Bom, 693

See Cases under Jurisdiction of Civil Court—Public Ways Obstruction of

See Jury—Jury under Nuisance Sections of Criminal Procedure Code
[I L R, 18 All., 158
I. L. R., 22 All., 267

See Madras Police Act 1888 s 71
[I. L. R., 14 Mad., 223

See Nuisance—Public Nuisance under Penal Code I. L. R., 20 Mad., 433

See Cases under Nuisance—Under Criminal Procedure Code

PUBLIC ROAD, HIGHWAY, STREET, OR THOROUGHFARE—*concluded.*

See CASES UNDER RIGHT OF SUIT—OBSTRUCTION OF PUBLIC HIGHWAY.

——— Rash riding on—

See PENAL CODE, s. 279.
[14 W. R., Cr., 32
I. L. R., 19 Bom., 715

1. ——— User of road by public—*Evidence that road is public.*—In order to establish that a road is a public road, it is sufficient if acts of user by the public are shown to have been acquiesced in by the owner of the land over which the road passes, and that these acts are of such a character as to warrant the inference that the owner intended to make over to the public the right to use the land as a public highway. ANDERSON *v.* JUGGODUMBA DABI
[6 C. L. R., 282

2. ——— Suit to remove trees planted on public road—*Space on sides of road.*—A public road includes a fair margin on either side of the road, which may be used for various purposes in connection with the road itself. Where trees have been planted on the margin of a public road, a suit will not lie by the proprietor of the land through which the road passes to have them removed. HARRENDRO COOMAR CHOWDHRY *v.* TARAMONI CHOWDHRAIN . . . . . 7 C. L. R., 272

3. ——— Diversion of road—*Right of owners of land adjoining old road—Grant by municipality of land forming old road—N.-W. P. and Oudh Municipalities Act (XV of 1873), s. 38—Power of municipality over public highway.*—There is a presumption that a highway, or waste land adjoining thereto, belongs to the owners of the soil of the adjoining land. S. 38 of Act XV of 1873 (N.-W. P. and Oudh Municipalities Act) was not intended to deprive persons of any private right of property they have in the land used as a public highway, or to confer such rights on the municipality, nor has the section any such effect. In a case where such land ceased to be used as a public highway, and was granted by the municipality to third persons, who proceeded to build thereon,—*Held* that the owners had a good cause of action against such persons for the demolition of the buildings and restoration of the property to its original condition. NIHAL CHAND *v.* AZMAT ALI KHAN . I. L. R., 7 All., 362

PUBLIC SAFETY, OFFENCE AFFECTING—

See CHARGE—FORM OF CHARGE—SPECIAL CASES—PUBLIC SAFETY . 1 Bom., 137

PUBLIC SERVANT.

See ASSAULT ON PUBLIC SERVANT.
[13 W. R., Cr., 49
I. L. R., 9 Bom., 558
I. L. R., 26 Calc., 630
3 C. W. N., 605, 627

PUBLIC SERVANT—*continued.*

See ESCAPE FROM CUSTODY.
[I. L. R., 6 All., 129

See EVIDENCE ACT, s. 74.
[I. L. R., 18 Calc., 534

See CASES UNDER FALSE EVIDENCE—FABRICATING FALSE EVIDENCE.

See ILLEGAL GRATIFICATION.
[3 W. R., Cr., 10
I. L. R., 21 Bom., 517

See PENAL CODE, s. 221.
[I. L. R., 3 All., 60

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
[I. L. R., 3 Calc., 758: 2 C. L. R., 520
I. L. R., 23 Mad., 540

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION — GOVERNMENT, SUITS AGAINST . I. L. R., 18 Mad., 395

——— Acts done by—

See MUNSIF, JURISDICTION OF.
[1 Bom., 144

See PENAL CODE, s. 217.
[I. L. R., 3 Calc., 412

——— Assaulting, in execution of his duty.

See PENAL CODE, s. 332.
[I. L. R., 18 All., 246

See SENTENCE—CUMULATIVE SENTENCES.
[4 C. W. N., 245

——— Contempt of authority of—

See CASES UNDER CONTEMPT OF COURT.

——— Disobedience of direction of law by—

See CRIMINAL PROCEDURE CODES, s. 45 (1872, s. 90) . I. L. R., 1 Mad., 266

See PENAL CODE, s. 217.
[I. L. R., 1 Mad., 266
I. L. R., 3 Calc., 412

——— Disobedience of order of—

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE . I. L. R., 8 All., 99
I. L. R., 19 Mad., 464

See CASES UNDER PENAL CODE, s. 188.

——— Giving false information to—

See CASES UNDER PENAL CODE, s. 182.

——— Obstruction of, in execution of his duty.

See ESCAPE FROM CUSTODY.
[2 Bom., 134: 2nd Ed., 128

See PENAL CODE, s. 152.
[I. L. R., 19 Calc., 105

PUBLIC SERVANT—*continued*

See PENAL CODE, s 183,
[I L R, 15 Bom, 564
I. L. R., 25 Calc, 274
I L R, 21 Mad, 78

See CASES UNDER PENAL CODE, s 183

See WRONGFUL RESTRAINT
[I L R, 12 Bom, 377

——— Personating—

See SENTENCE—CUMULATIVE SENTENCES
[I. L R, 10 All, 58

——— Prosecution of—

See SANCTION TO PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION
[I L R, 16 Mad, 468

1 ——— Municipal Commissioner—*Act XXVI of 1850—Bom Reg II of 1827 s 43* —A municipal commissioner appointed under Act XXVI of 1850 was a public servant within the meaning of Regulation II of 1827, s 43, and consequently a Munsif had no jurisdiction to try a suit brought against him for acts done in his public capacity GREAVES v BHAGVAN TULSI 4 Bom, A C, 93

REG v PURSHOTAM VALJI 5 Bom, Cr, 33

2 ——— Person performing public duties—*Penal Code, s 21* —Any person whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties and accepts those responsibilities, and is recognized as filling the position of a public servant, must be

[illegible]

the definition contained in s 21 of the Penal Code QUEEN EMPRESS v PARMESHAR DAT
[I L. R., 8 All, 201

3 ——— Engineer receiving municipal pay—*Penal Code s 21* —An engineer who receives and pays to others municipal moneys is a public servant within the meaning of s 21, cl 10 of the Penal Code, although he may not have the power of sanctioning the expenditure of such moneys REG v NANTAMRAM UTTAMRAM 6 Bom., Cr, 64

4 Izaphatdar—*Penal Code, s 21 — Lessee of village undertaking to keep forest accounts—Officer* —The word "officer" in s. 21, cl 9, of the Penal Code means a person employed to

[illegible]

of a village who has undertaken to keep an account of its forest revenues and pay a certain proportion to the Government, keeping the remainder for himself —is not an officer, and therefore not a public servant, within the meaning of s. 21 REG v. RAMAJIRAV JIVBAJIRAV 12 Bom, 1

PUBLIC SERVANT—*continued*

5 ——— Surveyor employed by the Collector—*Penal Code (Act XLV of 1860), s 21 and s 186* —The Collector acting in the management of a khas mehal the property of the Government, is as much "the Government" within the meaning of s 17 of the Penal Code as when he is exercising any other of the duties of his official position A surveyor employed by the Collector in the khas mehal department to make a survey of a certain portion of a watercourse is a "public servant" within the meaning of s 21 of the Penal Code *Reg v Ramajirav, 12 Bom, 1*, and *Chatter Lal v Thacoor Pershad, I L R 18 Calc, 518*, referred to BAJOO SINGH v QUEEN-EMPRESS I L. R., 23 Calc, 158
[3 C W. N, 116

6 ——— Labourer employed by Government—*Penal Code s 21* —A carter employed by Government is not a public servant within the meaning of s 21 of the Penal Code QUEEN v NACHIMUTTU I. L. R., 7 Mad., 18

7. Mohurrir appointed under Beng Act IX of 1862—*Money received for registering deeds* —Money received by a mohurrir appointed under the Registration Act Bengal Act IX of 1862, by way of fees for registering deeds is money entrusted to him as a public servant QUEEN v. DWARKANATH GHOSE 20 W R, Cr, 49

8 ——— Court of Wards peon—*Penal Code, s 21* —A peon employed by the manager of an estate under the charge of the Court of Wards is not a public servant within the meaning of s 21 of the Penal Code QUEEN v ARAYI
[I L R, 7 Mad., 17

9 Manager employed under the Court of Wards—*Penal Code (Act XLV of 1860), ss 21, 161—"Public servant"—Held* that the manager of an estate employed under the Court of Wards is a "public servant" within the [illegible] *Empress* [illegible] QUEEN-

[illegible] All, 127

10. Person appointed by Government Solicitor to act as Prosecutor in the Police Court—*Penal Code, s 21* —A person appointed by the Government Solicitor with the approval of Government and under an arrangement by the Governor General in Council to act as Prosecutor in the Calcutta Police Courts is a public servant within the meaning of s 21 of the Penal Code EMPRESS v BUTTO KRISHTO DOSS
[I L. R., 3 Calc, 497

11. — Public servant, Peon attached to the office of the Superintendent of the Salt Department whether a—*Penal Code (Act XLV of 1860), s 21, cl. (9), s 161—"Officer," Meaning of* — An officer in the service or pay of Government" within the terms of s 21 of the Penal Code is one who is appointed to some office for the performance of some public duty A peon, in the service and pay of the Government and attached to a Government office, is an officer of

PUBLIC SERVANT—*continued.*

Government and a public servant within the meaning of s. 21, cl. (9), of the Penal Code. *Reg.* v. *Ramajirav Jivbajirav, 12 Bom., 1,* explained and distinguished. *Queen* v. *Arayi, I. L. R., 7 Mad., 17,* and *Queen-Empress* v. *Mathura Prasad, I. L. R., 21 All., 127,* disapproved of. IN THE MATTER OF NAJAMADDIN . . . 4 C. W. N., 748

12. ———— Civil Surgeon—*Penal Code ss. 116 and 161—Abetment of illegal gratification.* —Where the accused was charged under s. 116, Penal Code, with having abetted the commission of an offence punishable under s. 161 of that Code, the person abetted having been a Civil Surgeon of a sudder station, it was held that the enhanced imprisonment prescribed by the latter part of s. 116 could not be awarded, as the Civil Surgeon was not a public servant within the words of the section "whose duty it is to prevent the commission of such offence." QUEEN *v.* RAMNATH SARMA BISWAS
[21 W. R., Cr., 9

13. ———— Peon of Collector's Court—*Penal Code, s. 21, cl. 9, and s. 161—Illegal gratification—Peon remunerated by fees.*—A peon of the Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the special Sub-Registrar, where he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant. *Held* that the peon was a public servant under the definition in the 9th clause of s. 21 of the Penal Code, and the trial of the charge against him must be proceeded with. QUEEN *v.* RAM KRISHNA DAS . 7 B. L. R., 446

S. C. QUEEN *v.* RAMKISTO DASS
[16 W. R., Cr., 27

14. ———— Officer employed in Criminal Court—*Obtaining valuable thing without consideration—Illegal gratification—Penal Code, s. 165.*—*K*, a police officer, employed in a Criminal Court to read the diaries of cases investigated by the police and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in s. 161 of the Penal Code, but as "dasturi." *Held* that *K* was not, under these circumstances, punishable under s. 161 of the Penal Code, but under s. 165 of that Code. EMPRESS OF INDIA *v.* KAMPTA PRASAD . . . . I. L. R., 1 All., 530

15. ———— Poddar of Bank of Bengal —*Illegal gratification—Penal Code, ss. 21 and 161.*—The manager of a Court of Wards estate paid into a bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. *B*, a poddar in the bank, demanded and took a reward for his trouble in receiving the money.

PUBLIC SERVANT—*concluded.*

On *B* being prosecuted and charged under s. 161 of the Penal Code,—*Held* that, although the money might have been paid on account of Government, it was on behalf of the bank, and not on behalf of the Government; that the money was received by the accused; and that the poddar was a servant of the bank only, and not a public servant within the meaning of cl. 9, s. 21 of the Penal Code. IN THE MATTER OF THE PETITION OF MODUN MOHUN
[I. L. R., 4 Calc., 376

16. ———— Convict warders—*Penal Code, s. 223—Suffering an escape from custody.*—Convict warders are "public servants" within the meaning of s. 223 of the Penal Code. QUEEN *v.* KALLACHAND MOITREE . . . . 7 W. R., Cr., 99

17. ———— Municipal Inspector—*District Municipalities Act (Mad. Act IV of 1884), s. 41.*—A municipal inspector is a public servant within the meaning of s. 41 of the Madras District Municipalities Act. QUEEN-EMPRESS *v.* RAMASAMI
[I. L. R., 13 Mad., 131

18. ———— Duties of zamindari karnam accounts — *Penal Code, s. 166 — Mad. Reg. XXIX of 1802, s. 12.*—A zamindari karnam is a public servant, and is bound by law to produce accounts to the proprietor or farmer of a zamindari. SUBRAMANAYA *v.* SOMASUNDARA
[I. L. R., 15 Mad., 127

19. ———— Sanitary Inspector—*Madras Local Boards Act (Mad. Act V of 1884).*—A Sanitary Inspector appointed by the local board is a public servant within the meaning of Local Boards Act, Madras, 1884, s. 43. QUEEN-EMPRESS *v.* TIRUVENGADA MUDALI . I. L. R., 21 Mad., 428

PUBLIC SPRING.

See PENAL CODE, S. 277.
[I. L. R., 2 Calc., 383
I. L. R., 4 Mad., 229

PUBLIC THOROUGHFARE.

See PUBLIC ROAD, HIGHWAY, ETC.

PUBLIC WORSHIP.

See MADRAS MUNICIPAL ACT, 1878, S. 119.
[I. L. R., 6 Mad., 287

See MAHOMEDAN LAW—CUSTOM.
[I. L. R., 18 Calc., 448
L. R., 18 I. A., 59

See CASES UNDER RIGHT OF SUIT—PUBLIC WORSHIP, SUITS REGARDING RIGHT OF.

PUBLICATION.

See CASES UNDER DEFAMATION.

See CASES UNDER LIBEL.

———— of banns of marriage.

See BIGAMY . I. L. R., 1 All., 316

PUBLISHER.

See LOTTERY I L R., 10 Bom, 97

See PRINTING PRESSES AND NEWSPAPERS ACT . I L R., 23 Calc., 414

PUNDITS, OPINIONS OF—

1 ———— Weight to be attached to—Observations of the Privy Council as to the weight to be attached to the opinions of pundits COLLECTOR OF MADURA *v* MUTU RAMALINGA SATHUPATHY
[1 B L R, P C, 1 12 Moore's I A, 397
10 W R, P C, 17

2 ———— *Pundits disagreeing with current authorities*—The opinions of pundits must not be taken on their authority to be a correct exposition of the law when such opinions are discordant from works of current and established authority COLLECTOR OF MASULIPATAM *v* CAVALY VENCATA NARAINAPAH
[2 W R., P C, 61 1 Moore's I A, 529

3 ———— Reference to pundits—*Statement of cases*—Every reference in a suit to law officers likely to bind a right should embrace all important facts proved or admitted in the cause which may affect the conclusion and it is the duty of the Court itself so to frame the questions as to elicit an opinion upon the very facts on which the legal title depends MYNA BOYEE *v* OOTTORAM
[2 W R., P C, 4 8 Moore's I A, 400

PUNISHMENT

———— Enhancement of—

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES
[I L R, 1 Mad 54, 289
I L R, 4 Mad, 233

See REVISION—CRIMINAL CASES—SENTENCES B L R., Sup Vol, 443
[I L R 6 All., 622
I L R, 11 Calc, 530
20 W. R, Cr, 15, 22

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—ENHANCEMENT

———— Form of—

See OFFENCE COMMITTED ON THE HIGH SEAS 1 B L R., O Cr, 1
[8 Bom, Cr., 63
I L R., 14 Bom, 227

See CASES UNDER SENTENCE

PURCHASE MONEY

See CASES UNDER PRE EMPTION—PURCHASE MONEY

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER 7 W. R., 317
[I. L. R., 5 Bom, 554
I. L. R., 3 All., 77

PURCHASE-MONEY—*concluded*

See CASES UNDER VENDOR AND PURCHASER—PURCHASE MONEY ETC

———— Failure to pay—

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[I. L R, 2 Bom, 547

See CASES UNDER VENDOR AND PURCHASER—CONSIDERATION

See CASES UNDER VENDOR AND PURCHASER—VENDOR RIGHTS AND LIABILITIES OF

———— Refund of—

See ACT XL OF 1858, s 18
[15 B L R, 350

See DECREE—FORM OF DECREE—GENERAL CASES 1 B L R., A C, 50

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS 7 B L R, 90
[7 N W, 201

See HINDU LAW—ALIENATION—ALIENATION BY FATHER
[I L. R, 11 Calc, 396
B L. R. Sup Vol., 1018
11 B L R., Ap, 28
4 B L R, A C., 15
I L. R., 22 Mad., 313

See CASES UNDER VENDOR AND PURCHASER—PURCHASE MONEY ETC

———— Refund of, Application for—

See LIMITATION ACT 1877 ART 178
[I L. R., 11 All, 372

———— Source of—

See CASES UNDER BENAMI TRANSACTION—SOURCE OF PURCHASE MONEY

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY

———— Suit to recover—

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE MONEY

See SUIT, SALE OF
[I. L. R, 21 Mad., 395

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—PURCHASE MONEY
[I. L R., 11 Mad., 269
4 C W. N., 63

See CASES UNDER VENDOR AND PURCHASE—PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASERS

PURCHASERS

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS

See CASES UNDER LIS PENDENS

PURCHASERS—*continued.*

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See PARTIES—PARTIES TO SUITS—BENAMIDARS.

See CASES UNDER PARTIES—PARTIES TO SUITS—PURCHASERS.

See CASES UNDER SALE FOR ARREARS OF RENT.

See CASES UNDER SALE FOR ARREARS OF REVENUE.

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHTS OF.

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

See CASES UNDER VENDOR AND PURCHASER.

——— Bonâ fide—

See CASES UNDER LIMITATION ACT, 1877, ART. 134 (1859, s. 5).

See CASES UNDER ONUS OF PROOF—HINDU LAW—ALIENATION.

See CASES UNDER VENDOR AND PURCHASER—NOTICE.

——— Effect of introduction of, into joint family.

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—JOINT PROPERTY.

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENERS.

See HINDU LAW—PARTITION—SHARES ON PARTITION—PURCHASERS.

——— from guardian.

See CASES UNDER ACT XL OF 1858, s. 18.

See CASES UNDER GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

See CASES UNDER HINDU LAW—GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

See MAHOMEDAN LAW—GUARDIAN.
[3 B. L. R., A. C., 423

——— from Hindu widow.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

——— from members of Hindu family.

See CASES UNDER HINDU LAW—JOINT FAMILY—POWER OF ALIENATION BY MEMBERS.

PURCHASERS—*continued.*

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS.

——— of endowed property.

See CASES UNDER HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY.

——— of equity of redemption.

See EQUITY OF REDEMPTION.
[5 B. L. R., 380, 450, 460 note
10 B. L. R., 60 note

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY.

See CASES UNDER VENDOR AND PURCHASER—PURCHASE OF MORTGAGED PROPERTY.

——— of joint family property.

See CASES UNDER DECREE—FORM OF DECREE—POSSESSION.

See CASES UNDER HINDU LAW—ALIENATION.

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS.

See CASES UNDER HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

See CASES UNDER SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

——— of right, title, and interest of widow.

See CASES UNDER HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

——— Rights of—

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION, AND RIGHTS OF PURCHASERS.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENER.

See CASES UNDER HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

See CASES UNDER MAHOMEDAN LAW—DEBTS.

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY.

See CASES UNDER SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

PURCHASERS—concluded

See CASES UNDER SALE FOR ARREARS OF REVENUE—PURCHASERS RIGHTS AND LIABILITIES OF

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS RIGHTS OF

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS

See CASES UNDER VENDOR AND PURCHASER

——— Title of—

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS TITLE OF

See CASES UNDER VENDOR AND PURCHASER—NOTICE

Q

QUARRIES

See LAND ACQUISITION ACT, s 24
[I L R, 16 Mad, 369
L R, 20 I A, 80

——— Suit for rent of—

See RENT SUIT FOR
[3 B L R, A C 61

QUARRYING

See CONTRACT—CONSTRUCTION OF CONTRACTS I. L. R., 13 Bom, 630

QUESTION OF FACT

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—CONCURRENT JUDGMENTS ON FACT

See CHARGE TO JURY—SPECIAL CASES—QUESTION OF FACT 21 W R, Cr, 40

See PRIVY COUNCIL PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS

See PRIVY COUNCIL PRACTICE OF—QUESTION OF FACT

See CASES UNDER REVISION—CRIMINAL CASES—QUESTIONS OF FACT

See CASES UNDER SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTION OF FACT

QUESTION OF LAW

See ADMISSION—ADMISSION IN STATEMENTS OR PLEADINGS
[I. L. R., 21 All, 285

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW

QUESTION OF LAW—concluded

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL I. L. R. 11 Calc, 740

——— and fact

See CHARGE TO JURY—SPECIAL CASES—QUESTION OF LAW AND FACT
[8 W R, Cr, 60

See PRIVY COUNCIL PRACTICE OF—CONCURRENT JUDGMENTS ON FACTS
[I. L. R, 1 Mad., 252

See CASES UNDER SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE MODE OF DEALING WITH

QUESTION REFERRED TO FULL BENCH

See PRIVY COUNCIL PRACTICE OF—PRACTICE AS TO OBJECTIONS
[I L R., 1 Calc, 226
L R, 3 I. A, 7

See CASES UNDER REFERENCE TO FULL BENCH

QUO WARRANTO, WRIT OF—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT s 31 I L R, 22 Calc, 717

R

RACE COURSE ENCLOSURE

See BOMBAY POLICE ACT 1890 s 47
[I L R., 22 Bom, 746

RAILWAY

——— Cattle straying on—

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT 1890
[I. L. R., 18 Mad., 228

RAILWAY COMPANY

See BOMBAY MUNICIPAL ACT 1865 s 2
[9 Bom, 217

See CONTRACT—PRIVITY OF CONTRACT
[17 W R, 210
18 W R., 145

See LIMITATION ACT 1877, ART 30
[I L R, 3 Mad., 240
I. L. R., 7 Bom, 478
I L R, 10 Bom., 105

See NEGLIGENCE 9 W R., 73
[I L R, 1 All, 60

See PRINCIPAL AND AGENT—LIABILITY OF PRINCIPAL I L R, 6 Bom, 371

See CASES UNDER RAILWAY ACTS

RAILWAY COMPANY—*continued.*

1. **Liability for nuisance caused by works**—*Statutory powers—Beng. Reg. I of 1824—Act XLII of 1850—Land taken for public purposes—Suit for injunction to restrain nuisance.*—The plaintiffs, the owners and occupiers of a house and premises in Howrah, sued for an injunction to restrain a nuisance caused by certain workshops, forges, and furnaces erected by the defendants, and for damages for the injury done thereby. The defendants were a railway company incorporated under an Act of Parliament for the purpose of making and maintaining railways in India, and by an agreement (entered into under their Act of Incorporation) between them and the East India Company, they were authorized and directed to make and maintain such railway stations, offices, machinery, and other works (connected with making, maintaining, and working the railways) as the East India Company might deem necessary or expedient. The workshops complained of were erected in 1867 under the sanction of the Bengal Government on land purchased by the Government in 1854 for the purposes of the railway under Regulation I of 1824 and Act XLII of 1850, and which had been made over to the defendants. *Held*, a nuisance having been proved to exist—that is to say, such annoyance as materially interfered with the ordinary comfort of human existence in the house and caused sensible injury to the property, of the plaintiffs,—the defendants could not plead laches or acquiescence on the plaintiffs' part, as, upon the plaintiffs complaining in May 1870, the defendants had admitted that there was a nuisance, and had up to June 1871 made various efforts to abate it. Nor could the defendants escape liability on the ground that the nuisance had been caused by them in the reasonable exercise of powers conferred upon them by the Legislature. An injunction was granted restraining the defendants, and liberty to apply was reserved in the decree. On a motion by the defendants, supported by an affidavit showing the alterations which they proposed to make with the view of abating the nuisance, and alleging that a period of three months was required to carry out these alterations, and that a refusal to grant this time would necessitate the closing of the company's workshops, and would occasion great inconvenience, the Court granted the time asked for, on the conditions that the defendants paid the costs of the application, and did all they possibly could in the meanwhile to prevent annoyance to the plaintiffs. RAJ MOHUN BOSE *v.* EAST INDIAN RAILWAY COMPANY . . **10 B. L. R., 241**

2. ———— **Fire caused by spark from engine**—*Action for damages—Negligence—Statutory powers.*—The East Indian Railway Company was incorporated under 12 & 13 Vict., c. XCIII, "for the purpose of making and constructing, working, and maintaining" the East Indian Railway, including all necessary, accessory, or convenient extensions, branches, etc., as might be agreed upon between the Railway Company and the East India Company; and by agreement between the Railway Company and the East India Company, dated 17th August 1849, the Railway Company was "authorized and directed to make and maintain such stations, offices, machinery, and other works and conveniences connected with the making, maintaining, and working the railway," and "to provide a good and sufficient working stock of engines, carriages, and other plant and machinery for working the said railway." The plaintiff was the owner of a piece of land adjoining the railway line at Kharmatta, a station on the Chord Line of the Company's railway, on which land was erected a bungalow, with stables and out-houses adjoining. In the action brought by the plaintiff against the Railway Company to recover compensation for damages occasioned by a fire caused by a spark from one of the engines of the Company, the plaint alleged want of due care on the part of the defendants in the management of the line by allowing dry grass of too great a length to remain on the railway banks, and in driving their engines along the line without due precautions being taken to prevent the expulsion of sparks. *Held* that the defendant Company was authorized to run locomotive engines on the lines of railway constructed by the Company under the statutory powers given to it, and therefore the Company was not liable for damage caused in working the line under such statutory powers, without proof of negligence. *Held* also on the evidence that neither in the construction of their engines nor in the condition of the railway banks was any negligence shown on the part of the Company. HALFORD *v.* EAST INDIAN RAILWAY COMPANY

[14 B. L. R., 1

See also MADRAS RAILWAY COMPANY *v.* ZAMINDAR OF CARVETINAGARAM

[14 B. L. R., 209 : 22 W. R., 279
L. R., 1 I. A., 364

3. ———— **Liability of company**—*Loss of articles not declared or insured—Liability between arrival and delivery.*—A railway company is not liable for non-delivery of articles specified in s. 10, Act XVIII of 1854, the value of which has neither been declared nor insured. The protection conferred by that section extends till such time as the consignee takes delivery, and does not terminate on the arrival of the articles at their destination. ILLOOR KRISTNIAH *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY. ILLOOR KRISTNIAH *v.* MADRAS RAILWAY COMPANY . . **I. L. R., 2 Mad., 310**

4. ———— ———— *Railway Act, 1854, s. 10—Declaration of nature of goods—Silver—Loss by criminal act of company's servants.*—S. 10 of the Railway Act, which provides that no railway company shall in any case be answerable for loss or injury in respect of gold, silver, and other excepted articles delivered for carriage, unless the conditions of that section are fulfilled, applies where the loss has been caused by the criminal acts of the company's servants. *Semble*—If, after declaration made by the sender of an excepted article entitling the railway company to receive an increased charge, the goods are carried at the ordinary rates, the sender would be entitled to recover in case of loss. The conditions of s. 10 are not fulfilled by the sender merely giving an account of the quantity and description of the goods delivered for carriage when required to do so by the booking clerk. To establish

RAILWAY COMPANY—*continued*

the liability of the railway company in the case of excepted articles the declaration required by s 10 must be made in such a manner as to intimate that the sender invites the company to undertake the special risk and is willing to pay the special rates VENKATACHALA *v* SOUTH INDIAN RAILWAY COMPANY I. L. R., 5 Mad., 208

5 ———— *Negligence—Liability for injury—Act XVIII of 1854 s 11*—A railway company is liable for injury sustained by goods committed to their care if they have been *guilty of gross negligence* ASSAM TEA COMPANY *v* EAST INDIAN RAILWAY COMPANY [Bourke, O C, 39

6 ———— *Damage done not*

7. ———— *Liability of company—Carriers of goods—Act XVIII of 1854, s 11—Negligence*—The East Indian Railway Company cannot under s. 11 of Act XVIII of 1854 limit their responsibility as carriers in respect of ordinary
caused
possibly
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arising otherwise than by gross neglect EAST INDIAN RAILWAY COMPANY *v* JORDAN [4 B L R., O C, 97 : 14 W R, O C, 11

8 ———— *Carriers—Insufficiency of evidence*—The consignees of two bundles of cow hides which had been carried by a railway company having refused to take delivery on the ground of shortness in the number of pieces the railway company pleaded that they were not in

EASTERN BENGAL RAILWAY COMPANY [21 W R, 830

9 ———— *Carriers—Evidence—Burden of proof of negligence—Misdescription of goods—Act III of 1865 (Carriers Act), s 9—Act XVIII of 1854 s 11*—The plaintiff caused to be delivered to the defendants for carriage from Bombay to Oojein certain goods among which were twelve bags of sugar candy His agent when signing the consignment note at the railway station erroneously, but without fraudulent intent stated the contents of the twelve bags to be alum for which a lower freight was charged by the defendants The railway clerk received the goods and gave a receipt note, on which the following condition was printed The company give notice that they are not responsible for loss or damage arising from fire the act of God or civil commotion In the course of the journey a fire broke out in the train and a large portion of the plaintiff s goods including ten bags of the sugar candy was destroyed In an action for damages for non delivery *Held* (1) under the provisions of s 9 of the Carriers Act (III of 1865) the burden of proving negligence on the part of the defendants did not rest upon the plaintiff notwithstanding the condition in the receipt note (2) the misdescription by the plaintiff's agent of the twelve bags of sugar candy as alum did not exonerate the defendants from all liability to the plaintiff in respect of these bags The plaintiff however was only entitled to recover in respect of the ten lost bags the value of alum only and not sugar-candy while the defendants on the other hand could not in respect of the said ten bags charge freight as for sugar candy ISHVARDAS GULABCHAND *v* G I P RAILWAY COMPANY I. L. R., 3 Bom., 120

10 ———— *Act XVIII of 1854 ss 11 and 43—Carriers*—The defendants having made arrangements with the Madras Railway

for conveyance to stations on other railways with which they have made arrangements to book through *subject to the rules and regulations and rates and*

the Madras Railway Company One bag was subsequently lost but the remaining twenty nine arrived and were unloaded in good condition at Bellary on the 19th September 1877 No steps were taken either by the defendants or by the Madras Railway Com

in force at the time of the making of the contract between the plaintiff and the defendants delivery was complete the instant the bags were unloaded at Bellary and (2 that the plaintiff s agent at Bellary *did not apply for the goods but allowed them to remain in the station yard until they became rotten by rain and were destroyed by order of the collector some time in November The Madras Railway Company had issued a public notice of the above rule in the following terms "The Madras Railway Company hereby give public notice that they will not be responsible for loss of or damage to grain after it has been unloaded from the company's wagons." The defendants sought to incorporate this notice into their contract with the plaintiff by virtue of the condition printed in their "goods consignment note" *Held* that the said public notice afforded no

RAILWAY COMPANY—*continued.*

protection to the defendants, on the ground that it was invalid as a regulation for non-compliance with the provisions of s. 43 of Act XVIII of 1854, inasmuch as it had not been sanctioned by the Local Government, and had not been posted up at all the stations of the Madras line of railway; and that it could not otherwise be binding against the plaintiff, as neither the plaintiff nor his agent were shown to have had any knowledge of it at the time of entering into the contract with the defendants. *Quære*—Whether, if the plaintiff or his agent had such knowledge at the time of making the consignment, the notice would have constituted such a stipulation as to contravene s. 11 of Act XVIII of 1854 or whether it might be read together with that section, and treated as effectual, except so far as its operation would be limited in its scope by that section. *Held* also that, the arrival of the grain at the station of destination (Bellary) having been proved, the burden of showing that the goods were ready for delivery to the plaintiff for a reasonable time after such arrival lay on the defendants, although no proof had been given of any application for delivery by the plaintiff within a reasonable time. It is the duty of a railway company to keep goods which have reached the station of their destination, ready there for delivery until the consignee, in the exercise of due diligence, can call for and remove them, and it is the duty of the consignee to call for and remove them within a reasonable time. *Semble*—The object of s. 11 of Act XVIII of 1854 is to preclude railway companies from being able by any stipulation to escape from liability for loss or injury to goods caused by the gross negligence or misconduct of their agents or servants. SURUTRAM BHAYA *v.* G. I. P. RAILWAY COMPANY . . I. L. R., 3 Bom., 96

11. ——— *Carriers, Liability of—Contract Act (IX of 1872), ss. 151, 152—Act XVIII of 1854—Act III of 1865.*—The English common law rule, under which common carriers are held liable as insurers of goods against all risks except the act of God or the King's enemies, is not now in force in India. In cases not met by the special provisions of the Act relating to railways and carriers, the liability of carriers for loss or damage to goods entrusted to them is prescribed by ss. 151 and 152 of the Contract Act (IX of 1872). The plaintiff's goods were being carried in a train of the defendants from Nandgaon to Egatpuri. During the journey the train was plundered by robbers, and the plaintiff's goods were stolen. *Held* the defendants were entitled to the benefit of s. 152 of the Contract Act, and should be permitted to give evidence that the robbers of the plaintiff's goods were not the servants or agents of the defendants, and that the defendants (by their servants and agents) took as much care of their goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods in question. KUVERJI TULSIDAS *v.* G. I. P. RAILWAY COMPANY [I. L. R., 3 Bom., 109

12. ——— *Exemption from liability—Special contract—Risk note—Railway Act (IX of 1890), s. 54, cl. (1), s. 72, cls. (a), (b), sub-cls. (2) and (3)—Carriers Act, 1865.*—The plaintiff sued the defendants (a railway company) for damage for short delivery of goods consigned to him. The defendants pleaded a special contract signed by the consignor, which, in consideration of their carrying the goods at a special reduced rate instead of the ordinary tariff rate, exempted them from liability for loss or damage to the goods from any cause whatever, before, during, and after transit over their railway or other railways working in connection therewith. *Held* that under the contract the defendants were not liable to the plaintiff. TIPPANNA *v.* SOUTHERN MARATHA RAILWAY COMPANY . . . . I. L. R., 17 Bom., 417

13. ——— *Railway Act (IV of 1879), s. 11—Loss of goods—Carrier—Bailment—Declaration of nature and value of goods and payment of increased charge, Effect of—Contract Act (IX of 1872), s. 151.*—In respect of goods for which, under s. 11 of the Indian Railway Act (IV of 1879, a railway company is under no liability unless "an increased charge" is paid, the payment of an increased charge puts them under the same liability as they are under with respect to goods not specially provided for by that section, *viz.*, the liability of ordinary bailees. The payment of "an increased charge" is not equivalent to insurance. In January 1890 a box containing rupees was delivered by the plaintiffs to the defendant Company in Bombay to be carried to Saugor. From the evidence it appeared that the plaintiffs did not intend to insure the box. The box was taken to the booking office at the station, and the parcel clerk asked what it contained, and was told that it contained coin, and he learned casually that the amount was R6,000. The clerk charged R18-1-0 for the box, which was the "treasure rate" for carriage. This sum was paid, and the box was duly despatched, but was lost or stolen in the course of transit. The plaintiffs sued to recover the R6,000. The defendants contended that, having regard to the provisions of s. 11 of Act IV of 1879, they were not liable, inasmuch as (1) the contents of the box had not been duly disclosed, nor (2) had an increased charge been paid. The plaintiffs obtained a decree in the lower Court. On appeal,—*Held* (reversing the decree) that the defendant company was not liable (1) because there was no sufficient declaration of the value and contents of the box; (2) because the sum paid by the plaintiffs for the carriage of the box was the ordinary charge for treasure, and was not the increased charge which under s. 11 of Act VI of 1879 should have been paid in order to make the company liable. GREAT INDIAN PENINSULA RAILWAY CO. *v.* RAISETT CHANDMULL [I. L. R., 19 Bom., 165

Reversing the decision in RAISETT CHANDMULL HAMIRMULL *v.* G. I. P. RAILWAY COMPANY [I. L. R., 17 Bom., 723

14. ——— *Railways Act (IX of 1890), ss. 72 and 76—Contract Act (IX of 1872), ss. 151, 152, and 161—Carriers Act (III of 1865)—Liability of Railway Companies as bailees.*—Subject to the provisions of Act IX

RAILWAY COMPANY—*continued.*

pany will, in absence of proof of any ground upon which it can be exonerated, be liable as a bailee SESHAM PATTER v. MOSS I. L. R., 17 Mad., 445

15 ——— *Railways Act*

is not for the owner suing for compensation for such loss or destruction to prove negligence on the part of the company, but, when the owner has proved delivery to the company, it is for the company to prove that they have exercised the care required by the Contract Act, 1872, of bailees for hire NANKU RAM v. INDIAN MIDLAND RAILWAY CO

[I. L. R., 22 All., 361

16 ——— *"Terminal charges"—Right of G I P Railway Company to levy terminal charges—Stat 12 & 13 Vict, c 83 (Local and Pers)—Railway Act (IX of 1890), ss 41, 45, 46—Carriers*—By the Act of Incorporation of the defendant Company it was enacted that it should be lawful for the Railway Company and the East India Company to enter into such contracts, etc., as they thought fit (*inter alia*) "for performing all matters and things necessary or con-

wagon, loading and unloading them on and from the wagon, and for the use of the Company's premises till the goods are removed The plaintiffs sued to recover from the defendants the sum of R1,34,152-11, which during the three years prior to suit the plaintiffs had been obliged by the defendants to pay as 'terminal charges" on consignments of cotton made by the plaintiffs from up-country stations

entitled to charge "terminal charges" on the goods carried by them for the plaintiffs, subject only, as to the rates and amounts thereof, to the sanction of Government and that the rates charged to the plaintiffs were not higher than the sanctioned charges "Terminal charge" means a charge for the use of goods station and for the various duties which a

RAILWAY COMPANY—*continued*

Railway Company, as common carriers perform in connection with the goods consigned to them for carriage *Semble*—Under ss 41, 45, and 46 of Act IX of 1890, the High Court has no jurisdiction to consider or entertain a claim relating to terminals charged by the defendants subsequently to the time at which that Act came into operation *Held* on

properly be regarded as a source of 'profit' to the Railway Company, within the meaning of that Act The only "terminal charge" sanctioned by Government was a charge sanctioned in 1865, and then,

sanction, or sanctioned It was consequently contended by the plaintiffs that the "terminal charge" now levied had never been sanctioned *Held* also that a review of the proceedings leading to the sanction of 1865 showed that Government had contemplated the possible abandonment by the Company of "collection and delivery" when it sanctioned the rate then fixed and that consequently it must be presumed that Government had left it to the defendant Company to make such deductions, in case of abandonment of this portion of their services as they should think proper, which they had done. LALJIBHAI SHAMJI v. G I P RAILWAY COMPANY . I. L. R., 16 Bom., 434

Affirming decision of lower Court in same case

[I. L. R., 15 Bom., 537

17 ——— *Railways Act (IX of 1890), s 72—Condition under which goods despatched by Railway—Absence of proof of deterioration—Remoteness of damage—Contract Act, s 73*—The plaintiff, who was a tailor delivered a sewing machine and some cloths to the Madras Railway Company (the defendant) to be sent to a place where he expected to carry on his business with special profit by reason of a forthcoming festival Through the fault of the Company's servants the goods were delayed in transmission, and were not delivered until some days after the conclusion of the festival The plaintiff had given no notice to the Company that the goods were required to be delivered within a fixed time for any special purpose, and he had signed a forwarding note under a statement that he agreed to be bound by the conditions at the back and one of those conditions was to the effect that the Company is not liable "for any loss of or damage to any goods whatever by reason of accidental or unavoidable delays in transit or otherwise" The plaintiff now sued to recover from the Company a sum on account of his

Act, 1890, s 72, although it had not been approved by

RAILWAY COMPANY—*continued.*

the Governor General in Council; (2) that the plaintiff was bound by the condition even if he was in fact ignorant of its effect; (3) that the damages claimed were too remote. MADRAS RAILWAY CO. *v.* GOVINDA RAU . . . . I. L. R., 21 Mad., 172

18. ——— *Duty to carry passengers safely—Explosion in carriage—Negligence—Onus of proof—Ignorance or knowledge of law as a defence—Its limitation—Damages, Measure of—Costs—Held* by the Appellate Court (affirming the decision of the Court below): In providing for the safety of their passengers it is the duty of a Railway Company to exercise such a degree of care, at the very least, as may reasonably be required from them under all the circumstances of the case, and where an accident happens, they must show that it was not preventible by any care or skill. If a railway carriage be rendered dangerous to the passengers travelling therein by reason of the fact that there are fireworks in it, and if the carrying of the fireworks could have been prevented by the exercise of due care on the part of the Railway Company, they are liable for damages for negligence should an explosion of the fireworks occur. Where loss of life and damage have resulted from the explosion of fireworks in a passenger carriage, the onus is on the Railway Company to show that they took due care to prevent the conveyance of fireworks in that manner, and not on the plaintiff to show that they did not. *Scott* v. *London Dock Co., 3 H. & C., 596; Kearney* v. *London, Brighton, and South Coast Railway Co., L. R., 5 Q. B., 411:* on appeal *L. R., 6 Q. B., 759; Byrne* v. *Beadle, 2 H. & C., 722; Cotton* v. *Wood, 8 C. B., N. S., 568; Foulkes* v. *Metropolitan Railway Co., L. R., 5 C. P. D., 157; Welfare* v. *London and Brighton Railway Co., L. R., 4 Q. B., 693;* and *Daniel* v. *Metropolitan Railway Co., L. R., 3 C. P., 593:* on appeal, *L. R., 5 E. & I., Ap., 45,* referred to. Costs in a case like the present should be allowed as between attorney and client, so as not to exhaust the damages or the larger portion thereof. *Narayan Jetha* v. *Municipal Commissioners of Bombay, I. L. R., 16 Bom., 254; Sorabji Ratanji* v. *Great Indian Peninsula Railway Co., 7 Bom. O. C., 119 note;* and *Ratanbai* v. *Great Indian Peninsula Railway Co., 7 Bom., O. C., 120 note; 8 Bom., O. C., 130,* followed. *Per* O'KINEALY, *J.* (in the Court below).—In the absence of evidence that the defendants had taken steps to prevent passengers from taking fireworks into the carriage, the Court cannot presume that the fireworks were taken clandestinely into the compartment, notwithstanding the fact that such carriage of fireworks is an offence, and that every one is presumed to know the law. The maxim that every man is presumed to know the law is limited to the determination of the civil or criminal liability of the person whose knowledge is in question. It cannot legitimately be made use of where (as in the present case) the parties are different and distinct from him. EAST INDIAN RAILWAY CO. *v.* KALLY DASS MOOKERJEE . . . I. L. R., 26 Calc., 465
2 C. W. N., 609: 3 C. W. N., 781

19. ——— *Negligence of Railway Company in leaving door of railway carriage open or unfastened—Hurt caused to passenger while trying to secure door.*—Leaving the door of a railway carriage open or unfastened amounts to negligence on the part of a Railway Company, and the Company is liable for any injury caused thereby to a passenger. If any inconvenience or danger is caused by the negligence of the Company, a passenger may lawfully attempt to get rid of such inconvenience or danger, provided that in doing so he runs no obvious risk disproportionate to the inconvenience or danger, and is not himself guilty of any negligence; and, if in such attempt he is injured, the Company is liable in damages. The door of a railway carriage attached to a train running from Poona to Bombay was left open or unfastened when the train left the Khandala station. The plaintiff was then asleep in the carriage. He subsequently awoke when the train was passing through a tunnel, and found that the whole of the door, which opened outwards, had been torn away from its hinges, except the upper part or sunshade, which was flapping backwards and forwards against the side of the tunnel and the door post of the carriage. In attempting to secure it, the top of the plaintiff's finger was torn away and the bone of one of his fingers fractured. *Held* that the injuries were caused by the negligence of the Railway Company, and that the plaintiff was entitled to damages. BROMLEY *v.* GREAT INDIAN PENINSULA RAILWAY CO.
[I. L. R., 24 Bom., 1

20. ——— *Interchange of traffic between two Railway Companies—Agency.*—When two Railway Companies interchange traffic, goods, and passengers with through tickets, rates, and invoices, payment being made at either end and profits shared by mileage, the receiving Company, by granting a receipt-note for goods to be carried over and delivered at a station of the delivering company's line, does not thereby contract with the consignor of the goods as agent of the delivering Company. KALEE KAHU RUM MAIGRAJ *v.* MADRAS RAILWAY COMPANY . . . I. L. R., 3 Mad., 240

RAILWAY RECEIPT.

See CONTRACT—BREACH OF CONTRACT.
[8 B. L. R., 581

See VENDOR AND PURCHASER—VENDOR: RIGHTS AND LIABILITIES OF.
[I. L. R., 14 Bom., 57

RAILWAYS ACT (XVIII OF 1854).

See CASES UNDER RAILWAY COMPANY.

——— s. 10.

See RAILWAYS ACT, 1879, s. 11.
[4 Bom., O. C., 129

——— s. 15.

See NEGLIGENCE . I. L. R., 1 All., 60

——— s. 17.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT, 1854.
[3 Bom., Cr., 54

RAILWAYS ACT (XVIII OF 1854)—*concluded*

——— s 26

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT, 1854
[3 Bom, Cr, 10
4 Mad, Ap, 9
6 Mad, Ap, 41
7 Mad, Ap, 8

See SESSIONS JUDGE, JURISDICTION OF
[6 Mad., Ap, 41

——— and s 29—*Duty of guard—Injury to coolies getting on train when in motion*—Where some coolies were employed in assisting a ballast train into motion at a railway station, and one of them, after pushing the train, in getting up on the train, or in attempting to do so, fell and was so injured that he afterwards lost his life,—*Held* that the evidence did not show that it was the duty of the guard to see that no one got up on the train when in motion QUEEN v FLOOD
[8 W. R, Cr, 4

——— s 27.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED DURING JOURNEY
[1 Mad, 193

— s. 34.

See SENTENCES AND FINE
[6 Mad, Ap, 37

——— s 35.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT
[3 Bom, Cr., 54

RAILWAYS ACT (XXV OF 1871)

——— s 2—*Act XVIII of 1854, s 17—Refusal to produce ticket—Fraudulent intention—Trespass—Passenger by rail*—The plaintiff ... lway at Surat ... Bombay By ... ulent intent, ... On arriving at Nowsari, he applied to the station master for a ticket to Bombay but was refused, he was, however, allowed by the defendants' servants to proceed in the same train to Bulsar, where he again applied for a ticket and was again refused, but was directed by the defendants' servants to get into the train and not leave it again At Dhandu he again got out and applied for a ticket to the station master During a discussion between the plaintiff's master and the station master, the plaintiff, at the direction of his master, re-entered the train Ultimately the station master refused to give the plaintiff a ticket, and ordered him to get out of the train, and, on his not complying ...

Dhandu and for the illegal refusal of the defendants

RAILWAYS ACT (XXV OF 1871)—*concluded*

to allow the plaintiff to proceed in the train to Bombay,—*Held*, 1st, that the latter portion of s. 2 of Act XXV of 1871, amending s. 1 of Act XVIII of 18...

cannot produce it, and not to a person travelling without having obtained a ticket with no intention to defraud, 2nd, that the absence of a fraudulent intention did not make the entry into the carriage less unlawful, and consequently that the plaintiff started from Surat as a trespasser, 3rd, that the conduct of the railway officials at the stations intermediate between Surat and Dhandu, if it amounted at all to leave and license to the plaintiff to proceed without a ticket could only operate as such until the train stopped at the next station, 4th, that there was no legal obligation on the station master to issue a ticket to the plaintiff to enable him to proceed from Dhandu PRATAB DAJI v BOMBAY, BARODA, AND CENTRAL INDIA RAILWAY COMPANY
[I. L. R., 1 Bom., 25

——— s. 21—*Allowing cattle to stray on the line—Fences to line*—On the 1 th April 1874, ...

of the fence, and the prisoner was convicted solely on his admission that he was the owner of the cow *Held* that the state of the fences required specific proof, in the absence of which the conviction could not be sustained ANONYMOUS 8 Mad., Ap, 1

——— s 29—*Endangering life by negligence—Precaution taken by others to avoid danger.*—The prisoner, a servant of a railway company, was convicted, under s 29 of Act XXV of 1871 of endangering the lives of the persons in a certain train by negligence There was no evidence that the safety of any persons in any train had been endangered by his neglect of duty On the contrary, by reason of precautions taken by other persons any possible danger which might have resulted from his neglect was avoided. *Held* that he could not be convicted and punished under s 29 of Act XXV of 1871 QUEEN v MANPHOOL 5 N W., 240

RAILWAYS ACT (IV OF 1879).

See CASES UNDER CARRIERS.

See CASES UNDER RAILWAY COMPANY

——— s 11.

See LIMITATION ACT 1877, ART 30
[I L R., 19 Bom., 165

1. ——— and sch. II (1)—*Silks—Insurance—Loss of goods by railway company*—The term "silks in a manufactured state and whether

RAILWAYS ACT (IV OF 1879)—*concluded.*

wrought up or not wrought up with other materials" used in the second schedule of the Railways Act, 1879, does not apply to all classes of goods in which silk may be introduced. A cloth composed of silk and cotton thread, one-eighth being silk and seven-eighths cotton, the proportionate value of silk and cotton being one to four and a half, does not come within the meaning of the said term. SAMINADHA MUDALI *v.* SOUTH INDIAN RAILWAY COMPANY

[I. L. R., 6 Mad., 420

2. ———————— *Railways Act, 1854, s. 10—Silk—Question of fact.*—Whether or not cotton fabrics bordered with silk, or having a portion of silk otherwise used in their manufacture, are "silks in a manufactured or unmanufactured state, wrought up or not wrought up with other materials," within the meaning of Act XVIII of 1854, s. 10, is a question of fact to be decided on the evidence, not a question of law to be reserved for the opinion of the High Court, under Act IX of 1850, s. 55, and Act XXVI of 1864, s. 7. *Semble*—The proper test for a Judge to apply in such cases is to determine whether or not the value of the silk wrought up with other materials is more than half the value of the fabric. If it be not, the fabric cannot be considered to be silk within the meaning of the Act. LAKHMIDAS HIRACHAND *v.* G. I. P. RAILWAY COMPANY . 4 Bom., O. C., 129

———— ss. 17, 31—*Passenger not producing season ticket when called upon—Travelling without a ticket—Order for recovery of fare.*—A passenger who has obtained a monthly ticket is liable to be called upon to produce it at any time on the journey which it covers, and if he does not so produce it, he is liable under ss. 17 and 31 of the Railways Act to pay the fare for the journey between the stations for which his ticket was issued. The order, under s. 31, in case of his refusal to pay it, should be one merely for recovery of the amount due as the fare, and not an order to pay such or any other sum as if it were a fine. A passenger who has such a ticket which is still in force and in his possession cannot be said to be travelling without a ticket within the meaning of s. 31, merely because he does not happen to have the ticket with him, and therefore cannot produce it when called upon to do so. IN THE MATTER OF THE PETITION OF BUSKIN. IN THE MATTER OF THE PETITION OF THOMAS. HART *v.* BUSKIN. HART *v.* THOMAS

[I. L. R., 12 Calc., 192

———— s. 26—*Disobedience of rule—Accident—Liability.*—Liability to conviction under s. 26 of the Railways Act, 1879, arises not from the consequences directly referable to the breach of the rule, but because of the danger which the breach of the rule entails. SNELL *v.* QUEEN

[I. L. R., 6 Mad., 201

RAILWAYS ACT (IX OF 1890).

See CASES UNDER CARRIERS.

See CASES UNDER RAILWAY COMPANY.

———— s. 12—*Municipality of Bombay—Right to enter on land of Railway Company to lay pipes, etc., in connection with water works—Bombay Municipal Act (Bom. Act III of 1888), ss. 222, 265.*—Under the Bombay Municipal Act (Bombay Act III of 1888), the Corporation of Bombay has the right, for the purpose of supplying the city with water, to enter upon land belonging to other owners to make connections between the mains and to lay the pipes forming the connections through or under such lands without the owners' permission, though not without giving them reasonable notice in writing. *Held* also that s. 12 of the Railways Act (IX of 1890) does not exclude the above right of the Corporation of Bombay to enter on land belonging to the Great Indian Peninsula Railway Company for the said purposes. GREAT INDIAN PENINSULA RAILWAY CO. *v.* MUNICIPAL CORPORATION OF BOMBAY

[I. L. R., 23 Bom., 358

———— s. 72—*Contract saving liability of Company for loss of goods carried by it—"Risk note."*—The contract embodied in what is commonly known as a "risk note," *i.e.*, a contract whereby, in consideration of goods being carried by a Railway Company at a reduced rate, the consignor agrees that the Company shall be free of all responsibility for any loss or damage to the goods, is a valid and legal contract within the terms of s. 72 of Act IX of 1890. *Suntokh Rai v. East Indian Railway Co., 2 Agra, 200*, distinguished. EAST INDIAN RAILWAY CO. *v.* BUNYAD ALI . I. L. R., 18 All., 42

———— s. 75—*Liability of Railway Company for loss of goods.*—(1) The words "loss, destruction, or deterioration" in s. 75 of the Indian Railways Act (IX of 1890) include loss caused by the criminal misappropriation of the parcel by a servant of the Railway Administration in charge thereof. (2) Under s. 75 of that Act, it is necessary that both the value and contents of a parcel (if over R100 in value) should be declared before the Railway Administration can be held liable in respect thereof. (3) The payment by a consignor of silver coin of the specie rate required by the general regulations of a Railway Company to be paid for the carriage of such goods is not such a payment as satisfies the requirements of s. 75 of the Indian Railways Act (IX of 1890). BAIARAM HARICHAND *v.* SOUTHERN MAHRATTA RAILWAY CO. . . I. L. R., 19 Bom., 159

1. ———— s. 77—*Notice of suit—Agent of Manager—Traffic Superintendent—Civil Procedure Code (1882), ss. 147 and 149—Practice—Pleading.*—The Traffic Superintendent is not the Manager's agent, and notice to him is not notice to the Railway Administration within s. 77 of the Indian Railways Act (IX of 1890). Under s. 77 of the Indian Railways Act, it is not necessary for the defendant to plead want of notice of action in order to avail himself of it, but he may raise the objection at the hearing. SECRETARY OF STATE FOR INDIA *v.* DIP CHAND PODDAR . I. L. R., 24 Calc., 306

2. ———— and s. 140—*Notice of suit to Railway Administration—Service on Traffic Manager.*—In a suit against the South Indian Railway Company to recover the value of a parcel delivered to the defendant Company for carriage, it

RAILWAYS ACT (IX OF 1890)—*concluded*

——— s 110—*'Compartment'*—*Meaning of the word*—*Offence of smoking in compartments of* ... *passen* ...' — Good ... ent' in ... t (IX of ... hould be ... is used ... ompart ... 0 in the same sense in which it is used throughout the Act and does not necessarily mean a completely partitioned division IN RE DADABHAI JAMSEDJI

[I. L R, 24 Bom, 293

1. ——— s 113—*Excess charge and fare Non payment of*—*Power of Magistrate to impose imprisonment in default*—*Fine*—*Imprisonment*.—S 113 sub s 4 of the Indian Railways Act (IX of 1890) which directs that on failure to pay on demand excess charge and fare when due the amount shall on application be recovered by a Magistrate as if it were a fine does not authorize the Magistrate to impose imprisonment in default The excess charge and fare referred to in the section is not a fine though it may be recovered as such QUEEN EMPRESS *v* KUTRAPA

[I. L R., 18 Bom, 440

QUEEN EMPRESS *v* SUBRAMANIA AYYAR

[I L R., 20 Mad, 385

2 ——— and s 132—*Penal Code (Act XLV of 1860), ss 40 64*—*Criminal Procedure Code, s 33*—*"Offence"*—*Travelling on a railway without a proper ticket*—*Imprisonment*— ...

QUEEN EMPRESS *v* ...

[I. L R, 20 All., 95

—— s 122.

See EASEMENT I L R., 22 Bom., 525

—— s 125

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—RAILWAYS ACT 1890

[I. L. R., 18 Mad, 228

RAJ, SUCCESSION TO—

See HINDU LAW—ALIENATION—RESTRAINT ON ALIENATION

[I. L. R., 8 Calc., 199
I. L. R., 10 All., 272
L. R., 15 I. A., 51

RAJ, SUCCESSION TO—*concluded*

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION 3 B L R, P C, 13
[12 Moore's I. A, 523
9 B L. R., 310 note
6 W. R., P C, 1 2 Moore's I. A, 344
2 W R., 232
W R, F B, 97
I. L. R., 1 Calc., 186

See CASES UNDER HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY

RAPE

See CHARGE TO JURY—SPECIAL CASES—RAPE I. L R., 25 Calc., 230

See SENTENCE—GENERAL CASES
[6 W R, Cr, 59

See SENTENCE—TRANSPORTATION
[1 B L R., A Cr, 5

1. ——— Consent—*Consent through fear of injury*—Sexual intercourse by a man with a woman without her free consent—*i e*, a consent obtained without putting her in fear of injury—amounts to rape and the Judge should leave the question to the jury and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory QUEEN *v* AKBAR KAZEE 1 W R., Cr, 21

2 ——— Attempt to commit rape—*Indecent assault*—*Penal Code ss 354 375 and 511*—An indecent assault upon a woman does not amount to an attempt to commit rape unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events and in spite of all resistance *Reg v Lloyd 7 C & P, 318* followed EMPRESS *v* SHANKAR

[I L R., 5 Bom, 403

RASH AND NEGLIGENT ACT

See CASES UNDER CULPABLE HOMICIDE

See HURT—GRIEVOUS HURT
[I. L. R., 18 Calc., 49

RATIFICATION

See ARBITRATION—AWARDS—VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE I. L. R., 24 Calc, 489

See COMPANY—POWERS DUTIES AND LIABILITIES OF DIRECTORS
[I L R., 3 Calc., 280
I. L. R., 9 Calc, 14

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.
[I. L. R., 10 Mad., 272

See GUARANTEE I L. R, 5 Calc., 421
[L. R., 6 I. A., 238

See CASES UNDER GUARDIAN—RATIFICATION

RATIFICATION—*concluded.*

See Hindu Law—Alienation—Alienation by Father . 2 Bom., 301

See Master and Servant. [2 B. L. R., O. C., 140

See Cases under Principal and Agent—Ratification.

See Specific Performance—Special Cases . I. L. R., 17 Calc., 223 [L. R., 16 I. A., 221

1. ———— **Doctrine of ratification—** *Criminal case.*—The doctrine of subsequent ratification does not apply in a criminal case. Reg. v. Rama bin Gopal . 1 Bom., 107

2. ———— **Delay in repudiating contract**—*Consent.*—Where a party to a contract seeks release from its obligations, on the ground that, for some reason or another, he is entitled to repudiate it, he must assert this right as soon after becoming aware of it as he reasonably can. Long inaction unaccounted for must be held in equity to be a ratification of the contract. Ishan Chunder Mojoomdar v. Sreekant Nath . . 9 W. R., 110

3. ———— **Delay in repudiating act of agent**—*Agent acting contrary to authority of principal.*—Where the proprietors of an estate, on being informed by their agent of a proposition to obtain a lease of the property, refused their consent, and the agent notwithstanding gave the applicant an amuldustuck to enter upon the property as lessee, and gave no notice at the time to the proprietors, but subsequently informed them of it,—*Held* that the proprietors were not under obligation to take early steps to disavow the act of their agent, and their not doing so did not amount to ratification of his act. Muhbool Buksh v. Suheedun . 14 W. R., 378

READINESS AND WILLINGNESS.

See Contract—Conditions Precedent. [3 Mad., 125, 209

See Contract—Contracts for Government Securities or Shares. [I. L. R., 9 Calc., 791 3 Bom., O. C., 79 1 Ind. Jur., N. S., 17 2 Bom., 260, 267, 272: 2nd Ed., 246, 253, 258

See Contract Act, s. 51. [I. L. R., 4 Calc., 252

REASONABLE AND PROBABLE CAUSE.

See Arrest—Civil Arrest. [I. L. R., 4 Calc., 583

See Champerty . I. L. R., 2 Calc., 233 [13 B. L. R., 530

See Cases under Defamation.

See Malice . . . 2 N. W., 353 [4 N. W., 42

See Cases under Malicious Prosecution.

RECEIPT.

See Promissory Notes—Assignment of, and Suits on, Promissory Notes. [17 W. R., 201

See Cases under Registration Act, 1877, s. 17, cl. (*c*) and cl. (*n*).

See Stamp Act, 1869, sch II, cl. 7. [I. L. R., 4 Calc., 829

See Stamp Act, 1869, sch. II, cl. 11. [23 W. R., 403

See Stamp Act, 1879, s 61. [I. L. R., 8 Mad., 11 I. L. R., 11 Mad., 329 I. L. R., 23 Bom., 54 I. L. R., 27 Calc., 324

See Stamp Act, 1879, sch. I, art. 52. I. L. R., 6 All., 253 [I. L. R., 11 Calc., 271 [I. L. R., 12 Bom., 103

See Stamp Act, 1879, sch. II, art. 15. [I. L. R., 10 Mad., 64

———— **for Counsel's fees.**

See Stamp Act, sch. II, art. 15. [I. L. R., 9 Mad., 140 I. L. R., 16 All., 132

———— **for money deposited with Banks.**

See Contract—Conditions Precedent. [I. L. R., 14 Bom., 498

———— **for rent.**

See Bengal Tenancy Act, s. 88. [I. L. R., 16 Calc., 155 I. L. R., 25 Calc., 531, 533 note

See Cases under Evidence—Civil Cases—Rent Receipts.

———— **given by secretary of club to member for club bill.**

See Stamp Act, 1879, sch. II, art. 15. [I. L. R., 10 Mad., 85

———— **Refusal to give—**

See Penal Code, s. 173. [I. L. R., 3 Calc., 621 5 Bom., Cr., 34 I. L. R., 5 Mad., 199, 200 note I. L. R., 20 Calc., 358

See Stamp Act, 1879, s. 64. [I. L. R., 9 Bom., 27

RECEIVER.

See Administration. [I. L. R., 10 Calc., 713

See Cases under Appeal—Receivers.

See Appellate Court—Objections taken for first time on Appeal Special Cases—Parties . . 12 W. R., 117

See Costs—Special Cases—Attorney and Client I. L. R., 21 Calc., 85

RECEIVER—*continued*

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE
[I. L. R., 7 Bom., 455
I. L. R., 12 Bom., 272
I. L. R., 15 Calc., 762
I. L. R., 14 All., 358

See PRACTICE—CIVIL CASES—APPLICATION BY PERSON NOT PARTY TO SUIT
[I. L. R., 17 Calc., 285

See PRACTICE—CIVIL CASES—SALE BY RECEIVER I. L. R., 21 Calc., 479

—— Application to restrain, from parting with fund.

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS I. L. R., 21 Calc., 561

—— appointment of—

See DECREE—FORM OF DECREE—MAINTENANCE I. L. R., 26 Calc., 441

See PARTIES—PARTIES TO SUITS—EXECUTORS I. L. R., 19 Bom., 83

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.
[I. L. R., 26 Calc., 771

—— Attachment of money in hands of—

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT
[I. L. R., 21 Calc., 85

—— Liability of, to account.

See APPEAL TO PRIVY COUNCIL—EFFECT OF PRIVY COUNCIL DECREE OR ORDER
[I. L. R., 22 Calc., 1011
L. R., 22 I. A., 203

—— Lien of—

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL
[I. L. R., 23 Calc., 960

—— Order on, to sell—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS
[I. L. R., 1 Calc., 403

—— Power to appoint—

See HINDU LAW—WIDOW—INTEREST IN ESTATE OF HUSBAND—BY INHERITANCE
[I. L. R., 19 All., 235

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RECEIVER
[I. L. R., 2 Bom., 558

RECEIVER—*continued.*

exercised with a sound discretion, upon a view of the whole circumstances of the case, not merely the circumstances which might make the appointment expedient for the protection of the property, but all the circumstances connected with the right which is asserted and has to be established. The Court will not interfere by appointing a receiver where a right is asserted to property in the possession of a defendant, claiming to hold it under a legal title, unless a strong case is made out *Owen v. Homan, 4 H. L. C., 997, 1032,* and *Clayton v. Attorney-General, Cooper's cases, Vol. I, p. 97,* referred to SIDHESWARI DABI v. ABHOYESWARI DABI I. L. R., 15 Calc., 818

2. —— *Temporary injunction—Civil Procedure Code (1882), ss. 492 and 503.*—The distinction between a case in which a temporary injunction may be granted and a case in which a receiver may be appointed is that, while in either case it must be shown that the property should be preserved from waste or alienation, in the former case it would be sufficient if it be shown that the plaintiff in the suit has a fair question to raise as to the existence of the right alleged, while in the latter case a good *primâ facie* title has to be made out *Sidheswari Dabi v. Abhoyeswari Dabi, I. L. R.,* [illegible]

the Code granted CHANDIDAT JHA v. PADMANAND SINGH I. L. R., 22 Calc., 459

3 —— *Civil Procedure Code (1882) s. 503—Waste or misappropriation of property as a ground for appointing a receiver.*—The fact that the acts complained of amount to misappropriation rather than waste makes no difference for the purposes of s. 503 of the Code of Civil Procedure HANUMAYYA v. VENKATASUBBAYYA
[I. L. R., 18 Mad., 23

4 —— *Administration, Suit for—Receiver appointed where executor is in possession—Suit against executor where will not proved—Will of Mahomedan testator.*—The rule of the Court of Chancery, that a receiver will not be [illegible]

5 —— *Appointment out of jurisdiction of High Court—Power of High Court—Quære*—Whether the High Court at Calcutta can appoint a receiver of property situate at Bombay ISMAIL HADJEE HUBBEEB v. MAHOMED HADJEE JOOSUB FOHIMA BYE v. MAHOMED HADJEE JOOSUB . 13 B. L. R., 91: 21 W. R., 303

6 —— *Receiver in testamentary suit—High Court Power of—Succession Act (X of 1865), s. 239*—The High Court has power to appoint a receiver in a testamentary suit YESHWANT BHAGWANT v. SHANKAR RAMCHANDRA
[I. L. R., 17 Bom., 388

RECEIVER—*continued.*

7. ———————— *Pending suit.*—It is not a matter of course, but when the circumstances are such that a special case is made out, the Court will appoint a receiver, pending litigation to set aside probate. JOYKALLY DABEE *v.* SHIB NATH CHATTERJEE . . . . . Bourke, Test., 5

8. ———————— *Power of Principal Sudder Ameen.—Semble*—A Principal Sudder Ameen cannot, like the Court of Chancery, appoint a receiver in a case where the defendant has kept the plaintiff for a considerable time out of assets to which he is jointly entitled with the defendant. JOYNARAIN GEEREE *v.* SHIBPERSHAD GEEREE

[6 W. R., Mis., 1

9. ———————— *Grounds for appointment—Civil Procedure Code, 1882, s. 503—Waste by Hindu widow.*—The powers conferred by s. 503 of the Civil Procedure Code are not to be exercised as a matter of course, and it is not a reason for allowing an application for the appointment of a receiver that it can do no harm to appoint one. The discretion given by that section is one that should be used with the greatest care and caution. Because a plaintiff in his plaint makes violent and wholesale charges of waste and malversation against a defendant in possession of property as executor under a will or as the tenant for life, and upon this basis applies for a receiver to be appointed, it is not a necessary consequence that such appointment should be made. *Held* in this case, where the sons of a Hindu widow, in possession of her husband's estate under a will, sued their mother, as reversioners under the will, for possession of the estate, on the ground of mismanagement and waste, and on the same grounds applied for the appointment of a receiver under s. 503 of the Civil Procedure Code, that a receiver had been appointed on insufficient grounds. PROSONOMOYE DEBI *v.* BENI MADHAB RAI . . . I. L. R., 5 All., 556

10. ———————— *Power of Subordinate Judge—Civil Procedure Code, 1877, ss. 503, 505.*—A Subordinate Judge, if he has good grounds, may decline to appoint a receiver even after he has received the necessary authority from the District Judge under s. 505 to do so. GOSSAIN DULMIR PURI *v.* TEKAIT HETNARAIN . . 6 C. L. R., 467

11. ———————— *Receiver in suit for arrears of rent and ejectment—Beng. Act VIII of 1869, ss. 23, 52—Civil Procedure Code (Act XIV of 1882), ss. 503, 505.*—Although, having regard to the provisions of ss. 23 and 52 of Bengal Act VIII of 1869, s. 503 of the Civil Procedure Code would not apply to a suit brought under Bengal Act VIII of 1869 merely for arrears of rent, there is no provision in that Act which excludes the operation of s. 503 when a suit is brought for recovery of the tenure itself. When therefore a suit was brought under Bengal Act VIII of 1869 for arrears of rent and for ejectment of the defendant,—*Held* that a receiver of the rents and profits of the tenure might properly be appointed under the provisions of s. 503 of the Civil Procedure Code. KARTIC NATH PANDY *v.* PADMANUND SINGH . I. L. R., 11 Calc., 496

12. ———————— *Ground for—Appointment of receiver—Civil Procedure Code (Act XIV of 1882), s. 503—Discretion of Court—Waste.*—The removal of a large amount of property by the defendant, and under circumstances which might fairly give rise to suspicion during the pendency of the suit in which the question of title to that property would be determined, is a sufficiently strong ground for the appointment of a receiver. *Sidheswari Dabi* v. *Abhoyeswari Dabi, I. L. R., 15 Calc., 818 ; Chandidat Jha* v. *Padmanand Singh, I. L. R., 22 Calc., 459 ;* and *Sham Chand Giri* v. *Bhairam Pundey, Suit No. 179 of 1893,* referred to. SIA RAM DAS *v.* MAHABIR DAS

[I. L. R., 27 Calc., 279

13. ———————— *Joint estate—Mortgage—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 503.*—In a suit for partition of a joint estate the words "property the subject of a suit" in s. 503 of the Civil Procedure Code mean the whole joint estate. In such a case "the owner" in s. 503 (*d*) means the whole body of owners to whom the joint estate belongs. The Court has jurisdiction *to place the whole of a joint estate out of which* a plaintiff seeks to have his share partitioned in the hands of a receiver, and to order that a receiver so appointed shall be at liberty to raise money on the security of the whole of such joint estate. PORESH NATH MOOKERJEE *v.* OMERTO NAUTH MITTER

[I. L. R., 17 Calc., 614

14. ———————— *Receiver of mortgaged property appointed at instance of mortgagee—Receiver appointed by Appeal Court—Practice.*—In a suit by a mortgagee for foreclosure or sale in default of payment of his mortgage-debt the Court of first instance, when passing a decree for the plaintiff, refused, on the plaintiff's application, to appoint a receiver of the rents and profits of the mortgaged property. The plaintiff appealed against the latter part of the decree, and after filing a memorandum of appeal obtained a rule for the appointment of a receiver until the hearing of the appeal. The Court of appeal, after argument, made the rule absolute, and appointed a receiver until the hearing of the appeal, and subsequently, when the appeal came on for hearing, varied the decree of the Court below by appointing a receiver of the mortgaged property. The High Court possesses the same powers with regard to the appointment of a receiver as are possessed and exercised by the Courts in England under the Judicature Act. JAIKISSONDAS GANGADAS *v.* ZENABAI . . . I. L. R., 14 Bom., 431

15. ———————— *Receiver in insolvency proceedings under Civil Procedure Code—Civil Procedure Code, s. 356—Commission of receiver how computed.*—A receiver appointed in insolvency proceedings under the Civil Procedure Code is entitled to a lien for the amount of his commission on the net assets remaining after payment of the charges specified in Civil Procedure Code, s. 356 (*b*), (*c*), and (*d*). MAHADEVA *v.* KUPPUSAMI

[I. L. R., 15 Mad., 233

RECEIVER—*continued*

16 ——— *Jurisdiction of District Judge to appoint receiver—Civil Proce-* [illegible]

[illegible]

Civil Procedure Code reviewed.) In a suit upon a [illegible]

[illegible]

LATAFUT HOSSEIN *v.* ANUNT CHOWDHRY [I. L. R., 23 Calc., 517

17. ——— *Civil Procedure Code (1882), s 505—Power of District Court under s 505 as to appointment of receiver*—The concluding words of s 505 of the Code of Civil Procedure—"or pass such order as it thinks fit"—must be read as controlled by the words preceding them, and do not confer upon the District Court the power itself to appoint a receiver not nominated by the Subordinate Court AMIR NATH *v.* RAJ NATH [I. L. R., 18 All., 453

18 ——— *Nomination by Subordinate Courts with grounds of nomination—* [illegible]

[illegible]

clearly the power to review it. [illegible] give the District Judge full discretion to pass such [illegible]

[illegible]

[I. L. R., 21 Bom., 328

19. ——— *Subordinate Judge, Power of, to appoint—Civil Procedure Code (Act XIV of 1882), ss 503 and 505*—A Subordi- [illegible]

[illegible]

RECEIVER—*continued*

order is passed under s 503, and when he refuses to take the necessary step preliminary to appointment, [illegible]

[illegible]

to SANGAPPA *v.* SHIVBASAWA [I. L. R., 24 Bom., 38

20 ——— *Civil Procedure Code, 1882, s 505—Criminal Procedure Code, 1882 s 145—Order of Magistrate for maintenance of possession—Effect of or power of appointment of a receiver by a Civil Court*—The fact that there exists in respect of any immoveable property an order of a Magistrate passed under s 145 of the Code of Criminal Procedure is no bar to the exercise by a [illegible]

[illegible]

21 ——— *Duration of receivership—Discretion of Court—Practice—* [illegible]

[illegible]

when such continuance is necessary, or for so long as it may be so A decree of the High Court declared it to be necessary that a permanent appointment should be made of a receiver and manager of the [illegible]

[illegible]

during the life of the senior widow, under whose management the estate had been originally placed, [illegible]

[illegible]

[I. L. R., 23 I. A., 28

22 ——— *Civil Procedure Code, 1882, s 503—Appointment of receiver after decree*—In a suit brought in 1880 by the widow of a deceased partner to wind up a partnership the surviving partner was prohibited by the Court, at the [illegible]

[illegible]

a receiver was appointed under s. 503 of the Code of Civil Procedure to collect outstanding debts for the purpose of executing the decree. The receiver having sued in 1883 to recover a debt which was due to the

RECEIVER—*continued.*

firm in 1879, the suit was dismissed, on the ground, among others, that the appointment of a receiver after decree was *ultra vires*. *Held* that the appointment of the receiver was valid. SHUNMUGAM *v.* MOIDIN . . . I. L. R., 8 Mad., 229

23. ———— *Civil Procedure Code, 1882, ss. 267, 268, and 503—Execution—Practice—Garnishee—Attachment by a judgment-creditor of a debt due to judgment-debtor by a third party—Order upon third party to pay, where debt admitted—Procedure where existence of debt not admitted.*—When a debt alleged to be due by a third party to a judgment-debtor has been attached by the judgment-creditor, the Court may, under s. 268 of the Civil Procedure Code (Act XIV of 1882), make an order upon the garnishee for the payment of such debt to the judgment-creditor in case the former admits it to be due to the judgment-debtor. Where, however, the garnishee denies the debt, there is no other course open to the judgment-creditor than to have it sold, or to have a receiver appointed under s. 503 of the Civil Procedure Code. TOOLSA GOOJAL *v.* ANTONE . . . I. L. R., 11 Bom., 448

24. ———— Receiver of High Court—*Position of—Right to sue and defend suits.*—The Receiver of the High Court does not represent the estate for which he is receiver, but is merely an officer of the Court, and as such cannot sue and be sued, except with the permission of the Court. MILLER *v.* RAM RANJAN CHAKRAVARTI

[I. L. R., 10 Calc., 1014

25 ———— *Position and functions of—Parties—Suit for specific performance.*—The receiver in a suit is nothing more than the hand of the Court for the purpose of holding the property of the litigants whenever it is necessary that it should be kept in the grasp of the Court in order to preserve the subject-matter of the suit *pendente lite*; and the possession of the receiver is simply the possession of the Court. He has no personal rights in the property, nor can he take any steps with regard to it without the sanction of the Court. If it is necessary for him to take action of any sort, he should be put in motion by the Court on the application of the parties to the suit; and whatever he rightly does with regard to the property, he does simply as the agent of the owners of the property. Where the receiver in a suit had, by order of Court, sold certain property in the suit, and had executed the contract of sale in his own name, a plaint praying for specific performance against the purchaser for refusing to complete the contract was admitted with the receiver as co-plaintiff, he having obtained leave to sue. WILKINSON *v.* GANGADHAR SIRKAR . . . . 6 B. L. R., 486

26. ———— *Right of suit as receiver and right to possession of property—Rule of Supreme Court.*—In a suit by *K* against *B* and others, the Supreme Court ordered that the estate of *R* (deceased) should be applied to the payment of his debts, legacies, etc., and appointed a receiver of the rents and profits of his real property. It also ordered the defendants and persons claiming through them to give up to the receiver such of the real property as might be in their possession. Subsequently, in the same suit, the High Court declared that *K* was entitled to a moiety of the estate of *R* after payment of costs and legacies, and directed the estate to be sold and the proceeds brought into Court. Afterwards the receiver brought a suit in his own name against *R* and one *S*, alleging that, though the property had been decreed to *K* and himself jointly, yet *K* had, by collusion, obtained sole possession of it, and that, in execution of a money-decree against her, it had been sold to *S*. *Held* that, as Receiver of the High Court, plaintiff had no title as of right against *S* to the immediate possession of the property, and no right to sue in another Court in his own person to receive possession thereof. The rule on the Original Side of the Court, taken from the practice of the English Court of Chancery, is not to compel a party to a suit to give up to the receiver possession of property unless an order of Court to that effect has previously been made upon him; the proper course being by proceedings in Court to fix an occupation rent, and to order the party in possession to pay the same. RAM LOCHUN SIRCAR *v.* HOGG . 10 W. R., 430

27. ———— Power of receiver—*Power to question title of third party.*—A receiver appointed by order of the Supreme Court can only sue for possession, and has no right to question the title of a third party in a suit with respect to the property put under his management. DINONATH SREEMONEE *v.* HOGG

[2 Hay, 395

28. ———— *Civil Procedure Code, 1882, s. 503—Right to sue.*—A zamindari was attached in execution of certain decrees against the zamindar, and the plaintiff was appointed receiver with full powers, under s. 503 of the Code of Civil Procedure, to manage the zamindari. Before the appointment of the receiver, the zamindar had expended certain sums at the defendant's request to repair a tank for the irrigation of lands held by them in common with him. This suit was brought to recover the sum so expended. It was objected that the receiver could not maintain the suit on the ground that the sum sued for was neither the subject of a suit against the zamindar nor property attached in execution of a decree against him. *Held* that the receiver could maintain the suit. SUNDARAM *v.* SANKARA . . . . I. L. R., 9 Mad., 334

29. ———— *Power of Court to allow receiver to sue in his own name—Code of Civil Procedure (Act XIV of 1882), s. 503.*—The Court has authority, under s. 503 of the Civil Procedure Code, to confer on a receiver the power to sue in his own name; and if the order appointing the receiver gives him liberty, he may do so. FINK *v.* MOHARAJ BAHADUR SINGH I. L. R., 25 Calc., 642

[2 C. W. N., 469

30. ———— *Suit to eject tenant claiming permanent tenure without leave of Court—Civil Procedure Code, 1882, s. 503.*—*D* was appointed receiver in a partition-suit pending in the High Court by an order which, amongst other things, gave him power to let and set the immoveable property, or any part thereof as he should think

RECEIVER—*continued*

standing debts and claims by action suit or otherwise as should be expedient D without special leave of the Court, served a notice to quit on certain tenants of the estate who claimed to hold a permanent lease and afterwards instituted a suit to eject them also without special leave of the Court *Held* that the order appointing him did not give him power to serve such notice or to institute such suit without the special leave of the Court and that as he was appointed under the provisions of s 503 of the Code of Civil Procedure and not vested with the general powers referred to in that section but only with the power referred to in the order appointing him and as a receiver is not otherwise authorized to institute such suits without special leave of the Court the suit must be dismissed DROBOMOYI GUPTA *v* DAVIS . I L R., 14 Calc, 323

31. ———— *Right to sue*

Held, under the terms of such order the receiver had power to sue to eject, without obtaining permission of the Court, a monthly tenant whose tenancy was determinable by a notice to quit which had been duly served *Drobomoyi Gupta v Davis I L R, 14 Calc, 323* distinguished HURI DASS KUNDU *v* MACGREGOR I L R., 18 Calc, 477

32 ———— *Appearance of receiver in applications for payment of money by him* —In all applications for payment of money by a receiver the receiver ought to appear and give

33 ———— *Position and power of receiver—Agreements entered into with one party to a suit—Contempt of Court—Attorney, Improper conduct of* —A receiver appointed by the

of the Court *Held* this was a gross contempt of Court for which the parties were liable to committal

34. ———— *Powers of receiver pending final decree* —A receiver appointed by the Court in a civil suit with the object of preserving property and keeping it within the reach of the Court until a final decree can be made can but exercise at the utmost such powers and rights over the property as the parties to the suit turn out to be possessed of when their rights are finally determined. IN THE MATTER OF THE PETITION OF TEIL & Co TEIL & Co *v* ABDUL HYE 19 W R., 37

35 ———— *Civil Procedure Code 1882 s 503*—In 1879 a zamindar granted a lease of part of the zamindari for twenty years reserving a rent of R18 000 per annum In 1881 the zamindari having been attached by a creditor the zamindar granted a new lease in perpetuity in lieu of the former lease reserving a rent of R12 000 a year A receiver of the zamindari having subsequently been appointed with full powers under the provisions of s 503 of the Code of Civil Procedure, sued the lessee to recover rent at the rate reserved in the first lease from 1881 *Held* that the receiver was entitled to recover the rent claimed The provisions of s 503 of the Code of Civil Procedure were intended to declare that the receiver in respect of all property which was or could be attached, had the powers of the owner as they existed at the time the property was brought under the orders of the Court by attachment provided that they have not ceased by operation of law GOPALASAMI *v* SANKARA I L R., 8 Mad., 418

36 ———— **Parties to conveyance** *Sale by receiver under order of Court* —Where certain

receiver for an order that the purchaser do complete the purchase according to the conditions of sale must be refused as not being made in proper form A sale of property under an order of Court by a person appointed receiver in a suit is not a sale by the Court The fact that such person is the Court receiver does not place him in a different position When the receiver sells under such an order it is necessary that he, being in possession of the property, should be a party to the conveyance CHANDRA NATH BISWAS *v* BISWANATH BISWAS [6 B L R, 493 note

37. ———— **Mode of questioning acts of receiver**—*Seizure of property by Collector as receiver* —Where property is seized and retained by a

38 ———— **Firm in hands of receiver, Claims on**—*Civil Procedure Code 1877 s 503—Management of business by receiver—Claim by servant for prior arrears of wages on assets of firm* —A servant of a firm the business of which is being managed by a receiver appointed under s. 503 of the Code of Civil Procedure 1877, has no preferential claim over the attaching creditor on the assets of

RECEIVER—*continued.*

the firm for wages due before the appointment of the receiver. SHORT *v.* PICKERING

[I. L. R., 6 Mad., 138

39. ———— Refusal to remove a receiver and manager of the estate of Hindu widows—*Discretion of Court.*—Case in which rights and proceedings rendering a Court's order, refusing to remove an appointed receiver and manager of the estate, of which the widowed ranis of the late Maharaja of Tanjore had become possessed by grant from the Government, were considered, and such order held to be entirely a matter for the discretion of the Court which had exercised its discretion soundly. EX-PARTE JIJAI AMBA

[I. L. R., 13 Mad., 390

40. ———— Partnership funds in hands of receiver—*Attachment by some of many creditors—Leave of Court for attachment necessary—Terms on which leave is granted.*—Where a fund, such as the assets of a partnership, is in the hands of the Court through its officer, the receiver, one out of the whole body of creditors against the fund will not be allowed to gain priority over the remainder by the expedient of attaching the moneys in the hands of the receiver. Such an attachment is an interference with the Court's possession through its officer, the receiver, and may not therefore be made without the Court's leave first obtained, which leave will not be granted except on such terms as will ensure equality between the creditors. KAHN *v.* ALI MAHOMED HAJI UMER

[I. L. R., 16 Bom., 577

See MAHOMMED ZOHURUDDEEN *v.* MAHOMMED NOOROODDEEN . . I. L. R., 21 Calc., 85

41. ———— Money in hands of Receiver—*Estate administered by Court—Pressing claims against estate, or part owners thereof—Power to order Receiver to pay—High Court, Power of.*—Plaintiff was admittedly entitled to a half share of an estate, which this suit was brought to divide. A decree had been made referring it to the Commissioner to ascertain and divide the said estate, and a Receiver had been appointed. No power had been especially reserved by the decree to the Receiver to pay pressing or other debts due by the estate, or the part owners thereof. Some time would elapse before the accounts could be taken in the Commissioner's office, and meanwhile two creditors were threatening attachment of the property of the estate, and their debts were running at considerable interest. The estate was not otherwise indebted. There was money in the Receiver's hands to the credit of the estate, half of which would be more than sufficient to pay off the claims of these creditors. The plaintiff applied to the Court for an order to the Receiver to pay these two debts out of the plaintiff's half share of the moneys in his hands, leaving the plaintiff to prove his right to debit the estate with such payments. *Held* that the Court had power to make the order asked for, though such an order would only be made in special cases and on special conditions. *Held* further that the present was a

RECEIVER—*concluded.*

case in which the order asked for might properly be made. MOTIVAHU *v.* PREMVAHU

[I. L. R., 16 Bom., 511

42. ———— Execution of mortgage-decree by sale of properties in the possession of the Receiver—*Mortgage decree—Attachment.*—A judgment-creditor can sell properties in the hands of a Receiver of the Court in execution of a mortgage-decree, although he cannot execute a decree against such properties by way of attachment and sale. *Semble*—A proceeding by way of attachment is an interference with the possession of the Receiver. *Hem Chunder Chunder* v. *Prankristo Chunder, I. L. R., 1 Calc., 403,* distinguished. JOGENDRA NATH GOSSAIN *v.* DEBENDRA NATH GOSSAIN . I. L. R., 26 Calc., 127

[3 C. W. N., 90

43. ———— Duties and liability of receiver—*Civil Procedure Code (1882), s. 503—Costs.*—A receiver appointed under s. 503 of the Civil Procedure Code (Act XIV of 1882) to collect the rents of an estate is bound to make good a loss caused to it by a breach of his duties. A receiver is not justified in delegating or entrusting to another a duty entrusted to him by the Court. He should in all important matters apply for and obtain the direction of the Judge who appoints him. A receiver is entitled to his costs, charges, and expenses properly incurred in the discharge of his duties. BALAJI NARAYAN PATVARDHAN *v.* RAMCHANDRA GOVIND KANADE . . . I. L. R., 19 Bom., 660

44. ———— *Receiver appointed by Court under s. 503 of Civil Procedure Code (1882)—Misappropriation by receiver of money collected by him—Liability for loss so caused—Civil Procedure Code (1882), s. 258—Effect of, as to satisfaction of decree and discharge of judgment-debtor.*—In execution of a decree, a receiver was appointed to collect certain rents due to the judgment-debtor. Some of the judgment-debtor's tenants paid the rents due by them into the hands of the receiver, but the receiver did not pay the money into Court. *Held* by MUTTUSAMI AYYAR, *J.*—In cases in which a receiver, appointed at the instance of the judgment-creditor under s. 503 of the Code of Civil Procedure, misappropriates moneys collected by him, the decree is not satisfied *pro tanto*, but the loss falls on the estate or its owner, subject to the receiver's liability. ORR *v.* MUTHIA CHETTI

[I. L. R., 17 Mad., 501

Held on appeal under the Letters Patent, *per* SHEPHARD, *J.*, that the payment by the tenants to the receiver did not *pro tanto* discharge the judgment-debtor from liability under the decree. *Held per* DAVIES, *J.*, that payment by the tenants to the receiver *pro tanto* discharged the judgment-debtor from liability under the decree. MUTHIA CHETTI *v.* ORR . . . . . I. L. R., 20 Mad., 224

The Judges differing in opinion, the case was referred under s. 575 of the Code to COLLINS, *C.J.*, who agreed with the decision of SHEPHARD, *J.*

the Magistrate adjourned the hearing of the case in

4 ——— *Power of police officers—Criminal Procedure Code, 1872 ss 396, 397—Bail taken by police officer*—The powers contained in ss. 396 and 397 of the Code of Criminal

[23 W. R., Cr., 74

5 ——— Security bond to appear before police—*Code of Criminal Procedure (Act X*

RECOGNIZANCE TO APPEAR—*continued.*

of 1882), s 514—As there is no provision in the Criminal Procedure Code authorizing a police officer to take a surety bond for the production of any person before the police, such a bond is *ab initio* void, and a Magistrate has no power to alter it and impose fresh obligations thereunder IN THE MATTER OF CHANDRA SEKHAR RAI . . I. L. R., 11 Calc, 77

6. ——— Recognizance bond—*Where appearance of accused has been dispensed with—Agent*—*Held* that, where the personal attendance of an accused is dispensed with a recognizance bond if such is deemed necessary, should be taken from him, and not from his agent, binding him (the accused) to

7. ——— Bail bond to appear "when called on"—*Right of sureties to notice*—Where the condition of bail bonds given by the defendants and by the surety of a security bond, was that the defendants should appear when called upon,—*Held* that the defendants and their surety were entitled to reasonable notice of the time at which the former would be required to attend ANONYMOUS

[4 Mad, Ap, 4

8 ——— Discharge of surety—*Permission of Court to accused to leave*—Where a surety conditioned that he would be responsible for the continued presence of an accused person at one Court (Nowadah) it was held that the surety was released from liability under his recognizance by the permission which the Court at Nowadah gave the accused without the surety's consent, of leaving that place of business and also by the subsequent transfer of the case to another Court. QUEEN v MEWA LALL 13 W. R., Cr, 53

9 ——— Prosecutor, Failure of, to appear—*Power of Magistrate to order recognizance to be forfeited*—A Subordinate Magistrate has no power to order a recognizance executed by a prosecutor before a police-station officer, binding himself to appear before the Subordinate Magistrate, to be forfeited on the failure of the prosecutor to appear ANONYMOUS . 4 Mad., Ap, 18

10 ——— Failure to appear—*Forfeiture of recognizances*—The estreating of recognizances is a proceeding resorted to where persons who

11. ——— ——— *Criminal Procedure Code, 1861, s 219*—*Forfeiture of recognizance*—Where a defendant charged with an offence bound himself to appear before a Subordinate Magistrate on the 10th June, and the defendant did appear on that day but made default on the 11th of June, on which

RECOGNIZANCE TO KEEP PEACE —*continued*.

2. MAGISTRATE WITH POWERS OF APPELLATE COURT—*concluded*.

security *Held* that the order of the District Magistrate was illegal, and must be set aside. Before an order under s. 106 can be properly passed, the conviction must be by a Magistrate of the class mentioned in the section and not by a third class Magistrate, and the order must be passed by the Magistrate who convicts and passes the sentence. MAHMUDI SHEIKH *v.* AJI SHEIKH . . I. L. R., 21 Calc., 622

10. ———— *Criminal Procedure Code (1882), s. 106—Magistrate acting as Appellate Court—Power to require security to keep the peace.*—The Magistrate of a district acting as an Appellate Court in criminal cases cannot make an order under s. 106 of the Code of Criminal Procedure. *Aslu v. Queen-Empress, I. L. R., 16 Calc., 779; Queen-Empress v. Lachman, Weekly Notes, All. (1890), 201,* referred to. QUEEN-EMPRESS *v.* ISHRI [I. L. R., 17 All, 67

3. WHEN RECOGNIZANCE MAY BE TAKEN.

11. ———— Prevention of wrongful act —*Act XXV of 1861, s. 282—Act X of 1872, s. 491—Power of Magistrate—Breach of the peace—Wrongful act.*—Under s. 282 of Act XXV of 1861, a Magistrate could prevent a person from doing a wrongful act, but not one which the person might lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his rights of property because another person would be likely to commit a breach of the peace if he did so. IN THE MATTER OF THE PETITION OF KASHI CHUNDER DOSS. KASHI CHUNDER DOSS *v.* HURKISHORE DOSS . 10 B. L. R., 441: 19 W. R., Cr., 47

12. ———— *Criminal Procedure Code (Act X of 1882), ss. 107 and 118—Wrongful act likely to occasion a breach of the peace—Practice—Rule issued upon the Magistrate—Right to appear of a party interested in the result.*—The granting of leases to tenants of land not in one's possession does not constitute a wrongful act such as s. 107 of the Criminal Procedure Code (Act X of 1882) contemplates. Where the notice directs a person to show cause why he should not be bound down to keep the peace, it is improper to make an order directing him to execute bonds for his good behaviour. When a rule is issued upon the Magistrate to show cause and the order sought to be set aside is one that is only intended to secure the peace of the district by binding down the petitioner, the Magistrate is the only party entitled to be heard. Any other party interested in the result of the order cannot appear. DRIVER *v.* QUEEN-EMPRESS [I. L. R., 25 Calc., 798

13. ———— Prevention of crime—*Pending charge of specific offence—Criminal Procedure Code, 1872, Ch. XXXVIII, ss. 489-503.*—The object of Ch. XXXVIII, Code of Criminal Procedure, 1872, was the prevention, not the punishment, of

RECOGNIZANCE TO KEEP PEACE —*continued*.

3. WHEN RECOGNIZANCE MAY BE TAKEN —*continued*.

crime. When a charge of a specific offence is under trial, proceedings under Ch. XXXVIII should not be instituted. *In the matter of the petition of Juggut Chunder Chuckerbutty, I. L. R., 2 Calc., 110,* followed. IN THE MATTER OF UMBICA PROSHAD [1 C. L. R., 268

14. ———— Offence against public tranquillity—*Order to convicted person to find security—Recognizance to convicted person—Criminal Procedure Code, 1861, s. 280—Offences affecting the human body.*—An order directing a person convicted of an offence to find security to keep the peace should be simultaneous with the conviction, and should not provide for an engagement to be executed at a future period. S 280 of the Code of Criminal Procedure, 1861, did not refer to offences affecting the human body, but to cases of riot, simple assault, or other breach of the peace, being an offence against public tranquillity. QUEEN *v.* KUNHIYA 4 N. W., 154

15. ———— Order for recognizances on expiration of sentence for criminal trespass. -The order of the Magistrate directing the prisoner, on the expiration of his sentence for the offence of criminal trespass, to execute personal recognizances to keep the peace, was upheld as legal and necessary. QUEEN *v.* GENDOO KHAN [7 W. R., Cr., 14

16. ———— Order for recognizance on dismissal of charge of criminal trespass—*Criminal Procedure Code (Act XXV of 1861), s. 283.*—A charge of criminal trespass and mischief was dismissed: thereupon the Magistrate recorded an order in the presence of both parties, calling on them to show cause, on a day fixed, why they should not enter into recognizances to keep the peace. *Held* it was not necessary also to issue a summons to them under s. 283 of the Criminal Procedure Code. QUEEN *v.* CHOWDHRY . . 2 B. L. R., Ap., 28

17. ———— Order for recognizance on conviction of criminal trespass—*Criminal Procedure Code, 1872, s. 489—Sentence*—On a conviction of criminal trespass under s. 447, Penal Code, the Joint Magistrate added to the sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in s. 489 for which such recognizances could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace. QUEEN *v.* JHAPOO [20 W. R., Cr., 37

18. ———— *Criminal Procedure Code (Act X of 1882), s. 106—Security to keep the peace on conviction of house trespass—Breach of the peace—Penal Code (Act XLV of 1860),*

RECOGNIZANCE TO KEEP PEACE —*continued*

3 WHEN RECOGNIZANCE MAY BE TAKEN —*continued*

s 448 —An order under s 106 of the Criminal Procedure Code (Act X of 1882) binding down the accused to keep the peace upon conviction for "house trespass" under s 448 of the Indian Penal Code, cannot stand where the intention of the accused for committing the trespass was to have illicit intercourse with the complainant's wife *Queen v Gendoo Khan 7 W R Cr 14* and *Queen v Jhapoo, 20 W R, Cr, 37*, distinguished It is necessary before an order under s 106 of the Criminal Procedure Code can be made that the accused should have an opportunity of answering to an accusation for an offence of the kind upon a conviction for which such an order can be made SUBAL CHUNDER DEY v RAM KANAI SANYASI I L R., 25 Calc, 628 [3 C W.N 18

19 ———— Order for recognizances on renewal of conviction of house trespass—*Order in absence of accused—Criminal Procedure Code, 1861, s 280* —A conviction of house trespass by

would not for one year enter the house and would not commit a breach of the peace *Held* by the High

The order was also illegal as not authorized by s 280 or any other section of the Criminal Procedure Code REG v BHASKAR K KHARKAR 3 Bom, Cr, 1

been convicted of rioting or any other offence SAHEBDI v KURAN 21 W. R, Cr, 37

21. ———— *Criminal Procedure Code (Act V of 1898), s 106—Security for keeping the peace on conviction—Conviction under s 143 of the Penal Code (Act XLV of 1860)*—

his acts within the terms of the latter section there must either be an express finding to the effect that his acts involved a breach of the peace or an evident intention of committing the same, or the evidence must be so clear as to satisfy the Court (without an express finding) that such was the case JIB LAL GIR v JOTMOHAN GIR I. L R., 26 Calc., 576

22. ———— *Conviction under s 143 of the Penal Code (Act XLV of 1860)—Code of Criminal Procedure (Act V of 1898), s 106* —An offence under s. 143 of the Penal Code is not one of the offences specified in s. 106 of the Code of Criminal Procedure which would justify an order directing a person or persons to furnish security to keep the peace There may be findings in the case which would justify such an order if such findings can be brought within the terms of s 106 *Gib Lal Gir v Jogmohun Gir, I L R, 26 Calc, 576*, referred to Where the accused were convicted under s 143 of the Penal Code and ordered under s 106 of the Code of Criminal Procedure to furnish security to keep the peace and it was alleged that the facts as proved showed that the

convicted of criminal intimidation or other offence

23 ———— Order for recognizance to witness in case of rioting —*Admission of being present at or near scene of riot* —A witness for the defence in a case of rioting having admitted being present at or near the scene of the riot and denied that the accused took any part in it the Magistrate after finding the accused guilty and without further proceedings called upon both the accused and his witness to enter into bonds to keep the peace for one year *Held* that this procedure was illegal so far as the witness was concerned QUEEN v KADER KHAN I L R, 5 Mad, 380

24 ———— Order for recognizance in case of criminal intimidation —*Criminal Procedure Code 1872 s 489—Penal Code ss 503 506* —The words in s 489 of the Criminal Procedure Code "taking other unlawful measures with the evident intention of committing a breach of the peace," do not include the offence of intimidation by threatening to bring false charges Where therefore a person was convicted under ss 503 and 506 of the Penal Code of such offence —*Held* that the Magistrate by whom such person was convicted could not under s. 489 of the Criminal Procedure Code require him to give a personal recognizance for keeping the peace EMPRESS OF INDIA v RAGHUBAR [I. L. R., 2 All, 351

25 ———— Order for recognizance on conviction of offence of voluntarily causing hurt—*Power of Magistrate Criminal Procedure Code 1872 s 489* —It is in the power of a Magistrate on conviction of a person of voluntarily causing hurt to take security from him under s. 489 of Act X of 1872 An order under that section requiring security should not direct that the person convicted should execute the engagement to keep the peace at the end of the term of imprisonment to which he may have been sentenced The person convicted is

RECOGNIZANCE TO KEEP PEACE —*continued.*

3. WHEN RECOGNIZANCE MAY BE TAKEN —*continued.*

at liberty to execute the engagement at once or at any time during the term. QUEEN v. BACHU [7 N. W., 328

26. ——— **Order made under Criminal Procedure Code, 1882, s. 106, with respect to a person convicted of theft**—*Illegality thereof—Penal Code (Act XLV of 1860), s. 379.*—Where an accused person was convicted of an offence under s. 379, Penal Code, and the Magistrate, having found on the evidence that there was an intention of committing breach of the peace, directed him to execute a bond under s. 106, Criminal Procedure Code, it was held that the order under s. 106 was illegal, as the accused was convicted of theft only. *Queen v. Gendoo Khan, 7 W. R., 14,* and *Queen v. Jhapoo and others, 20 W. R., 37,* distinguished. RAM CHARAN MAITIE v. UMESH CHUNDER MONDAL [1 C. W. N., 186

27. ——— **Order for recognizance to refrain from collecting cesses**—*Criminal Procedure Code, 1861, s. 282.*—A Magistrate cannot pass an order under s. 282 calling on a person to enter into recognizances not to collect certain cesses, though under s. 282 the Magistrate may bind him down to keep the peace, if there is sufficient evidence to show that a breach of the peace is imminent through his act IN THE MATTER OF LUCHMEEPUT SINGH [14 W. R., Cr., 3

28. ——— **Order for second recognizance before expiration of first**—*Criminal Procedure Code (Act XXV of 1861), s. 290—Execution of second recognizance.*—Under s. 290 of the Criminal Procedure Code, an order to execute a second recognizance during the time the first recognizance is in force is illegal QUEEN v. KUMODINIKANT BANERJEE CHOWDHRY [9 B. L. R., Ap., 30: 18 W. R., Cr., 44

29. ——— *Criminal Procedure Code (Act XXV of 1861), s. 298—Illegal order.*—*A* was bound over to keep the peace for a year. Before the expiry of the period, he was involved in fresh disputes with other persons. The Deputy Magistrate, instead of referring the case to the Court of Session under s. 298 of the Code of Criminal Procedure, directed *A* to enter into another recognizance for a further period of one year. *Held* the order was illegal. QUEEN v. KALINATH BISWAS [6 B. L. R., Ap., 116: 15 W. R., Cr., 18

30. ——— *Criminal Procedure Code (Act V of 1898), ss. 120 (2), 123—Order to give fresh security upon expiry of a previous and existing security bond, Legality of.*—A security to keep the peace once given is sufficient for that purpose so long as it is in force in respect of every act of the person bound over breaking any of its conditions. A second order to give further security during the continuance of the first one is not contemplated by law; but if upon expiry of the first order the dispute still exists, a further security may be demanded on fresh proceedings properly taken. MAHOMED ABDUL BARI v. EMPRESS [4 C. W. N., 121

31. ——— *Criminal Procedure Code (Act X of 1882), ss. 107, 145—Disputes concerning land—Procedure.*—Where a dispute likely to cause a breach of the peace exists concerning possession of land, proceedings under s. 145, and not under s. 107, of the Criminal Procedure Code should be instituted. DOLEGOBIND CHOWDHRY v. DHANU KHAN . . . I. L. R., 25 Calc., 559

32. ——— In a case of a dispute regarding land where the Magistrate had taken proceedings under s. 107 and one of the parties moved the High Court, and contended that the Magistrate should have acted under s. 145, and not s. 107, the High Court held that they were not competent to direct the Magistrate to act under s. 145, but they expressed an opinion that it would be more desirable that proceedings should be taken under that section, and left it to the Magistrate to consider whether it would not be desirable to institute proceedings. IN THE MATTER OF THE PETITION OF EKRAM SINGH [3 C. W. N., 297

BEJOY SINGHA NEOGI v. EMPRESS [3 C. W. N., 463

4. CREDIBLE INFORMATION.

33. ——— **Nature of information required**—*Criminal Procedure Code, 1882, s. 107.*—*Held* by the Divisional Bench that "information" of the kind mentioned in s. 107 of the Criminal Procedure Code, 1882, must be clear and definite, directly affecting the person against whom process is issued, and should disclose tangible facts and details so that it may afford notice to such person of what he is come prepared to meet. IN THE MATTER OF THE PETITION OF JAI PRAKASH LAL [I. L. R., 6 All., 26

34. ——— **Report of police officer.**—The report of a police officer is "credible information" within s. 282 of the Code of Criminal Procedure, 1861. IN THE MATTER OF BRINDABUN SHAHA . . . . 10 W. R., Cr., 41

BEHARI PATAK v. MAHOMED HYAT KHAN [4 B. L. R., F. B., 46 12 W. R., Cr., 60

35. ——— *Criminal Procedure Code, 1872, ss. 491, 530.*—A police report is, under Act X of 1872, s. 530 (explanation), sufficient information on which a Magistrate may take action in a case of apprehended breach of the peace under s. 491 of that Act. QUEEN v. RAM CHUNDER ROY [21 W. R., Cr., 28

36. ——— **Statement of complainant on oath**—*Criminal Procedure Code, 1861, s. 282.*—There is nothing in the Criminal Procedure Code

RECOGNIZANCE TO KEEP PEACE —*continued*

4 CREDIBLE INFORMATION—*continued.*

which makes it imperative on a Magistrate to confront the accuser and the accused in a case under s 282 of the Criminal Procedure Code, and if a Magistrate considers a statement on oath of a complainant to be "credible information" under that section, there is no reason why he should not call on the accused to give security, the sufficiency of such "credible information" being ordinarily left to the Magistrate to determine IN THE MATTER OF THE PETITION OF TARINEE KANT LAHOORY CHOWDHRY [8 W. R, Cr, 79

37. ———— Statement of complainant—*Expectation of attack by defendant—Criminal Procedure Code, 1861, s 282*—A statement by a com-

[illegible]

38 ——— Petition not on oath—*Criminal Procedure Code, 1861, s 282*—A petition unsupported by any complaint or deposition on solemn affirmation cannot be considered "credible information" within the meaning of s 282 of the Code of Criminal [illegible] trate to [illegible] MARO MALO [illegible]

39. ———— Statement by private person not on oath—*Report by Subordinate Magistrate—Criminal Procedure Code, 1861, ss 282, 288*—A statement by a private person, not upon oath or solemn affirmation, is not credible information upon which alone a Magistrate should issue a summons under s 282 of the Code of Criminal Procedure [illegible]

under s 288 REG v. JIVANJI LIMJI [6 Bom, Cr, 1

40 ——— Report of Magistrate—*Criminal Procedure Code, 1861, s 282*—The report of a Subordinate Magistrate is such "credible information" within the meaning of s 282 of the Code of Criminal Procedure as to authorize a Magistrate to summon an individual named in the report, and require him to enter into a recognizance to keep the peace, although the report does not suggest that a recognizance should be required, but suggests other means for the prevention of disputes and the preservation of order Ex PARTE NELLIKEL EDATTHIL ITTI PUNGY ACHEN 2 Mad., 240

REG v IRAPA BIN BASAPA . 8 Bom, Cr, 162

41 [illegible]

RECOGNIZANCE TO KEEP PEACE —*continued.*

4 CREDIBLE INFORMATION—*concluded*

Magistrates should adopt proceedings under s. 107, Act X of 1882 EMPRESS v BABUA [I. L R., 6 All., 132

42. ———— Information unsupported

[illegible]

5 SUMMONS

43 — Contents of summons—*Criminal Procedure Code, 1872, ss 491, 492*—In a

[illegible]

Procedure Code, and the summons should distinctly specify the amount and nature of the security required and the time for which the security is to run QUEEN v GUNOA SINGH 20 W R, Cr, 36

44. —— —— —— Dispute likely to occasion breach of the peace—It should appear on

[illegible]

45 —— *Criminal Procedure Code, 1861, s 283*—*Separate summons to several persons*—It is essential to the validity of a summons issued under s 283 that it should contain the substance of the information by which the Magistrate is moved to act A separate summons should be issued to each person required to furnish security, and a separate bond taken from each which should be in the form required by the Code, and in the order the Magistrate should state the period for which the person against whom the order is made is to be imprisoned if he fail to comply with it QUEEN v. POWELL . 3 N. W, 96

46. —— —— —— — *Criminal Procedure Code, 1861, s 282*—A summons under s 282 of the Criminal Procedure Code, 1861, should set forth the substance of the information It should also call upon the parties summoned to show cause QUEEN v NIJABUT HOSSEIN [1 N. W., Ed. 1873, 304

47. *Criminal Procedure Code, 1861, s 283*—The summons to a person

[illegible]

summoned to show cause, the Magistrate in taking evidence should look not merely to the question of possession, but also whether he is satisfied that there

RECOGNIZANCE TO KEEP PEACE —*continued.*

5. SUMMONS—*concluded.*

was a probability of a breach of the peace. KOONJBEHARY CHOWDHRY *v.* EKNATH GURAIN [15 W. R., Cr., 43

48. ——— ——— *Criminal Procedure Code (Act X of 1872), s. 492.*—The words of s. 492 of the Code of Criminal Procedure are directory, and not imperative; and an omission to insert in a summons under that section the amount of the recognizance and security required will not invalidate any subsequent proceedings binding over the parties to keep the peace. ABASU BEGUM *v.* UMDA KHANUM . . . I. L. R., 8 Calc., 724

49. ——— **Form of summons**—*Summons to appear—Criminal Procedure Code, 1872, s. 491.*—A summons setting out that the person to whom it is directed is charged with an offence under s. 491 of the Criminal Procedure Code, and requiring his personal appearance in Court, is not such a summons as is required by that section. IN THE MATTER OF CHAROO CHUNDER MULLICK 10 C. L. R., 430

6. OPPORTUNITY TO SHOW CAUSE.

50. ——— **Omission to issue summons to show cause**—*Order directing recognizance to be taken.*—An order directing certain persons to enter into recognizances of R500 each, conditioned to keep the peace for the period of one year, without first summoning them to show cause why they should not be required so to do, is irregular, and will be quashed. QUEEN *v.* MOONEE DOOBEY . 2 N. W., 189

KALI PERSHAD SIRDAR *v.* FUTTEH CHUND DASS [9 W. R., Cr., 16

51. ——— **Order giving insufficient time to show cause**—*Irregular order—Criminal Procedure Code, 1872, s. 491.*—Where parties required on the 1st July to show cause on the 9th under s. 491, Criminal Procedure Code, why they should not furnish security for breach of the peace, were served on the 5th and 7th idem, it was held that they had not had sufficient time allowed them for the purpose, and the order requiring security was accordingly set aside. QUEEN *v.* CHEYT SINGH [22 W. R., Cr., 70

52. ——— **Omission to give opportunity to show cause**—*Criminal Procedure Code, 1872, s. 492.*—On a complaint being lodged of criminal trespass and assault, the Magistrate recorded that, after interrogating the witnesses, he found that a breach of the peace was likely to ensue, and proceeded to examine the complainant and two of his witnesses and the accused, and thereupon ordered that the parties should furnish recognizances to keep the peace,—*Held* that the parties had not had opportunity afforded them under s. 492, Criminal Procedure Code, to show cause why they should not be bound. QUEEN *v.* SHUKUR MAHOMED 22 W. R., Cr., 68

53. ——— *Notice to accused giving insufficient time.*—The notice to the accused should give him sufficient time to come in and produce his evidence. QUEEN *v.* ISREEPERSHAD SINGH [20 W. R., Cr., 18

RECOGNIZANCE TO KEEP PEACE —*continued.*

6. OPPORTUNITY TO SHOW CAUSE —*concluded.*

RUN BAHADUR SINGH *v.* TILESSUREE KOOER [22 W. R., Cr., 79

7. SUMMONING WITNESSES.

54. ——— **Obligation of Magistrate as to summoning witnesses**—*Criminal Procedure Code, 1872, s. 491.*—A Magistrate is bound to assist both parties in a case under s. 491, Criminal Procedure Code, 1872, in bringing in their witnesses by issuing summonses to attend. QUEEN *v.* CHEYT SINGH [22 W. R., Cr., 70

55. ——— **Right to adjournment to produce witnesses**—*Criminal Procedure Code, 1872, ss. 491, 496, 497.*—Under the sections (491 and 497) of the Criminal Procedure Code relating to security for breach of the peace, the party charged is not entitled, when sufficient time has already been given him to show cause and to produce his witnesses, to an adjournment in order to produce his witnesses. In such a case, he must either bring his witnesses with him or apply for summons in such time as to enable him to bring them into Court on the day fixed. CHULAN TEWARI *v.* SUKEDAD KHAN [23 W. R., Cr., 9

8. LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE.

56. ——— **Evidence of specific act or conduct likely to cause breach of the peace**—*Criminal Procedure Code, 1872, s. 491.*—A party cannot be called upon under Act X of 1872, s. 491, to enter into recognizances to keep the peace, unless the evidence points to some specific conduct or act on his part from which a reasonable or immediate inference can be drawn that he is likely to commit a breach of the peace. HUREE MOHUN MULLICK *v.* KALINATH ROY . . . 25 W. R., Cr., 15

57. ——— **Mere possibility of breach of peace**—*Criminal Procedure Code, 1872, s. 491.*—To justify an order under s. 491, Act X of 1872, calling on a person to give security to keep the peace, there must be a reasonable probability of a breach of the peace being committed, and not merely a bare possibility of a breach of the peace. QUEEN *v.* ABDOOL HUQ . . . 20 W. R., Cr., 57

QUEEN *v.* HUR KUMARI DASSIA [24 W. R., Cr., 10

58. ——— **Omission to prevent rioting**—*Criminal Procedure Code, 1861, s. 282.*—Parties who are not stated by a Magistrate to be likely to commit a breach of the peace, or to do any act that may probably occasion a breach of the peace, cannot be called upon to enter into recognizances to keep the peace with a view that they should interfere

RECOGNIZANCE TO KEEP PEACE
—*continued*

8. LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*continued*

to prevent riot simply because they did not interfere when they might have done so between the persons actually quarrelling so as to prevent a riot their laches in this respect not bringing them within the purview of s 282 of the Code of Criminal Procedure QUEEN v OMERTO LALL 19 W. R, Cr, 32

59 ——— Acts of agents of zamindar —*Non resident zamindar, Liability of*—A non-resident zamindar cannot be bound over to keep the peace be ... acts likely to ... THE MATTER ... [10 C. L. R., 430

60.——— Probable resistance by raiyats—*Distraint for arrears of rent—Criminal Pro-* ...

... C. L. ...

61 Want of evidence of likelihood of breach of peace —A Magistrate cannot bind over a person to keep the peace where there is no evidence to show that such person was likely to commit a breach of the peace, or to do any act that might probably occasion a breach of the peace QUEEN v KIDAR NATH . 7 N. W., 233

IN THE MATTER OF THE PETITION OF BROJENDRO KUMAR RAI CHOWDHRY *alias* DIGHOO BABOO [17 W. R., Cr., 35

62. Want of adjudication as to security for preservation of peace—*Recognizance made on admission of accused* —A Magistrate has no power to make an order that an accused person should enter into a bond to keep the peace until after an adjudication that it is necessary for the preservation of peace to take a bond from him, and until he is satisfied on that point, unless there is an admission by the party against whom the order is to be made. QUEEN v. LALL BEHAREE SINGH [11 W. R., Cr, 50

63. — Evidence of necessity for taking security—*Necessity of adjudication by Magistrate — Onus probandi* — In proceedings against persons to show cause why they should not ...

RECOGNIZANCE TO KEEP PEACE
—*continued*

8 LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*continued*.

upon the party on whose complaint the summons was issued QUEEN v NIRUNJUN SINGH [2 N W, 431

64. ——— *Inquiry by Magistrate—Criminal Procedure Code 1861 s 282*— After calling upon a person, under s 282 of the Code of Criminal Procedure, to show cause why he should not enter into recognizances to keep the peace, ... to enter ... nce, or ... ommit ... breach of the peace QUEEN v DEO NUNDUN SINGH [12 W. R., Cr, 16

QUEEN v HARVEY . . 20 W R, Cr., 68

65 Evidence of likelihood of breach of peace —*Necessity of adjudication by Magistrate* —After summoning a person to show cause why he should not enter into a bond to keep the peace, the Magistrate cannot bind over that person until he adjudicates on evidence before him that such person is likely to commit a breach of the peace GOSHAIN LUCHMUN PERSHAD POOREE v POHOOP NARAIN POOREE 24 W R., Cr., 30

QUEEN v. NIAZ ALI 5 N W, 60

QUEEN v ISREEPERSHAD SINGH [20 W R., Cr, 18

RUN BAHADOOR SINGH v TILUKDHARE KOOER [22 W R., Cr., 79

66 ——— *Evidence not taken in presence of accused —Criminal Procedure Code, 1872, ss 491, 494—Necessity for adjudication by Magistrate* —A Magistrate cannot bind over a person to keep the peace unless he has adjudicated on evidence taken in the presence of that person that a breach of the peace is probable If such person fails to attend on a summons duly served a warrant should issue (s 491); the order for security cannot be passed *ex-parte*. IN THE MATTER OF OKHIL CHUNDER BISWAS . 1 C. L. R., 48

67. *Criminal Proce-* ...

notice was given and the ground of complaint to which such notice had reference was found by the Magistrate to be unfounded, it was held that the Magistrate could not proceed to adjudicate that an ... was ...

RECOGNIZANCE TO KEEP PEACE —*continued.*

8. LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*continued.*

68. ———— *Necessity of judicial investigation and adjudication.*—In order to warrant an adjudication under s. 288, Civil Procedure Code, 1861, there should be a judicial investigation, and the order should be passed upon legal evidence duly taken and recorded. REG. *v.* JIVANJI LIMJI . . . 6 Bom., Cr., 1

69. ———— *Order for recognizance made without evidence duly taken.*—Order of District Magistrate, requiring certain persons to enter into recognizances and find security to keep the peace, reversed, as such order appeared to have been made without any legal evidence having been taken and recorded, as required by s 307 of the Criminal Procedure Code, 1861. REG. *v.* DALPATRAM PEMABHAI . . . . 5 Bom., Cr., 105

70. ———— *Presence of accused—Criminal Procedure Code (Act XXV of 1861), s. 282—Procedure.*—Before making an order absolute directing a person to enter into a bond to keep the peace, the Magistrate must take the evidence on which he bases the order in the presence of the accused or his agent. (GLOVER, *J.*, dissenting.) MAGHAN MISRA *v.* CHAMMAN TELI

[2 B. L. R., A. Cr., 7 : 10 W. R., Cr., 46

QUEEN *v.* NARSING NARAYAN

[2 B. L. R., A. Cr., 7 note : 10 W R., Cr., 1

71. ———— *Presence of accused—Necessity of adjudicating on evidence.*—A Magistrate is not competent to require persons to give security to keep the peace until he has adjudicated, on evidence taken in their presence, that they have by their conduct rendered this necessary. *Run Bahadoor Singh* v. *Tilessuree Kooer, 22 W. R., Cr., 79,* cited and followed. IN THE MATTER OF UMDA KHANUM . . . . 3 C. L. R., 72

72. ———— *Dispute likely to cause breach of peace—Report of police officer.*—The existence of a dispute likely to cause a breach of the peace must be first proved by legal evidence before the Magistrate can proceed to call upon the parties to enter into recognizances to keep the peace. The report of a police officer is not such legal evidence. ABHAYA CHOWDRY *v.* BRAE

[6 B. L. R., Ap., 148 : 15 W. R., Cr., 42

73. ———— *Report of police officer — Procedure.*— *Held* (GLOVER, *J.*, *dissentiente*) the report of a police officer, though it justifies the issuing of a summons, is not sufficient ground on which to bind a man over in a recognizance to keep the peace. The Magistrate must adjudicate on the question whether there is reasonable ground for believing that the defendant is likely to commit a breach of the peace, after taking evidence in the presence of the person charged, and giving him an opportunity to cross-examine the witnesses. BEHARI PATAK *v.* MAHOMED HYAT KHAN. DUNNE *v.* HEM CHANDRA CHOWDHRY. GOVERNMENT *v.* BEHARI LALL BRAJABASI

[4 B. L. R., F. B., 46 : 12 W. R., Cr., 60

RECOGNIZANCE TO KEEP PEACE —*continued.*

8. LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*continued.*

IN THE MATTER OF PORESH NARAIN ROY

[16 W. R., Cr., 45

74. ———— *Report of police inspector.*—A report of an inspector of police and the evidence given by the same inspector are not sufficient to justify an order binding a person to keep the peace. IN THE MATTER OF RAJENDRO KISHORE ROY CHOWDHRY . . 10 W. R., Cr., 55

75. ———— *Criminal Procedure Code, 1861, s. 282—Inquiry before taking recognizances—Cross-examination of witnesses.*—The kind of inquiry required to be held by a Magistrate in cases under s. 282, Code of Criminal Procedure, is a full judicial inquiry, evidence being taken in the presence of the parties charged, and opportunity given for the cross-examination of witnesses. NOOR MAHOMED *v.* NIL RUTUN BAGCHEE

[18 W. R., Cr., 2

76. ———— *Criminal Procedure Code, 1861, s. 282—Inquiry before taking recognizances—Cross-examination of witnesses.*—A Magistrate is not competent, under s. 282 of the Criminal Procedure Code, to order persons to enter into bonds to keep the peace merely upon the statement of the complainant on which the summons was granted, and without taking further evidence or giving the parties an opportunity of cross-examining the complainant. QUEEN *v.* NUSSEER-OOD-DEEN

[2 N. W., 461

QUEEN *v.* MAHOMED AFZUL . 7 W. R., Cr., 59

77. ———— *Report of Subordinate Magistrate—Criminal Procedure Code, 1861, ss. 280, 287, 288.* - The report of a Subordinate Magistrate, although it is credible information on which a Magistrate of the district would be justified, under s. 280 of the Code of Criminal Procedure, in issuing a summons, is not evidence on which he can properly arrive at a conclusion that the accused is likely to cause a breach of the peace ; ss. 287 and 288 of the Code require that evidence in such a case shall be recorded, and, if none is forthcoming, security to keep the peace should not be demanded. REG. *v.* IRAPA BIN BASAPA . 8 Bom., Cr., 162

78. ———— *Criminal Procedure Code, 1872, s. 490—Want of evidence.*—In the absence of any evidence rendering a breach of the peace probable, a Magistrate is not justified in calling upon parties to show cause why they should not enter into recognizances, and, on their failure, to make an order under Act X of 1872, s. 490. QUEEN *v.* GOSSAIN MUNRAJ POOREE. QUEEN *v.* GOSSAIN LUCHMEE NARAIN POOREE . 24 W. R., Cr., 23

79. ———— *Evidence taken as to some only of accused—Illegal order.*—Where a Magistrate bound down twenty-six persons to keep the peace under s. 491 of the Criminal Procedure Code, 1872, after recording evidence as to eleven of them only, the order was set aside as to the persons

RECOGNIZANCE TO KEEP PEACE —*continued*

8 LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*continued.*

not affected by the evidence IN THE MATTER OF KASSIM BISWAS . . 10 C. L. R., 335

80 ———————— *Criminal Procedure Code, 1882, ss 107, 112, 115—Security to keep the peace—Substance of information—Joint inquiry* —A Magistrate ordered sixty nine persons to show cause why they should not give security to keep the peace, it having been reported to him by the police [illegible]

the "ringleaders" should enter into bonds with sureties and the rest should enter into their own recognizances to keep the peace for one year *Held* that the Magistrate's order, purporting to be prepared under s 112 of the Criminal Procedure Code, did not adequately or properly disclose the substance [illegible] the [illegible] the [illegible] the [illegible] re quired the tehsildar and sub inspector to give much [illegible]

81. ———————— *Criminal Procedure Code, ss 107, 112 117, 118—Nature of order to show cause — Onus probandi — Nature and quantum of evidence necessary before passing order for security* —An order passed by a Magistrate under ss. 107 and 112 of the Criminal Procedure [illegible] ention to establish circumstances justifying the action of the Magistrate in calling upon persons to furnish security *Deane* v *Hem Chandra Chowdhry, 4*

RECOGNIZANCE TO KEEP PEACE —*continued*

8 LIKELIHOOD OF BREACH OF PEACE AND EVIDENCE—*concluded*

B L R, F. B ,46, and *Queen* v *Nirunjun Singh, 8 N. W., 431,* referred to In proceedings instituted under s 107 of the Criminal Procedure Code against more persons than one it is essential for the prosecution to establish what each individual implicated has done to furnish a basis for the apprehension that he will commit a breach of the peace In holding such an inquiry it is improper to treat what is evidence against one of such persons as evidence against all, wiothut discriminating between the cases of the various persons implicated *Queen-Empress* v *Nathu, I L R, 6 All 214* referred to. Although in an inquiry under s 117 the nature or quantum of evidence need not be so conclusive as is necessary in trials for offences, the Magistrate should not proceed purely upon an apprehension of a breach of the peace, but is bound to see that substantial grounds for such an apprehension are established by proof of facts against each person implicated which would lead to the conclusion that an order for furnishing security is necessary What the nature of the facts should be depends upon the circumstances of each case, but where the nature of the Magistrate's information requires it overt acts must be proved before an order under s 118 can be made, and such an order cannot be passed against any person simply on the ground that another is likely to commit a breach of the peace *Queen* v *Abdool Huq, 20 W. R, Cr, 57, Gorbhan Luchmun Pershad Pooree* v *Pohoop Narain Pooree 21 W R Cr, 30 Rajah Run Bahadoor* v *Ranee Tillessuree Koer, 27 W. R Cr, 79,* and *In the matter of Kashi Chunder Doss, 10 B L R 441 19 W R, Cr, 47* referred to QUEEN EMPRESS v ABDUL KADIR [I L R, 9 All., 452

82 ———————— *Interference of High Court—Criminal Procedure Code 1861, ss 282, 288* —Where there is evidence which would [illegible]

83 ———————— *Evidence taken irregularly* —The High Court declined to interfere with an order passed by a Magistrate in a case in [illegible] Criminal Procedure, 1861. QUEEN v [illegible] SINGH [13 W. R., Cr, 20

9 SECOND APPLICATION FOR SECURITY

[illegible] recognizances under s 280, or for security under

RECOGNIZANCE TO KEEP PEACE —*continued.*

9. SECOND APPLICATION FOR SECURITY —*concluded.*

s. 281, Code of Criminal Procedure, must be passed at the time of deciding the original case. If no such order is then made, subsequent proceedings must be taken under s. 282, and the parties summoned to show cause. IN THE MATTER OF THE PETITION OF GOBIND SOOBOODHEE

[15 W. R., Cr., 56

85. ——————— *Subsequent order —Criminal Procedure Code, 1861, s. 281—Evidence of likelihood of breach of the peace—Separate summons.*—Although it is competent to a Magistrate, upon conviction and sentence for assault, to order the accused to enter into an engagement to keep the peace, yet having omitted to do so he can afterwards only institute proceedings under s. 281 of the Criminal Procedure Code, upon receiving some further credible information (other than that which he derived from the previous trial) that the parties are likely to commit a breach of the peace. QUEEN *v.* POWELL

[3 N. W., 96

86. ——————— **Use of evidence formerly taken in other proceedings**—*Criminal Procedure Code, 1872, s. 491—Evidence Act, s. 33.* —S. 33 of the Evidence Act, 1872, does not justify a Magistrate in proceedings under s. 491 of the Criminal Procedure Code, in using evidence taken in a previous criminal trial in supersession of evidence given in the presence of the accused. QUEEN *v.* PROSONNO CHUNDER GOSSAMI . . 22 W. R., Cr., 36

See DILLOO SINGH *v.* OOTIM SINGH . [22 W. R., Cr., 9

RUN BAHADOOR SINGH *v.* TILESSUREE KOOER [22 W. R., Cr., 79

87. ——————— **Order for further security**—*Criminal Procedure Code, 1861, s. 290—Procedure.* —Where a matter in respect of which further security to keep the peace is required is the same as that before the Magistrate on the first occasion, the case can only be dealt with under s. 290 of the Code of Criminal Procedure. DE SILVA *v.* JEHANGEER

[7 W. R., Cr., 23

KALLY CHURN SINGH *v.* BUNKER SINGH

[7 W. R., Cr., 26

10. EFFECT OF ORDER POSTPONING PROCEEDINGS FOR CIVIL SUIT.

88. ——————— **Discharge of accused**—*Criminal Procedure Code, 1872, s. 491.*—An order postponing proceedings instituted under s. 491 of the Code of Criminal Procedure (Act X of 1872) until the person called upon to show cause shall have established in a Civil Court the title claimed by him to the property disputed, with reference to which there is a likelihood of a breach of the peace, amounts to a discharge. EMPRESS *v.* DHUNIRAM

[5 C. L. R., 366

RECOGNIZANCE TO KEEP PEACE —*continued.*

11. ORDER LIMITED BY REQUISITION.

89. ——————— **Order going beyond terms of requisition**—*Criminal Procedure Code, 1872, ss. 491, 492—Order for other and further security than originally required.*—Where information of a probable breach of the peace is first laid in general terms and is subsequently supported by evidence, which is given in the presence of the persons who are particularly implicated by it, the case for a demand for recognizances may properly rest on the whole evidence taken in the case; but when a Magistrate calls upon persons to show cause why they should not be bound down in their own recognizances to keep the peace, he cannot go beyond the requisition, and on the adjudication of the matter order them to furnish other securities besides. IN THE MATTER OF THE PETITION OF ABDOOL BARI

[25 W. R., Cr., 50

12. AMOUNT OF SECURITY.

90. ——————— **Considerations in fixing amount of security**—*Criminal Procedure Code, 1861, s. 284.*—A Magistrate should have due regard to the circumstances of the case and the means of the parties when fixing the amount in which the sureties should be bound in a case under s. 284 of the Code of Criminal Procedure, 1861. IN THE MATTER OF THE PETITION OF NILMADHUB GHOSAL. IN THE MATTER OF THE PETITION OF JUDOONATH ROY

[19 W. R., Cr., 1

91. ——————— **Mode of calculating amount** —*Criminal Procedure Code, 1872, s. 493—Means of parties called on.*—The High Court reduced the amount of recognizances required in this case, as it was very much in excess of, and out of proportion to, the means of the party accused, s. 483 of the Criminal Procedure Code requiring that the Magistrate should look to the means of the party ordered to find sureties. FUTTEH BAHADOOR *v.* GIBBON. LALL MAHAMAD *v.* GIBBON . . 22 W. R., Cr., 74

92. ——————— **Statement of amount in summons**—*Power of Magistrate to alter amount and form from what is stated in summons.*—A party was called upon summons to show cause why he should not be required to enter into his own recognizance to keep the peace for six months, the amount specified being R200. On his appearing before the Magistrate, he was required to enter into his own recognizance to the amount of R4,000 and to find two sureties for R1,000 each for a period of one year. *Held* the order was an illegal one. QUEEN *v.* ISREE PERSHAD SINGH

[9 B. L. R., Ap., 44 : 18 W. R., Cr., 61

See IN THE MATTER OF THE PETITION OF ABDOOL BARI . . . . 25 W. R., Cr., 50

93. ——————— **Power to increase amount** —*Criminal Procedure Code, 1861, s. 290.*—Notwithstanding that a person has been bound down by bond to keep the peace for a stated period, a Magistrate has power, under s. 290 of the Code of Criminal

RECOGNIZANCE TO KEEP PEACE —*continued*

12 AMOUNT OF SECURITY—*concluded.*

Procedure, to increase the amount of the security required before the expiry of that period. IN THE MATTER OF THE PETITION OF GOOROODASS ROY [18 W. R., Cr., 57

13 EFFECT OF SIGNING WRONG BOND

94. ——— Bond signed by mistake for security for good behaviour—*Invalid bond.*—Where a person who had been required to give a bond to keep the peace in the form E to schedule II of the Code of Criminal Procedure, instead of giving such bond, signed a security bond in the

14 CANCELLING ORDER

95. ——— Power of Magistrate to cancel order—*Criminal Procedure Code, 1861, ss 282, 291* —A Magistrate may, under s 291 of the Code of Criminal Procedure, cancel an order passed by him under s 282 of that Code, summoning a person to show cause why he should not enter into a bond to keep the peace ANUNDEE KOOER *v* SOONSET KOOER GOVERNMENT *v.* ANUNDEE KOOER [10 W. R., Cr., 40

96. ——— Power of Sessions Judge to

15 DISCHARGE OF RECOGNIZANCES.

97. ——— Order as to disposition of property in dispute—*Illegal order.*—Where a

PROSHAD *v.* CHOWDHRY NII KANTH PROSHAD [13 W. R., Cr., 44

16 FORFEITURE OF RECOGNIZANCES.

98 ——— Proof of forfeiture—*Criminal Procedure Code, 1872, s 502*—*Evidence on oath.*—

RECOGNIZANCE TO KEEP PEACE —*continued*

16 FORFEITURE OF RECOGNIZANCES —*continued.*

A Magistrate has no jurisdiction to call on a person who has entered into a recognizance bond, under s. 493 of the Code of Criminal Procedure, to pay the penalty or show cause why he should not do so, without previous *primâ facie* proof, by which is meant evidence on oath, that it has been forfeited IN RE HARIRAM BIRBHAN . . 11 Bom., 170

99 ——— *Sufficiency of evidence to prove forfeiture* —Before a recognizance can be forfeited, it must be proved that the person accused has either personally broken the peace or abetted some other person or persons in breaking it.

100 —

101. ——— *Necessity for evidence of forfeiture*—*Criminal Procedure Code, 1872, s 502*—An order estreating a recognizance or a bail bond must be made upon evidence duly recorded in the case, and not upon evidence taken in other cases Where a Magistrate makes an order forfeiting a recognizance under s 502 of the Criminal Procedure Code, the terms of the section must be strictly followed It is not competent to direct that in default of payment the person whose recognizance is forfeited should be imprisoned, without first issuing a warrant for the attachment and sale of his immoveable property IN THE MATTER OF MOHESH CHUNDER ROY . 10 C. L. R., 571

102. ——— *Evidence of person bound over*—*Power of Magistrate to reduce penalty.*—*Per* AINSLIE, J —In a case in which pro-

the bond, and is ... penalty corres- ... confined only to ... OF THE PETITION OF JEHAN BUKSH . 15 W. R., Cr., 87

103. ——— *Opportunity to accused for cross examination of witness*—*Proceedings on forfeiture of recognizance*—*Criminal Procedure Code (Act X of 1872), s 502*—A Magistrate is not justified in forfeiting a recognizance under s. 502 of Act X of 1872, unless the party charged with a breach of the peace has had an opportunity of cross-examining the witnesses upon whose evidence the rule to show cause why the recognizance should

RECOGNIZANCE TO KEEP PEACE —*continued.*

16. FORFEITURE OF RECOGNIZANCES —*continued.*

not be forfeited has been issued. EMPRESS *v.* NOBIN CHUNDER DUTT [I. L. R., 4 Calc., 865 : 4 C. L. R., 243

104. ———— *Liability to forfeiture—Evidence necessary—Criminal Procedure Code (Act X of 1882), s. 514.*—The mere fact of the person for whom another stands surety being convicted of a breach of the peace ought not to be sufficient to make the surety bond executed by the latter liable to forfeiture without any evidence taken in the presence of the surety to show that the forfeiture has been incurred. The language of s. 514 of the Criminal Procedure Code (Act X of 1882) does not indicate that the final order making a person bound by a bond can be made without taking any evidence in his presence or giving him any opportunity of cross-examining the witnesses on whose evidence the forfeiture is held to be established. The mere production of the original record or of a certified copy of the original record of the trial in which the principal had been convicted of breaking the peace within the period covered by a bond would not be conclusive, if indeed it would be any evidence, against the surety in a proceeding under s. 514 of the Criminal Procedure Code. QUEEN-EMPRESS *v.* HAR CHANDRA CHOWDHRY [I. L. R., 25 Calc., 440

105. ———— Delay in taking steps to forfeit recognizance—*Invalid proceedings.*—When a Magistrate has before him the fact that a person convicted by him of an offence attended with violence was under recognizance to keep the peace, and does not nevertheless proceed to forfeit such recognizance, it must be held that he thought it unnecessary to do so. Proceedings taken after the lapse of a considerable period are bad and contrary to the intention of the law. IN RE RAM CHUNDER LALLA . . . . . 1 C. L. R., 134

106. ———— Liability to forfeiture—*Commission of offence—Theft.*—Where a person has been bound down by recognizance not to commit a breach of the peace, the amount of the recognizance cannot be recovered from him if he is guilty of an offence, such as theft, which does not amount to a breach of the peace, or which is not likely to occasion a breach of the peace. IN THE MATTER OF THE PETITION OF HARAN CHUNDER ROY [18 W. R., Cr., 63

107. ———— *Subsequent offence.*—A person was bound down under recognizances to keep the peace towards all Her Majesty's subjects for a period of one year. Some time afterwards he wrongfully confined and extorted a sum of money from two raiyats who were supposed to have committed theft on his lands, he being for such offence fined and his recognizances forfeited. *Held* that the matter ought to have ended with the fine; for the raiyats not having offered any resistance, no breach of the peace took place, and the amount of the recognizance could not be taken. IN THE MATTER OF THE PETITION OF ZEARUDDIN HOWLDAR [19 W. R., Cr., 48

108. ———— *Criminal Procedure Code (Act XXV of 1861), s. 293—Jurisdiction.*—*A* executed in district T a recognizance to keep the peace towards *B*. *A* was afterwards convicted in district S of having assaulted *B* in that district. *Held* *A* had forfeited his recognizance, and the Magistrate in district T could proceed against him under s 293 of the Criminal Procedure Code. QUEEN *v.* SHAM SUNDER CHOWDHRY [2 B. L. R., A. Cr., 11

109. ———— *Assault.*—On the application of *A*, a recognizance was taken from *B* that he would keep the peace for six months under a penalty of R500. Before the expiry of the period, *B* assaulted *C*. *Held* that there was a forfeiture of the recognizance. JARU BAX *v.* GOVERNMENT [6 B. L. R., Ap., 66 : 15 W. R., Cr., 14

110. ———— *Criminal Procedure Code, 1872, s. 502.*—Where certain persons were bound over to keep the peace and were subsequently convicted of voluntarily causing grievous hurt, and at the time of conviction the Magistrate made an order estreating their recognizances, as part of his judgment in the case, without in any way fulfilling the provisions of s. 502 of Act X of 1872, and the convictions were quashed by the Court of Session, the High Court cancelled the order of forfeiture. QUEEN *v.* GHISA . . . 7 N. W., 375

111. ———— *Criminal Procedure Code, 1872, s. 502—Forfeiture of recognizances—Fresh recognizances.*—On the 10th of April 1877 *A* was bound down to keep the peace for one year. On the 14th of January 1878 he was convicted of an offence, and sentenced therefor to fine and imprisonment, but no order was made for the recovery of the penalty, though the Magistrate knew that the recognizance had been forfeited. On the 2nd of April 1878 the Magistrate, at the instance of a third party, called upon *A* to show cause why the penalty of the recognizance should not be paid, and a warrant for its recovery was issued on the 6th of June 1878. *Held* that the warrant must be quashed, on the ground that the Magistrate having inflicted a sentence of fine and imprisonment with the knowledge that the recognizance was forfeited, he was not competent to inflict a further penalty on a reconsideration of the circumstances. IN THE MATTER OF PARBUTTI CHURN BOSE . . . . 3 C. L. R., 406

112. ———— Forfeiture of portion of recognizances—*Criminal Procedure Code, 1861, s. 293.*—Under the provisions of s. 293, a Magistrate cannot direct the forfeiture of a portion of the penalty. Where the amount of the recognizances were wholly out of proportion to the nature of the dispute and to the means of the parties, the High

RECOGNIZANCE TO KEEP PEACE —*concluded.*

16 FORFEITURE OF RECOGNIZANCES —*concluded.*

Court held they could not interfere, but the Government might be moved in the matter IN THE MATTER OF THE PETITION OF NILMADHUB GHOSAL IN THE MATTER OF THE PETITION OF JUDOONATH ROY . . . . . 19 W. R., Cr., 1

113 ———— Reduction of penalty—*Power of Magistrate to enforce only portion of penalty* —A Magistrate has no power to mitigate the penalty entered in a recognizance bond which must be enforced to its full amount, unless Government forego a portion of the penalty ANONYMOUS [1 Bom., 138

114. ———————— *Power of Court to reduce amount of penalty* —The High Court has no power to reduce the amount of recognizances which have been forfeited, but in a case of hardship the matter should be referred to Government EMPRESS v. NURAL HUQQ [I. L R., 3 Calc, 757: 2 C. L. R, 408

IN THE MATTER OF THE PETITION OF NILMADHUB . . 19 W. R., Cr, 1

IN THE MATTER OF NAKI HAZI . 8 C. L R, 72

115. Mode of enforcing penalty —*Surety—Imprisonment on forfeiture of recognizance to keep the peace.*—S 294 of the Code of Criminal Procedure, 1861, did not authorize the imprisonment of sureties ANONYMOUS [4 Mad., Ap, 69

RECORD.

See PRACTICE—CIVIL CASES—RECORD. [5 W. R., 271 I. L. R., 5 Calc, 317

See PRACTICE—CRIMINAL CASES—RECORD IN SESSIONS CASES . 14 W. R., Cr, 46 [15 W. R., Cr., 16 7 W. R., Cr, 112 8 W. R., Cr., 30, 57

Entry in—

See CASES UNDER KHOTI SETTLEMENT ACT

———— Loss of—

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS

— — *Appeal case to High Court—Procedure* —Where the records of a case in appeal were not forthcoming, the High Court ordered the return of whatever papers had been sent up, together with such papers as the parties had respectively filed with a direction to the lower Court to summon both parties, and to take such further evidence as either of them might think fit to adduce in support of his case and to return such evidence with its own opinion for final disposal by the High Court BUNWARRY LALL v FURLONG . 8 W. R, 38

RECORD—*concluded.*

———— Loss of, in Mutiny.

See POSSESSION—EVIDENCE OF TITLE [4 B. L. R., Ap., 21

— — — of proceeding in Small Cause Court.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS — SMALL CAUSE COURT, PROCEEDINGS IN [6 B. L. R., 729, 730 note 7 B. L R., Ap, 61

— — Preparation of, for appeal.

See PRIVY COUNCIL, PRACTICE OF—RECORD, PREPARATION OF [I. L. R., 20 Mad., 395 L. R., 24 I. A., 194

— Signature to—

See PRACTICE—CRIMINAL CASES—SIGNATURE BY MAGISTRATE [I. L. R., 6 Mad,

Transmission to High Court.

See PRACTICE—CRIMINAL CASES—TRANSMISSION OF RECORD TO HIGH COURT [15 W. R, Cr., 67

RECORD-OF-RIGHTS.

See BENGAL TENANCY ACT, s 101. [I. L. R., 21 Calc., 378

See BENGAL TENANCY ACT, s 102 [I. L. R., 21 Calc., 38

See BENGAL TENANCY ACT s 103 [I. L. R., 16 Calc, 641, 643

See BENGAL TENANCY ACT s 108 [I. L R., 21 Calc, 521

See CASES UNDER PRE EMPTION

Amendment of—

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872), ss 11 AND 25 . I. L. R.; 18 Calc, 146 [I. L. R., 22 Calc., 473

———— Dispute as to—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 16 Calc., 598 I. L. R., 21 Calc., 776 I. L. R., 22 Calc., 477 I. L. R., 24 Calc., 462 I. L. R., 25 Calc, 146

———— Entries in—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N.-W. P [I. L. R., 1 All, 614

— Publication of—

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872), ss 24, 25 [I. L. R., 13 Calc., 245 I. L. R., 15 Calc., 765

RECORD OFFICE.

——— Report from—

See EVIDENCE—CRIMINAL CASES—PREVIOUS CONVICTIONS. [6 B. L. R., Ap., 15

RECORDER OF MOULMEIN.

See PARTIES—ADDING PARTIES TO SUITS—GENERALLY . . 10 W. R., 86

See CASES UNDER RECORDER'S ACT, 1863.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES. [6 B. L. R., 180

1. ——— Jurisdiction of Recorders—*Execution of decree made by Town Assistant Commissioner.*—The Court of the Recorder of Moulmein has no jurisdiction to execute a decree made by the late Court of the Town Assistant Commissioner. KYANPETIEE *v.* NGA SHA LAW . 14 W. R., 386

2. ——— *Trespass to personalty in foreign State—Judicial cognizance—Question of title.*—Trespass to personalty in a foreign State (the title to such personalty depending upon the right to land in such foreign State) is cognizable by the Recorder's Court, so as to rebut a *primâ facie* title to such personalty acquired within the Court's jurisdiction. The Recorder's Court cannot take judicial cognizance of the fact that the country in which the rights of the party attempting to rebut such *primâ facie* title accrued is lawless and unsettled, and possesses no tribunal capable of pronouncing a decision on the rights of the parties which the Recorder's Court could consider as the decision of a Court of competent jurisdiction. Although the foreign State might be civilised, and have Courts competent to try the title, the Recorder's Court would have a right in a suit against a party subject to his jurisdiction to try incidentally the question of title to the land for the purpose of determining the right to the personalty. SAYA LOO *v.* NGA PAW LOO [6 W. R., Civ. Ref., 4

RECORDER OF RANGOON.

See ADVOCATE . . 21 W. R., 297

See CASES UNDER RECORDER'S ACT, 1863.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES. [15 W. R., 351

——— Court of—

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION. [I. L. R., 22 Calc., 487

——— Decree of, Appeal from—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL . I. L. R., 24 Calc., 30

RECORDER OF RANGOON—*concluded.*

1. ——— *Cause of action—Defendant out of the jurisdiction.*—The Court of the Recorder of Rangoon had no jurisdiction in a suit brought against a defendant dwelling in Surat, though the cause of action arose in Rangoon. ANONYMOUS CASE . . 18 W. R., 397

2. ——— *Civil Procedure Code (Act XIV of 1882), s. 16 (c), proviso—Suit for damages for trespass on land and for injunction.*—The plaintiff sued in the Court of the Recorder of Rangoon to recover damages for trespass on land in his own possession situate outside the limits of the original jurisdiction of the Recorder's Court; asking at the same time for an injunction restraining the defendant from further acts of trespass. Both plaintiff and defendant resided within the limits of the original jurisdiction of the Recorder's Court. *Held* (1) that the plaintiff, having alleged that the land was in his possession, was not entitled to the benefit of the proviso to s. 16 of the Code of Civil Procedure; and (2) that a suit for damage to land cannot be said to be a suit for which relief can be entirely obtained through the personal obedience of the defendant, even though it may be joined with a claim for an injunction; and that for the above reasons the Recorder had no jurisdiction to try the suit. CRISP *v.* WATSON [I. L. R., 20 Calc., 689

3. ——— *Reference to High Court, Calcutta—Lower Burma Courts Act (XI of 1889), s. 42—Conflicting decisions—Decision of Superior Court—Power of Recorder to refer.*—The Recorder of Rangoon, in a suit tried by him, referred to certain decisions of the High Courts at Calcutta, Bombay, and Madras, which were in conflict, and, not agreeing with the decision of the Calcutta High Court, referred the case to the High Court in its appellate jurisdiction. *Held* that, as the decisions of the High Court at Calcutta are binding on the Recorder, he had no jurisdiction to make the reference, and that it must be returned MAHOMED HADY *v.* SWEE CHEANG & CO. . I. L. R., 25 Calc., 488 [1 C. W. N., 172

RECORDER'S ACT (XXI OF 1863).

1. ——— Jurisdiction of Recorder—*Recorder of Moulmein—District of Amherst.*—Under Act XXI of 1863, the Recorder of Moulmein had no power to order execution to issue on a judgment of the late Court of the First Class Assistant Commissioner of the district of Amherst. IN THE MATTER OF RYAW PETEE . . 6 B. L. R., Ap., 15

2. ——— *Minors Act (IX of 1861).*—Recorders appointed under Act XXI of 1863 possess all the jurisdiction relative to minors referred to in s. 1, Act IX of 1861, or intended to be given by that Act. IN RE HUTTON [3 W. R., Rec. Ref., 5

3. ——— *Jurisdiction of Judge in cases of bank in which he is a shareholder.*—A Recorder, under Act XXI of 1863, being the holder of Bank of Bengal shares, has power to dispose of a suit to which the Bank is a party, in a

RECORDER'S ACT (XXI OF 1863)—*concluded*

case of necessity as when the Commissioner also has shares in the Bank BANK OF BENGAL *v* GOLAM AZIM . 12 W R., 185

4 ———— *Suit on judgment of Court of Queen's Bench* —In a suit to make a judgment passed in the Court of Queen's Bench in London

it not being a suit for land and the defendant not dwelling carrying on business or personally working for gain within the local limits of the Court's jurisdiction, and the cause of action not having arisen within those limits SIEVEKING, DROOP & Co *v* FOCKE . 9 W R. 215

———— s 17—*Withdrawal of license to practise as a pleader* —The Recorder of Moulmein, under s 17 of Act XXI of 1863 had no power to withdraw a license granted by him to plead in the Court of Moulmein ' except for any sufficient reason ' IN THE MATTER OF THOMSON

[6 B L R., 180 14 W R., 257

———— s 18

See ADVOCATE 7 W R., 390

———— ss 22, 25—*Reference to High Court —Execution of decree* —The Recorders could not under Act XXI of 1863 refer for the opinion of the High Court questions arising in execution of a decree The question must be one in the trial of a suit. DACOSTA *v* CURRIE 4 B. L R., A C, 50

S C ASHBURNER *v* CURRIE 13 W R., 27

IN THE MATTER OF SUTHERLAND 9 W R., 478

———— s 27

See APPEAL—ACTS—ACT XXI OF 1863

[7 W R., 508

1. ———— *Appeal to High Court—Valuation of suit* —Where the plaintiff sued to establish his right to a quantity of timber the value of which he stated in his plaint to be R1 590 but on appeal to the High Court valued his appeal at R3 100 and made no claim for damages —*Held* that no appeal lay to the High Court under s. 27, Act XXI of 1863 MUTU *v* VEERAPAH CHETTY

[8 B. L R., Ap, 61 17 W R., 243

2 ———— and s 39—*Appeal—Valuation of suit* - The Recorder of Moulmein in trying an administration suit valued at R13 000, found as to R6 000 in value of the property claimed that it did not exist. The value of the amount decreed by him amounted to R7 003 *Held* that under Act XXI of 1863 ss 27 and 39 the appeal lay in the first instance to the High Court and not to the Privy Council. HAWABI *v* IBRAHIM SALI BHAY DAPTI

[5 B L R., 305

S C. HOWAH BEE *v* IBRAHIM SALEE BHOY DUTLEE . . 13 W R., 393

RECURRING RIGHT

See CASES UNDER LIMITATION ACT 1877, ART 131

REDEMPTION

See CASES UNDER EQUITY OF REDEMPTION

See CASES UNDER MORTGAGE—REDEMPTION

Suit for—

See CASES UNDER LIMITATION ACT 1877, ART 148 (1871 ART 148)

See SALSETTE LAW APPLICABLE IN

[I L R, 19 Bom, 680

See VALUATION OF SUIT—APPEALS

[I L R, 2 All., 778
I L R., 13 All 94
I L R, 16 Mad 326 415

See CASES UNDER VALUATION OF SUIT—SUITS,

REFERENCE FROM SUDDER COURT AT AGRA

———— Establishment of High Court—*Letters Patent, N W P 1866 s 27* The Sudder Court being equally divided referred a case for the opinion of the High Court of Calcutta. The High Court at Agra having been established in the meanwhile *Held* that the Chief Justice of that Court had power to hear and determine the case UDEY KUNWAR *v* LADU

[6 B L R., 283 15 W R, P C, 16
13 Moore's I A., 585

REFERENCE TO FULL BENCH

1 ———— Power of one Judge to refer —When the senior Judge of a Division Bench of the High Court composed of two Judges passes an order which he intends as a final judgment in a case the junior Judge cannot of his own authority refer the case to a Full Bench IN THE MATTER OF THE PETITION OF CHUNDER KANT BHUTTACHARJEE

[B L R., Sup Vol, Ap, 43

S C CHUNDER KANT BHUTTACHARJEE *v* BINDABUN CHUNDER MOOKERJEE 7 W R, 277

2. ———— Refusal to answer question when found not to arise in the case The majority of the Judges of a Full Bench refused to answer the question referred on the ground that it did not arise in the case INDRA CHANDRA DUGAR *v* BRINDABUN BIHARA

[7 B L R., F B., 251 15 W R., F B., 21

3 ———— Power of a single Judge sitting alone, to refer a case in which the value of the subject-matter in dispute does not exceed R50—*Division Court—Rules of the High Court Ch V, Rule 1 Ch II Rules 1 and 6—Stat 24 & 25 Vict c 104 s 13* —A reference to the Full Bench cannot be made by a Judge of the High Court sitting alone to hear cases in which

REFERENCE TO FULL BENCH—*continued.*

the value of the subject-matter in dispute does not exceed R50. NATU MONDUL *v.* CHOLIM MULLIK [I. L. R., 25 Calc., 896

NATU MANDAL *v.* BADAL MULLICK [2 C. W. N., 405

4. ———— Question referred not answered on the ground that it did not arise in the case. GIRISH CHANDRA LAHURY *v.* FAKIR CHAND [B. L. R., Sup. Vol., 503

GOPAL CHUNDER ROY *v.* GOOROO DOSS ROY [B. L. R., Sup. Vol., 704 note

See also RAM KANTH CHOWDHRY *v.* BHUBAN MOHAN BISWAS, *per* PEACOCK, *C.J.* [B. L. R., Sup. Vol., 25: W. R., F. B., 183

See KIRTEE NARAIN CHOWDHRY *v.* PROTAP CHUNDER BURUOAH . . W. R., F. B., 120

5. ———— KEMP and MACPHERSON, *JJ.*, were of opinion that the last question referred did not arise in the case, and therefore should not have been answered. PROSONNO COOMAR PAL CHOWDHRY *v.* KOYLASH CHUNDER PAL CHOWDHRY [B. L. R., Sup. Vol., 759
2 Ind. Jur., N. S., 327: 8 W. R., 428

6. ———— Difference of opinion between individual Judges—*Practice.*—A question arising from a conflict of opinion between individual Judges is not, properly speaking, the subject of reference to a Full Bench. RAJ KOOMAR SINGH *v.* SAHEBZADA ROY . I. L. R., 3 Calc., 20

7. ———— Practice—*Regular appeal—Special appeal.*—On a reference to a Full Bench from a special appeal, the Full Bench will decide the special appeal; but on a reference from a regular appeal the Full Bench will only decide the point referred, and send the case back to be dealt with by the Bench which made the reference. SUFDAR REZA *v.* AMJAD ALI [I. L. R., 7 Calc., 703: 10 C. L. R., 121

8. ———— *Power of Full Bench to send case back to referring Bench for final disposal—High Court, Appellate Side, Ch. V, rule 5.*—The language of rule 5 of Ch. V of the Rules of the High Court, Appellate Side, relating to references to the Full Bench in criminal matters is sufficiently wide to enable the Full Bench to send a case back, with an expression of opinion upon the point of law raised, to the Bench which referred it for final disposal. IN THE MATTER OF ABDUR RAHMAN . I. L. R., 27 Calc., 839

ABDUR RAHMAN *v.* EMPRESS . 4 C. W. N., 656

and *per* MACLEAN, *C.J.*, in NEMAI CHATTARAJ *v.* EMPRESS . . . . 4 C. W. N., 645

9. ———— Matter not decided in order of reference—*Limitation Act (XV of 1877), sch. II, art. 64—Statement of account unsigned—Cause of action.*—The plaintiffs claimed on a statement of account in writing dated the 18th October 1877; this statement of account was not signed by the defendant. The date of the institution of the suit was the 30th September 1880. A Division Bench of the High Court held on the appeal on the case coming up before them on the 18th October 1877 that the suit was not based upon any express contract made between the parties; that the transaction which took place on that date did not constitute an implied contract; and that therefore these contentions were not open to the plaintiffs, but the Court referred the question whether the plaintiffs' claim, so far as it was based on the statement of account on the 18th October 1877, fell within art. 64 of sch. II of Act XV of 1877. *Held* by MITTER, PRINSEP, and MCDONELL, *JJ.*—That the question referred was a matter of limitation arising in the case which had not been decided in the order of reference, and without such a decision the case could not be disposed of; and as to that point, that the statement of account, not being signed by the defendant, did not fall within the terms of art. 64 of sch. II of Act XV of 1877. *Held* by GARTH, *C.J.*, and TOTTENHAM, *J.*—That the Division Bench, having held that the transaction afforded no basis for a suit, had disposed of the case, and the question referred was therefore immaterial. DUKHI SAHU *v.* MAHOMED BIKHU [I. L. R., 10 Calc., 284: 13 C. L. R., 445

10. ———— Matter not decided in or made the subject of reference—*Matter for decision by Full Bench.*—*Per* TYRRELL, *J.*, that in a reference to the Full Bench the only matters which can legally be attended to are the cases referred, and it is not competent for the Full Bench to review or pronounce judicial opinions upon the Court's judgment in cases which have been finally decided and not made the subject of reference. *Jagram Das v. Narain Lal, I. L. R., 7 All., 857*, and *Afzal-un-nissa Begam v. Al Ali, I. L. R., 8 All., 85*, followed and explained. JADU RAI *v.* KANIZAK HUSAIN . . . I. L. R., 8 All., 575

REFERENCE TO HIGH COURT—CIVIL CASES.

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE. [I. L. R., 11 Bom., 57

See DISTRICT JUDGE, JURISDICTION OF. [I. L. R., 11 Mad., 36

See MAMLATDARS COURTS ACT, s. 17. [I. L. R., 14 Bom., 371

See PRACTICE—CIVIL CASES—REFERENCE TO HIGH COURT. [I. L. R., 21 Bom., 806

See RECORDER OF RANGOON. [I. L. R., 25 Calc., 488

See RECORDER'S ACT, 1863, ss. 22, 25. [4 B. L. R., A. C., 50
13 W. R., 27
9 W. R., 478

See REVIEW—ORDERS SUBJECT TO REVIEW . . I. L. R., 10 Bom., 68

REFERENCE TO HIGH COURT—CIVIL CASES—*continued.*

See RIGHT TO BEGIN 13 B. L. R., 142

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT

See STAMP ACT, 1879 s 50
[I. L. R., 15 Mad., 259

1. ———— Question for reference—*Act XXIII of 1861, s. 28—Question arising on application for review*—S 28, Act XXIII of 1861, merely authorized the reference of such questions as might arise in the trial of the suit, and not of questions arising on an application for a review of judgment which cannot in any sense be considered as the trial of a suit BONOMALLY DEO *v* RAM SODOY CHUCKERBUTTY . 17 W. R., 95

2. — — — *Question arising on application for review*—A reference cannot be made upon an application for a review of judgment TALIM MUNDAL *v* WATSON & CO 17 W. R., 94

3. ———— *Order made on application for probate—Court of concurrent jurisdiction—Succession Act (X of 1865), ss 182 264—Code of Civil Procedure (Act X of 1877), s 617*—The order made by a District Judge on an application for probate, not being a final order, cannot be referred for the opinion of the High Court under s 617 of the Code of Civil Procedure But the Court will, under certain circumstances, entertain such an application, as a Court of concurrent jurisdiction, under s. 264 of the Succession Act IN THE MATTER OF MONOHUR MOOKERJEE
[I. L. R., 5 Calc., 756; 7 C. L. R., 228

4. ———— *Civil Procedure Code, 1877, s. 617—Case in which there is no appeal.*—It is only when a matter cannot come before the High Court as a Court of appeal that a reference can be made under s 617 of the Civil Procedure Code (Act X of 1877) KRISHNA NATH SIRCAR *v* RAM KUMAR DE . . . 7 C. L. R., 144

5. — — — *Civil Procedure*

decree in the suit, and any order of the Judge in appeal disposing of the plea of jurisdiction would not amount to a "final" decree within the meaning of s. 617 of the Civil Procedure Code, the High Court had not jurisdiction to entertain the reference RAM PHUL *v* DURGA . I. L. R., 7 All., 815

REFERENCE TO HIGH COURT—CIVIL CASES—*continued*

6. — ———— — *Civil Procedure Code, s 617—Reference of question arising in execution of a decree—Final decree*—A question arising in execution of a decree cannot be referred for the decision of the High Court under s. 617 of the Civil Procedure Code (Act XIV of 1882) except where the decree is final ORIENTAL LOAN ASSOCIATION *v* HATCH I. L. R., 17 Bom., 735

7. ———— *Civil Procedure Code, 1882, s 617—Stay of execution—Amount of security required on granting stay of execution,*

security being given by him The Subordinate Judge feeling doubt as to whether the actual value of the property or the value stated in the plaint should be

Civil Procedure Code The question as to the amount of the security was a question relating to execution as contemplated by s 244 of the Code, and therefore an order determining that question would be appealable under s 2 of the Code ISHWARGAR *v* CHUDASAMA MANABHAI I. L. R., 12 Bom., 30

8. ———— *Difference of opinion between Judges of Division Bench on reference—Civil Procedure Code (1882), ss 575 647*—On a

[4 C. W. N., 389

9. ———— *Civil Procedure Code, 1882, s 617—Pleader—Professional conduct*—S 617 of the Code of Civil Procedure (Act XIV of 1882) does not authorize a reference, except on a point arising in a litigation between parties in a suit, or appeal or in a matter wherein the Court is ... the ... ader ... udge ... after receipt of retaining fee On appeal, the District Judge referred the matter to the High Court under s 617 of the Code of Civil Procedure (Act XIV of 1882) *Held* that the inquiry into the pleader's professional conduct was of a disciplinary, and not litigious, character The fact that an appeal lay from the Subordinate Judge to the District Judge did not make it litigious. In such an enquiry no reference could properly be made under s. 617 of Act XIV of 1882 YESHVANT NARAYAN ADARKAR *v* DESOUZA I. L. R., 13 Bom., 78

10. ———— *Civil Procedure Code (1882), s 646A—Reference of case before*

REFERENCE TO HIGH COURT—CIVIL CASES—*continued.*

judgment.—A reference to the High Court which applies to a case before judgment is not authorized by s. 646A of the Civil Procedure Code. DIWALEBAI *v.* SADASHIVDAS . I. L. R., 24 Bom., 310

11. ———————— *Civil Procedure Code, s. 646B—Reference by District Judge of proceedings in Small Cause Court attacked for want of jurisdiction.*—Before a District Court can make a reference under s. 646B of the Civil Procedure Code, it must be of opinion that the subordinate Court has erroneously held upon the point of jurisdiction in regard to the particular suit before it, and that therefore the matter is one in which the interference of the High Court should be sought. The word "shall" in s. 646B, cl. (1), is not mandatory, but directory. MADAN GOPAL *v.* BHAGWAN DAS [I. L. R., 11 All., 304

12. ———————— *Civil Procedure Code, 1882, s. 646B—Reference where appeal lies to lower Court—Case in which jurisdiction of Small Cause Court is doubted.*—A suit to recover a sum of money as payable to the plaintiff under an award which was contested was filed in a subordinate Court on the small cause side. The Subordinate Judge returned the plaint, being of opinion that the suit was not cognizable by a Court of Small Causes. The plaint was then presented in the Court of the District Munsif as an ordinary suit, but the District Munsif returned it on the ground that the suit was cognizable by a Court of Small Causes. The plaintiff then applied to the District Judge to submit the record for the orders of the High Court. *Held* that the District Judge was bound to submit the record to the High Court under s. 646B of the Code of Civil Procedure on the requisition of the plaintiff, although the plaintiff might have appealed to the District Court against the order of the District Munsif. SIMSON *v.* MCMASTER [I. L. R., 13 Mad., 344

13. ———————— *Civil Procedure Code, s. 646B—Civil Procedure Code Amendment Act (VII of 1888), s. 60—Provincial Small Cause Court Act (IX of 1887), s. 16—Power of High Court on reference under s. 646B.*—Notwithstanding s. 16 of the Provincial Small Cause Courts Act, the High Court has, on a case being submitted to it under s. 646B of the Civil Procedure Code, full power to consider the matter of jurisdiction or to deal with it on the merits, so as to do substantial justice without putting the parties to the expense of a fresh trial. SURESH CHUNDER MAITRA *v.* KRISTO RANGINI DASI [I. L. R., 21 Calc., 249

14. ———————— *Ajmere Court Regulation (I of 1877), s. 18 et seq.—Reference by Commissioner of Ajmere—Powers of High Court—Jurisdiction.*—*Held* that, where a point of law or a question as to the construction of a document is referred to the High Court by an order purporting to be made under s. 18 of the Ajmere Courts Regulation, the High Court cannot consider whether the point referred arises in the case in which the reference before it has been made or not; but its functions are limited to pronouncing an opinion on any point which may be so referred to it. KALIAN MAL *v.* RAM KISHEN . . . I. L. R., 21 All., 163

REFERENCE TO HIGH COURT—CRIMINAL CASES.

See COUNSEL . . 9 B. L. R., 417 [I. L. R., 1 Bom., 64

See PLEADER—APPOINTMENT AND APPEARANCE . . 6 B. L. R., Ap., 46 [17 W. R., Cr., 37

See PRACTICE—CRIMINAL CASES—REFERENCE TO HIGH COURT. [I. L. R., 18 Calc., 186

See RIGHT TO BEGIN . 9 B. L. R., 417 [20 W. R., Cr., 33 I. L. R., 8 Bom., 200

See CASES UNDER VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS. [I. L. R., 19 Calc., 380

———— for confirmation of sentence of death.

See CRIMINAL PROCEDURE CODES, s. 374. [5 N. W., 130

See CRIMINAL PROCEDURE CODES, s. 376. [I. L. R., 1 Bom., 639 19 W. R., Cr., 57 2 C. W. N., 49

———— Right of—

See OFFENCE BEFORE PENAL CODE. [I. L. R., 1 All., 599

1. ———— Discretion of Magistrate—*Criminal Procedure Code, 1872, s. 296.*—A Magistrate should, under s. 296, Criminal Procedure Code, exercise a discretion as to whether he will refer a case to the High Court, and is not bound to refer every case in which he may detect an error. *3 W. R., Cr., Let. 5*, explained. NIBARUN CHUNDER DASS *v.* BHUGGOBUTTY CHURN CHATTERJEE [20 W. R., Cr., 40

2. ———— Power to refer—*Power of Joint Magistrate—Criminal Procedure Code, 1861, s. 434.*—A Joint Magistrate of a district had no power to make a reference to the High Court under s. 434 of the Code of Criminal Procedure. Such references can be made only by the Sessions Judge or by the Magistrate of a district. QUEEN *v.* CHOORAMONI SANT . . . 14 W. R., Cr., 25

3. ———————— *Power of Magistrate—Case heard by Sessions Judge.*—One of two prisoners, who were tried jointly before a Bench of Magistrates on the complaint of the District Magistrate, appealed to the Sessions Judge and was acquitted. The District Magistrate thereupon, under ss. 296 and 297 of the Criminal Procedure Code, 1872, transmitted the proceedings in the case to the High Court, and asked that they might be quashed on the ground that there had been a failure of justice.

REFERENCE TO HIGH COURT—CRIMINAL CASES—*continued*

Held that the Magistrate was not competent to refer the proceedings of a superior Court to the High Court IN THE MATTER OF DAVID

[6 C. L. R., 245

4. ———————— *Power of Magistrate—Order of Appellate Court—Criminal Procedure Code (Act X of 1872), ss 295, 296, and 297* — A District Magistrate, being of opinion that the

trate had no power to make such a reference IN THE MATTER OF THE PETITION OF RAM LAL. EMPRESS *v* RAM LALL I. L. R., 8 Calc, 875

5 ———————— *Practice—Criminal Procedure Code, s 438—Reference by District Magistrate of proceeding of Sessions Judge*—A District Magistrate who considers that there has been a miscarriage of justice in the Court of Session should not report the case to the High Court for orders under s 438 of the Criminal Procedure Code, but should communicate with the Public Prosecutor as to the case in which he thinks such miscarriage has occurred and invite his assistance to move the Court with regard to it QUEEN-EMPRESS *v* SHERE SINGH I. L. R, 9 All., 362

6. ———————— *Criminal Procedure Code, s 438—Reference by Magistrate of orders passed by Sessions Judge*—A Magistrate is not justified in referring under s 438 of the Criminal Procedure Code orders passed by the Sessions Judge on appeal, except in very special cases *Queen-Empress v. Shere Singh, I L R, 9 All, 362,* referred to QUEEN EMPRESS *v* ZOR SINGH

[I. L R, 10 All., 146

7. ———————— *Criminal Procedure Code (1882), s 438—Power of the District*

propriety of a judgment or sentence by a superior

an inferior criminal authority with respect to a proceeding by a superior authority QUEEN EMPRESS *v* KARAMDI . . I. L. R., 23 Calc, 250

8 ———————— *Criminal Procedure Code (1882), s 438—Power of the District Magistrate to refer to the High Court a case in which the Sessions Court has, under s 123 refused to confirm his order under s. 118 of the Code*—S 438 of the Criminal Procedure Code does not authorize the District Magistrate to refer to the High Court a case in which the Sessions Court has, under

[I. L. R., 23 Calc., 249

9 ———————— *Criminal Procedure Code, 1882, s 307—Duty of Sessions Judge as to referring cases tried with a jury*—The discretionary power to refer cases conferred on Sessions Judges by Criminal Procedure Code, s 307, should always be exercised when the Judge thinks that the verdict is not supported by the evidence QUEEN-EMPRESS *v.* GURUVADU I. L. R., 13 Mad., 343

10 ———————— *Criminal Procedure Code 1882, s 307—Reference necessary for ends of justice.*—A reference under s 307 of the Criminal Procedure Code should be made when the Judge is "clearly of opinion" that he should do so for the ends of justice SURJA KURMI *v* QUEEN EMPRESS

[I. L. R., 25 Calc., 555

11 ———————— *Criminal Procedure Code, 1898, s 269, cl 3 and s 307—Trial by jury of an offence triable with the aid of assessors*—The accused was tried by a jury on four charges (1) forgery (2) using a forged document, (3) criminal ... forged ... unani- ... charges, ... in their

been tried by the Sessions Judge with the aid of the jurors as assessors Nevertheless the Judge took the verdict of the jury upon this charge and, differing from it, referred the case to the High Court under s 307 of the Code *Held* that, although the procedure of the Sessions Judge was irregular, the trial by jury must be accepted as legal and the case as one that could be referred to the High Court under s. 307 of the Criminal Procedure Code QUEEN-EMPRESS *v* JAYRAM HARIBHAI I. L. R., 23 Bom., 696

12. ———————— *Code of Criminal Procedure (Act V of 1898), ss 369, 307—Verdict of a jury, Acceptance of, by Sessions Judge—Reference to High Court for decision on a reconsideration of verdict—Sessions Judge, Power of.*—It is not open to a Sessions Judge, when he has once accepted the verdict of the jury and has postponed the case for passing sentence, to reconsider his order and to refer the case to the High Court under s. 307, Criminal Procedure Code, but he must pass sentence on the persons awaiting sentence on the verdict. QUEEN EMPRESS *v* MOJAHER RAHMAN . 4 C. W. N., 683

13 ———————— **Mode of reference**—*Criminal Procedure Code, 1861, s 434—Reasons for reference by Judge*—A Sessions Judge, in referring a

REFERENCE TO HIGH COURT—CRIMINAL CASES—*continued.*

case under s. 434 of the Code of Criminal Procedure, should state reasons of his own for the reference, and not merely send up the reasons which may have been left by his predecessor. BATOOL NASHYO *v.* BHUGLOO CHOWKEEDAR . . 10 W. R., Cr., 50

14. ——— *Criminal Procedure Code (Act V of 1898), s. 307—Power of Judge in dealing with evidence.*—In making a reference under s. 307 of the Code of Criminal Procedure the Sessions Judge is limited to the evidence at the trial which was before the jury. QUEEN-EMPRESS *v.* JADUB DAS . I. L. R., 27 Calc., 295 [4 C. W. N., 129

15. ——— Question as to validity of commitment—*Criminal Procedure Code, 1872, s. 296—Power of Sessions Court to set aside commitment.*—The Court of Session has no power to set aside a commitment made under its direction. If it doubts the legality of the commitment, it should make a reference to the High Court. IN THE MATTER OF THE PETITION OF HASSAN RAZA KHAN [7 N. W., 211

16. Order contrary to law—*Sessions Judge—Criminal Procedure Code, 1872, s. 296.*—Where a Sessions Judge considers that a judgment or order is contrary to law, or that the punishment is too severe, he should report the proceedings to the High Court in the manner prescribed by the circular order of 15th July 1863, which is applicable to references under s. 296 of the Code of Criminal Procedure, 1872. RAJKISTO PAUL *v.* NITTYANUND PAUL . . . 20 W. R., Cr., 50

17. ——— Question of jurisdiction pending trial—*Reference under s. 296 of Act X of 1872 by Court of Session.*—A Court of Session, after it had asked the assessors their opinion in a case which was being tried by it, suspended the trial of the case and made a reference to the High Court under s. 296 of Act X of 1872, on a question of jurisdiction which had arisen in the trial of the case. *Held* that it was not intended that that section should be so used, and the Court of Session must dispose of such question itself. EMPRESS OF INDIA *v.* BHUP SINGH . . I. L. R., 2 All., 771

18. ——— Question of sufficiency of evidence—*Criminal Procedure Code, 1861, s. 434.*—S. 434 of the Code of Criminal Procedure, 1861, contemplated reference to the High Court in cases where the sentence or order is contrary to law. A case where a Magistrate had convicted of an offence on the evidence of one witness whom he considered credible was held not a proper subject of reference to the High Court. QUEEN *v.* BINDU [8 W. R., Cr., 60

19. ——— Power of High Court on reference—*Criminal Procedure Code, 1882, s. 434.*—The power exercised by a Court sitting as a Court to decide questions of law reserved in criminal cases under s 434 of the Criminal Procedure Code (X of 1882) is the power of review, and the Court is a Court of Reference and Revision. QUEEN-EMPRESS *v.* APPA SUBHANA MENDRE I. L. R., 8 Bom., 200

REFERENCE TO HIGH COURT—CRIMINAL CASES—*continued.*

20. ——— *Reference made without jurisdiction.*—Upon a reference made without jurisdiction, the High Court has no power to act in considering the merits of the case on the evidence. QUEEN-EMPRESS *v.* MOJAHUR RAHMAN [4 C. W. N., 683

21. ——— *Criminal Procedure Code (Act X of 1872), s. 466; (Act X of 1872), s. 197—Grounds for non-interference—Government orders as to tribunal for trial of officials—Magistrate, Jurisdiction of.*—In 1890 the Collector of Ganjam reported to the Board of Revenue a charge of bribery, etc., against a Sub-Magistrate and received directions to send the case for trial to some Magistrate other than himself, or the Principal Assistant Magistrate. He accordingly sent it to the Senior Assistant Magistrate of Berhampore; the accused was convicted, but he appealed to the Sessions Judge, who held that the Magistrate had jurisdiction to try it, but reversed the conviction on the merits. The Government did not appeal against the acquittal of the accused, but the District Magistrate referred to the High Court the question whether the Magistrate had jurisdiction. *Held,* on the reference, that it was not a case for the interference of the High Court, because (1) it was not shown that the Magistrate had acted without jurisdiction; (2) Government had not appealed against the acquittal by the Sessions Judge who had tried and determined the question of jurisdiction. QUEEN-EMPRESS *v.* RANGA RAU . . . . . I. L. R., 15 Mad., 36

22. ——— *Illegality in proceedidgs—Criminal Procedure Code, 1861, s. 434.*—The Court can only interfere under s. 434, Code of Criminal Procedure, when there is some illegality in the proceedings of a lower Court. QUEEN *v.* JOY KISHEN LALL . . . 12 W. R., Cr., 46

23. ——— *Criminal Procedure Code, s. 307—Trial by jury—Verdict of acquittal—High Court's power of interference with the verdict of a jury.*—In a case referred under s. 307 of the Criminal Procedure Code (Act X of 1882), the High Court will not, as a rule, interfere with the verdict of a jury, except when it is shown to be clearly and manifestly wrong. QUEEN-EMPRESS *v.* MANIA DAYAL . . I. L. R., 10 Bom., 497

24. ——— *Criminal Procedure Code, s. 307—Powers of High Court under s. 307—Criminal Procedure Code, ss. 418, 423 (d).*—No trial can be, legally speaking, concluded until judgment and sentence are passed, and the trial of a case referred by a Sessions Judge to the High Court under s. 307 of the Criminal Procedure Code remains open for the High Court to conclude and complete, either by maintaining the verdict of the jury and causing judgment of acquittal to be recorded, or by setting aside the verdict of acquittal, and causing conviction and sentence to be entered against the accused. The provisions of s. 307 of the Criminal Procedure Code are not in any way cut down by ss. 418 and 423; and the High Court has power, under s. 307, to interfere with the verdict of the jury where the verdict is perverse

REFERENCE TO HIGH COURT—CRIMINAL CASES—*concluded.*

or obtuse, and the ends of justice require that such perverse finding should be set right The power of the High Court is not limited to interference on

[18 W. R, Cr., 7

IN THE MATTER OF RAMDHUN MUNDLE [18 W. R., Cr., 39

25. ———— *Question as to credibility of witnesses—Criminal Procedure Code,*

26. ———— *Criminal Proce-*

had no power to interfere upon a reference made to it under s 296, Act X of 1872 OKHOY TELI *v* MODHOO SHEIKH . . . 19 W. R., Cr, 55

27. ———— *Criminal Procedure Code, 1872, s 296—Order of Magistrate reject-*

[23 W. R., Cr, 30

28. ———— *Taking up on reference case where sentence of imprisonment had expired*—Where the imprisonment awarded on a summary conviction before a Magistrate had already

[24 W. R., Cr., 71

29. ———— Right of counsel to be heard—*Criminal Procedure Code 1872, s 296*—Counsel cannot claim as of right to be heard on a reference to the High Court under s 296 of the Criminal Procedure Code REG *v* DEVAMA [I. L. R., 1 Bom, 64

See ANGELO *v.* CARGILL . 9 B. L. R., 417

REFORMATORY SCHOOLS ACT (V OF 1876).

———— ss. 2, 7.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES [I. L. R., 12 Mad, 94

———— *Reformatory Schools Act (VIII*

nal Procedure Code and s. 7 of Act V of 1876, that Ahmad Ali be confined in the Calcutta Reformatory for two years for training in some branch of useful industry" *Held* that the order could not be sustained under s 7 of Act V of 1876, as that Act had been repealed before the date of the order and the commission of the offence, nor under s. 8 of Act VIII of 1897, as the order does not comply with the provisions of the latter Act *Held* further that, s 318 of the Criminal Procedure Code (Act X of 1872) having been repealed by s 2 of Act V of 1876, the corresponding s 399 of present Criminal Procedure Code (Act X of 1882) must also be held by virtue of s 3 of the Code to have been repealed in the provinces including Bengal, to which Act V of 1876 was extended The repeal of a statute repealing another statute does not revive the repealed statute The law in India, as embodied in s 7 of the General Clauses Act (X of 1897), is the same

[I. L. R., 25 Calc., 333
2 C. W. N., 11

———— s. 8—*Magistrate's duty under that section to ascertain the prisoner's age—Nature of proceeding under that section—High Court's power of revising such proceeding—Criminal Procedure Code (Act X of 1882), ss 4 and 435—Judicial proceeding*—A Magistrate acting under s 8 of the Reformatory Schools Act (V of 1876) is bound to ascertain the age of the prisoner, and, in accordance with that finding, to direct the confinement in a reformatory according to the rules made under s 22 of the Act It is not sufficient for the Magistrate merely to find that the prisoner is under a particular age

REFORMATORY SCHOOLS ACT (V OF 1876)—*concluded.*

1. ———— s. 22—*Government Notification (India) No. 173 of the 14th March 1889—Sentence.*—Where a boy over fourteen, but otherwise of uncertain age, was ordered upon conviction by a Magistrate to be detained in a Reformatory School for two years,—*Held* that such sentence, having regard to the rule made by the Governor-General in Council on the 14th March 1889 under s. 22 of Act V of 1876, was illegal. The proper course for the Magistrate to have adopted with reference to the above-mentioned rules was to have ascertained, as near as might be, the exact age of the offender and sentenced him to a specified period of detention, which should be that elapsing between his conviction and the attainment by him of the age of eighteen years. QUEEN-EMPRESS *v.* NARAIN . . . I. L. R., 15 All., 208

2. ———— *Reformatory Schools Act (VIII of 1897), s. 2—Period of detention in reformatory—Rules under Act of 1876.*—*Held* by SHEPHARD, *Offg. C.J.*, affirming the judgment of MOORE, J. (DAVIES, J., dissenting), that the rules made by Government under Act V of 1876 must be deemed to have been made under Act VIII of 1897; and that Magistrates acting under Act VIII of 1897 must order the detention of a juvenile offender until he attains the age of eighteen. QUEEN-EMPRESS *v.* RAMALINGAM . . I. L. R., 21 Mad., 430

REFORMATORY SCHOOLS ACT (VIII OF 1897).

———— ss. 8, 9, 11—*Recording of and finding on evidence as to age of offender—Jurisdiction of Sessions Judge as a Court of appeal to pass order for detention in reformatory school in lieu of imprisonment.*—A Sessions Judge can on appeal from a Magistrate pass an order for detention in a reformatory school in supersession of an order for imprisonment. But he can only do so when he has before him evidence as to the age of the accused, otherwise he must take evidence under s. 11 of the Act, and record a finding stating the age, and then with reference to such finding pass a sentence within the terms of the Reformatory Schools Act and the rules made by the Local Government thereunder. DEPUTY LEGAL REMEMBRANCER *v.* KOPIL KAHAR [4 C. W. N., 225

1. ———— s. 16 and ss. 8, 11, and 31—*Rule framed by the Local Government—Youthful offender—Evidence of age—Order not properly passed—Penal Code (Act XLV of 1860), s. 83.*—If an order for detention in a reformatory school in substitution for transportation or imprisonment be not properly passed, a Court is not debarred by s. 6 of the Reformatory Schools Act (VIII of 1897) from altering or reversing such order. A boy of about 9 years of age was found in the grounds of the residence of the Commissioner of Patna at 3 A.M. in the morning with a brass lota in his hand. He was tried summarily and, without any preliminary inquiry as to the age of the boy being made, was sentenced to three months' rigorous imprisonment, or in lieu thereof to be detained in a reformatory school for seven years. *Held* the

REFORMATORY SCHOOLS ACT (VIII OF 1897)—*continued.*

accused did not come within the definition of "youthful offenders" as given in the rules framed by the Local Government under s. 8 of the Reformatory Schools Act, and the offence of the accused being his first offence, the case should have been dealt with under s. 31 of the Act. It is not that a Magistrate is under no circumstances competent to find from the appearance of a person convicted by him that he is a youthful offender, but it is generally desirable that there should be some reliable evidence on the point, and especially when it is necessary to determine the period of detention. The age of the accused being under twelve years, the Magistrate should, considering the provisions of s. 83 of the Penal Code, have found that the accused had attained sufficient maturity of understanding to judge of the nature and consequences of his act. QUEEN-EMPRESS *v.* MAKIMUDDIN [I. L. R., 27 Calc., 133

2. ———— *Order for detention in a reformatory school under s. 8—Powers of High Court in revision.*—*Held* that the High Court has no power to interfere in appeal or revision with an order for detention in a reformatory school passed in substitution for an order of transportation or imprisonment. QUEEN-EMPRESS *v.* HIMAI [I. L. R., 20 All., 158

QUEEN-EMPRESS *v.* GOBINDA [I. L. R., 20 All., 159

QUEEN-EMPRESS *v.* BILLAR [I. L. R., 20 All., 160

3. ———— *Power of High Court in revision.*—The prohibition contained in s. 16 of Act VIII of 1897 does not apply to an order for detention in a reformatory school when the person to whom it relates has not been convicted of any offence and has not been sentenced to any term of imprisonment or transportation for which detention in a reformatory could be substituted. In such a case the High Court has power to interfere in revision. QUEEN-EMPRESS *v.* BILLAR . . I. L. R., 20 All., 160

4. ———— *Substitution of an order of detention in a reformatory school for a sentence of imprisonment passed on a youthful offender—Power of Appellate Court to order the alteration of such order—Evidence—Age of such offenders, Finding as to—Revisional powers.*—S. 16 of the Reformatory Schools' Act (VIII of 1897) does not entitle any Appellate Court to order the alteration of the substitution of an order for detention in a reformatory school to imprisonment. Before an order for detention in a reformatory school can be passed in lieu of a sentence for imprisonment, there should be a definite finding as to the age of the boy and as to his being a fit subject for a reformatory school. EMPRESS *v.* HARIDAS MUKHERJEE . . 3 C. W. N., 576

5. ———— *Rules of the Local Government framed under s. 8 (3) of the Act—Order sending a boy of the Dalera caste to a reformatory school—Jurisdiction of High Courts to interfere with orders under s. 16—Interpretation of statutes.*—*Held* that the High Court has power to interfere

REFORMATORY SCHOOLS ACT (VIII OF 1897)—*concluded*

in appeal or revision with an order for detention in a reformatory school passed in substitution for transportation or imprisonment when such order is made without jurisdiction and is not an order warranted by Act VIII of 1897 S 16 of Act VIII of 1897 only precludes the interference of a superior Court with the original Court's order so far as it (1) determines the age of a youthful offender or (2) directs the substitution of detention in a reformatory school for transportation or imprisonment, where such substitution is not made without jurisdiction or is not otherwise illegal having regard to the provisions of the Act *Queen Empress* v *Himai I L R, 20 All*, 158, and *Queen Empress* v. *Gobinda I L R, 20 All*, 159, overruled *Queen Empress* v *Billar, I L R 20 All*, 160, *Queen Empress* v *Kaidya Husain 1 Bom L R, 162, Deputy Legal Remembrancer* v *Ahmad Ali, I L R, 25 Calc*, 333 *Queen Empress* v *Ramalingam I L R, 21 Mad*, 430; *Roop Lal Das* v *Manook, 2 C W N* 572, *Queen Empress* v *Partap Chunder Ghose, I L R, 25 Calc*, 852, *Ex parte Bradlaugh, L R, 3 Q B D*, 509, and *Colonial Bank of Australasia* v. *Willan, L R, 5 P C*, 417 referred to QUEEN EMPRESS v HORI . I L R, 21 All, 391

REFUSAL TO PERFORM SERVICES.

See SERVICE TENURE

I. L. R., 4 Calc, 67
I. L. R., 23 Bom., 602

REFUSAL TO REGISTER

See CASES UNDER REGISTRATION ACT, 1877, s 35

See REGISTRATION ACT, 1877, s 73

I. L. R., 1 All, 318

See CASES UNDER REGISTRATION ACT, 1877, s 77

REGIMENTAL DEBTS ACT.

——— 26 & 27 Vict., c 57, ss 5, 7, 8, 10, 12, 22, and 35—*Committee of adjustment—Royal Warrant, cl 17— Surplus'—"Person"—Bona fides*—The president of a committee of adjustment, appointed under the provisions of 26 & 27 Vict., c. 57 (Regimental Debts Act, 1863) wrote to the Agra Bank at Bombay a letter enclosing the order by which the committee had been appointed stating that he had given over to the widow of a deceased officer the whole of the estate of her husband by direction of the *Military Secretary to Government*, and requesting the Bank to conform to her instructions concerning the amount of deposit receipts then in charge of the Bank in the name of the deceased officer The widow had taken out no letters of administration to the estate of her husband, nor had she a preferential claim or any preferential charge against it, but she paid all the preferential charges. On receipt of the

REGIMENTAL DEBTS ACT—*concluded*

[illegible]

1873 and her husband the second plaintiff to [illegible]

[illegible]

s 5 of the Regimental Debts Act of 1863 and that, assuming the Agra Bank at Bombay to be 'within the command' within the meaning of s. 7 the moneys of the deceased officer in the hands

[illegible]

should have been remitted to the Military Secretary to Government *Held* also that the Military Secretary to Government had no authority to pay or order the payment of such 'surplus' to any person except in accordance with the provisions of s. 12 of the Regimental Debts Act of 1863 *Held* also that s 8 of the Regimental Debts Act of 1863 did not render it incumbent on the widow, for the purpose of ousting the jurisdiction of the committee of adjustment, to pay the preferential charges before the committee had taken any steps under s 7 The true construction of s 8 is that on payment of the preferential charges, the committee of adjustment must be regarded as *functi officio*, except for the purpose of reporting, and should make over whatever property they have, which comes under the denomination of 'surplus" in accordance with the terms of s 10 *Held* also that the letter of the president of the committee of adjustment was a sufficient notice to the Bank that the committee were *functi officio*, and that the period had arrived when

[illegible]

were not protected by that section the payment by them not having been made to a "representative" as defined in the Act *Held* also that the Bank were not protected by s. 35 of the Regimental Debts Act, the payment not having been made "in pursuance" of the Act and the carelessness of the Bank in paying the money having been such as to amount to positive negligence, and debar them from pleading that they acted under the *bona fide* belief that the payment was made in pursuance of the Act *Pemberton* v *Chapman, 7 E. & B.*, 210 distinguished. SARSTEDT v AGRA BANK . . 12 Bom., 268

REGISTER.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS

See EVIDENCE ACT, s. 74.

I. L. R., 18 Calc., 534

REGISTER—*concluded.*

———— **Entry in—**

See EVIDENCE ACT, s. 32.
[I. L. R., 19 Calc., 689
L. R., 19 I. A., 157

See EVIDENCE ACT, s. 35.
[I. L. R., 20 Calc., 940
I. L. R., 23 Mad., 492

See LAND REGISTRATION ACT (BENGAL), s. 7 . . I. L. R., 17 Calc., 304

REGISTRAR OR SUB-REGISTRAR.

See CASES UNDER REGISTRATON ACT, 1877, ss. 57-84.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY OR OTHERWISE.
[I. L. R., 10 Mad., 154
I. L. R., 11 Mad., 3, 500
I. L. R., 12 Bom., 36
I. L. R., 12 Mad., 201
I. L. R., 15 Mad., 138
I. L. R., 15 All., 141

———— **Offence committed before—**

See CRIMINAL PROCEDURE CODES, ss. 480, 481, 482 . 13 B. L. R., Ap., 40

REGISTRAR OF HIGH COURT.

———— **Reference to—**

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R., 19 Calc., 334

See PRACTICE—CIVIL CASES—REFERENCE TO REGISTRAR.
[I. L. R., 26 Calc., 585

———— **Report of—**

See HINDU LAW—USURY.
[I. L. R., 23 Calc., 899, 903 note, 906 note

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR . I. L. R., 24 Calc., 437

———— **Sale by—**

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR . I. L. R., 21 Calc., 566

1. ———— **Examination of stamps.**—The examination of stamps is a fiscal duty belonging to a Revenue officer, and the Registrar of the High Court is not responsible for it. BHIKOO MOLLAH *v.* RASH MONEE DOSSEE . . . . 9 W. R., 357

2. ————**Authority of Registrar**—*Power to execute conveyance and enter into covenants on behalf of infants and persons refusing to execute—Effects of title known to purchaser at time of sale—Covenants for title and quiet enjoyment—Pardanashin, when not bound by conveyance executed by her containing covenants for title and quiet enjoyment—Civil Procedure Code (Act XIV of 1882), ss. 261, 262—Rules of Court (Belchambers' Rules and Orders), Nos. 341 and 436.*—The

REGISTRAR OF HIGH COURT—*continued.*

Registrar of the High Court has authority, when so directed by an order of Court, to execute a conveyance on behalf of a party refusing to do so, so as to pass his estate, if any, but has no authority to bind him by entering into any covenants on his behalf. The power of the Registrar to execute such a conveyance rests upon statutory authority. General covenants for title and quiet enjoyment extend to the case of a defect known to the purchaser at the time of the sale, unless the intention of the parties that they should not do so is clearly expressed in the covenants themselves. "Conveyance," as used in rule 436 (Belchambers' Rules and Orders) means such an instrument as may be necessary to transfer the estate, if he has any, belonging to the person on behalf of whom the Registrar executes the transfer to the purchaser. Circumstances under which a pardanashin lady will be relieved from liability under covenants contained in a conveyance executed by her. *D*, an heir of one *X*, a deceased Hindu lady, sold and conveyed to *M*, in March 1878, a moiety in certain premises belonging to the estate of *X*. Subsequently a decree was made for partition of the estate left by *X* in a suit to which *D*, *A*, *R*, *G*, and *S* were parties, and an order was made in that suit directing the premises, of which *D* had so sold a moiety, to be sold by the Registrar, and the parties were directed to join in the conveyance, the Registrar being directed to approve and execute the same on behalf of *G*, who was an infant. At the sale, the plaintiff purchased the premises, and thereafter *D* refused to execute the conveyance, which included the usual covenants for title and quiet enjoyment. A summons was thereupon taken out against him, and an order was made directing the Registrar to execute the conveyance on his behalf. The conveyance was then executed in September 1885 by *A*, *S*, and *R*, and by the Registrar on behalf of *D* and the minor *G*. In a suit instituted by *M* under the conveyance of 1878, the Court held that he was entitled to possession, as against the plaintiffs, of the moiety of the premises covered by his conveyance. The plaintiff therefore brought a suit against *D*, *A*, *R*, *G*, and *S* to recover damages for breach of the covenants for title and quiet enjoyment. It was not found that *R* had any good independent advice in the matter, or that she clearly understood the nature of the contract she was entering into, and the liabilities she was taking upon herself. *Held* that, although the Registrar had authority to execute the conveyance on behalf of *D* and *G*, he had no authority to enter into the covenants on their behalf; and that the suit should be dismissed as against them. *Held* also that, having regard to the position of *R*, the suit should also be dismissed as against her. RAM CHUNDER DUTT *v.* DWARKA NATH BYSACK
[I. L. R., 16 Calc., 330

3. ———— **Sale by Registrar**—*Title to property purchased at Registrar's sale—Doubtful title, Enforcement* [illegible] *—Rent charge.*—The Court will [illegible] title on a purchaser where (*a*) there is a reasonable probability of litigation resulting; or (*b*) where the title depends

REGISTRAR OF HIGH COURT—*concluded*

on the construction and legal operation of some ill expressed and inartificial instrument, and the Court

4 ——————— *Compensation to purchaser for deficiency in area of land—Conditions of sale.*—At a Registrar's sale held on 13th June 1895 a property described as "Lot No 11, formerly Lot No. 21, Emambaree Lane, containing by estimation 8 cottahs, be the same a little more or less" was sold to the applicant One of the conditions of sale was that the purchaser would not be entitled to any compensation On the 10th July the purchaser applied for and obtained an order to pay the balance of the purchase money into Court, and for confirmation of the sale Subsequently the purchaser caused the property to be measured, and discovered that it consisted only of 5 cottahs 13 chittaks and 38 sq ft, and he accordingly applied for compensation in respect of the deficiency The purchase money was still in the hands of the Court at the time of the application *Held* that the proviso in the conditions of sale applied only to small or unimportant errors and misstatements, and not to a deficiency in measurement of a substantial ...

KISSORY MOHAN ROY *v* KALI CHARAN GHOSE [1 C. W. N., 106

5 ——————— *Sale notification —Boundaries, Rectification of—Compensation—*

determining what the property is which is purchased at Registrar's sale one has to look at the sale notification the description of the property and the boundaries therein given It is therefore impossible to determine in the present application what were the boundaries of the property purchased by the applicant That in a proceeding of this kind an application for rectification of boundaries cannot be entertained, and the best course is to annul the sale ADMINISTRATOR GENERAL OF BENGAL *v* ANNODA PROSAD DASS [4 C W. N., 504

REGISTRATION.

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS [I. L. R., 11 All., 13

REGISTRATION—*concluded*

See OUDH ESTATES ACT (I OF 1869), s 13 [I. L. R., 16 Calc., 468, 550

——— Effect of—

See DEED—PROOF OF GENUINENESS [15 W R., 15, 305 I L. R, 17 Calc., 903

See HINDU LAW—GIFT—REQUISITES FOR GIFT I L R, 20 Calc, 464

See CASES UNDER MORTGAGE SALE OF MORTGAGED PROPERTY—PURCHASER

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING [I. L R., 13 All., 432

See CASES UNDER REGISTRATION ACT, s 50

See CASES UNDER VENDOR AND PURCHASER —NOTICE

——— Beng Reg XXXVI of 1793, s 17 —*Document registered by Kazi* —This Regulation did not apply to registration by Kazis SREEMUNT KOWAR *v* AKBUR MUNDUL 8 W R, 438

——— Mad Reg XVII of 1802, s 3 —*Instrument of hypothecation* —An instrument of hypothecation is a mortgage instrument, and may as such be registered under Regulation XVII of 1802, s 3 KADARSA RAUTAN *v* RAVIAH BIBI [2 Mad., 108

REGISTRATION ACT (XIX OF 1843)

See CASES UNDER REGISTRATION ACT, 1877, s 50

1. ——— s 2—*"Satisfied," Meaning of*—*Held* that the term "satisfied" as used in s 2 Act

2. ——————— *Construction—Mortgages—Deed of sale—Deed tainted by fraud.*—The words "any knowledge or notice of any such unregistered deed or certificate alleged to be had by any party to

from the benefit of the Act, but also of a deed tainted by fraud although in other respects genuine. BREENATH BHUTTACHARJEE *v* RAM COMUL GANGOOLY [3 W. R, P. C, 43: 10 Moore's I. A., 220

3. ——————— *Construction — Effect of registration.*—The words in Act XIX of 1843, "provided its authenticity be established to the satisfaction of the Court," were introduced in order to prevent any supposition that registration would give to

REGISTRATION ACT (XIX OF 1843) —*concluded.*

a merely fictitious transaction any effect which it would not otherwise possess. NARASANNA *v.* GAVAPPA [3 Mad., 270

REGISTRATION ACT (XVI OF 1864).

———— s. 13.

See CASES UNDER REGISTRATION ACT, 1877, s. 17.

———— and ss. 17 and 68—*Admissibility in evidence—Priority of registered over unregistered deed.*—A deed creating an interest in immoveable property exceeding in value R100 executed prior to 1st January 1865 was not affected by Act XVI of 1864, s. 13, although it might have been registered under s. 17. All former Acts and Regulations having been repealed except in respect of registered instruments, an unregistered deed creating an interest in immoveable property exceeding in value R100 executed prior to 1st January 1865 was not, by any provision of Act XVI of 1864, postponed to a registered instrument executed subsequently to that date. CHUTTERDHAREE MISSER *v.* NURSINGH DUTT SOOKOOL . . . . 3 Agra, 371 [Agra, F. B., Ed. 1874, 163

S. 13 did not apply to deeds executed before 1st January 1865, and s. 17 contained no penalty for non-registration. BAMA SOONDUREE DOSSIA *v.* MADHUB CHUNDER GOOHOO . . . 8 W. R., 269

———— s. 15.

See PLEADER—REMUNERATION. [9 W. R., 101

See CASES UNDER REGISTRATION ACT, 1877, s. 77.

———— s. 16.

See PROMISSORY NOTES,—FORM OF. [6 B. L. R., Ap., 40

———— s. 17 — *Construction — Inducement to register old deeds.*—S. 17, Act XVI of 1864, did not say that deeds executed prior to the passing of the Act should not be received as evidence in Courts. It was intended merely to encourage parties to register old deeds at once. KAROOLALL THAKOOR *v.* DHOONAL MUNDUL . . . 8 W. R., 86

———— s. 29.

See REGISTRATION ACT, 1877, ss. 34, 35.

———— s. 51—*Record of agreement by Registrar—Signature of Registrar.*—S. 51, Act XVI of 1864, did not require a Registrar to record the agreement there spoken of entirely with his own hand. *The signature of the Registrar was sufficient.* HOBEEBO SOBAIR *v.* HOSSAIN ALI [5 W. R., S. C. C. Ref., 14

———— ss. 51, 52.

See BOND . . . . 3 Mad., 88 [5 B. L. R., 167

REGISTRATION ACT (XVI OF 1864) —*concluded.*

———— s. 52.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—REGISTRATION ACT. [4 W. R., S. C. C. Ref., 11

———— s. 68.

See REGISTRATION ACT, 1877, s. 50.

REGISTRATION ACT (XX OF 1866).

See CASES UNDER REGISTRATION ACT, III OF 1877.

———— s. 32.

See APPEAL—ACTS—REGISTRATION ACT. [6 B. L. R., 578 note

———— ss. 52 and 53.

See CASES UNDER APPEAL—ACTS—REGISTRATION ACT.

See LIMITATION ACT, 1877, ART. 178 (1859, s. 22) . . . 18 W. R., 512 [I. L. R., 10 Calc., 196 I. L. R., 5 Bom., 673 I. L. R., 1 All., 586

See LIMITATION ACT, 1877, ART. 179 (1871, ART. 167)—LAW APPLICABLE TO APPLICATION FOR EXECUTION. [I. L. R., 1 All., 586

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—MONEY-DECREES ON MORTGAGES.

See REGISTRATION ACT, 1871, s. 2. [6 Mad., 351

See RES JUDICATA—CAUSES OF ACTION. [14 B. L. R., 408 8 B. L. R., Ap., 92 I. L. R., 3 Calc., 363

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—REGISTRATION ACT. [I. L. R., 11 Calc., 169 18 W. R., 199

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—REGISTRATION ACT . . . 6 B. L. R., 177

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 1 Mad., 401 I. L. R., 11 Calc., 169

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 1 Mad., 401

1. ———— and s. 54 — *Bond for delivery of paddy—Money-bonds.*—Ss. 52 to 54, Act XX of 1866, contemplated money-bonds only. A bond for the delivery of paddy without specification of its money value, or of the amount to be paid in case of non-delivery, *could not be summarily* enforced under s. 53 of that law. JADUB MUNDUL *v.* BISHOO SIRDAR . . . 15 W. R., 369

REGISTRATION ACT (XX OF 1866)
—continued

GOBIND SHUNKERJEE v. GIRDHAREE SING
[1 N W, 90 Ed. 1873, 142

WOOMA CHURN MOOKERJEE v. HURRY CHURN BOSE . . . . 11 W R., 60

3 ———— Bond—Instalment—A bond payable by instalments stipulated that in case of default in payment of two successive instalments the whole amount secured should become due *Held* that a petition in a summary way could not be presented under s 53 of Act XX of 1866 IN THE MATTER OF THE INDIAN REGISTRATION ACT 1866 IN THE MATTER OF LACHMIPAT SING DUGAR FOY
[2 B L R, O C., 151 11 W R, O C, 24

VENITHITHAN CHETTY v. MOOTHIROOLANDI CHETTY
[6 Mad., 4

GRISH CHUNDER CHOWDHRY v. KRISTO SOONDUR SANDYAL 14 W R, 277

4 ———— *Bond payable by instalments—Agreement that on non payment of interest amount of bond should become due*—A bond payable two years after date contained a stipulation that in case of default being made in payment of interest on the principal sum secured the principal sum with interest up to the due date of the bond should at once become payable The bond was specially registered under s 52 of the Registration Act, 1866 *Held* that such an agreement did not come strictly within the words of ss 52 and 53 of the Act and could not therefore be summarily enforced by petition under s. 53 IN THE MATTER OF THE PETITION OF GANPUT MANIKJI PATIL
[6 Bom., O C, 64

5 ———— *Summary application—Representative of obligee*—The summary remedy under s. 53 of the Registration Act 1866 was made applicable only as between the immediate parties to the registered obligation Such remedy therefore could not be enforced by the representative of an obligee IN THE MATTER OF THE PETITION OF SUBBUVIYAN 4 Mad., 233

RAMNARAIN DOSS BISWAS v. SREEMUNTH PODDAR
[9 W R., 498

Nor by an assignee of the bond. GAUR MOHUN DASS v. KAMRUP MAZOOMDAR
[1 B L R, A C, 42
10 W R., 84

6 ———— *Proceeding against heirs of obligor*—An agreement recorded on a bond or obligation under s 52 Act XX of 1866 binds the obligor only and not his heirs, who cannot be summarily called upon to show cause why a decree should not be passed against them. RAM NARAIN DOSS BISWAS v. SREEMUNTH PODDAR . 9 W R., 498

REGISTRATION ACT (XX OF 1866)
—continued

So with his personal representative PUDIYAPORAYIL MAMY v. MADAKARATH AMMAN KUTTI
[3 Mad., 199

BOISTUB CHURN DIGPUTTY v. GOBIND PERSHAD TEWAREE . . 13 W R., 203

And so with a partner The petitioner was held to be only entitled to a decree against the partner who actually signed the note and special agreement. IN THE MATTER OF THE PETITION OF BAKATRAM BADRINATH . 6 Bom, O C, 131

7 ———— *Procedure—Summoning defendant* [illegible]
s 53
Court
applica
tion of

KRISTO KISHORE GHOSE v. BROJONATH MOZOOMDAR
[6 W R, Civ Ref., 11

8 ———— *Application to enforce bond—Copy of obligation and record*—In an application to a Small Cause Court under s 53 Act XX of 1866 to enforce the agreement recorded by the registering officer under s 52 on the bond—*Held* that the applicant would be entitled to a decree only on production of the original obligation and of the record signed but not on a copy of the same SREERAM ROY CHOWDHRY v. KOLEMOODDEE MOLLAH 9 W R, 477

9 ———— *Application to enforce mortgage bond—Money decree*—The obligee of a simple mortgage-bond was only entitled under s 53 Act XX of 1866 to a money-decree AKHE RAM v. NAND KISHORE I. L. R., 1 All., 236

10 ———— *Decree on mortgage bond—Enforcement of lien*—A decree obtained under the summary procedure prescribed by the Registration Act 1866 could be for money only and not for the enforcement of a lien JUGGUN NATH v. KOMAL SINGH 3 N W, 123

ASMA BIBEE v. RAM KANT ROY CHOWDHRY
[19 W R., 251

GRISH CHUNDER CHOWDHRY v. KRISTO SOONDUR SANDYAL 14 W R., 277

BOISTUB CHURN DIGPUTTY v. GOBIND PERSHAD TEWAREE 13 W R., 203

11 ———— *Form of decree on obligation enforceable under Act*—The only jurisdiction given to the Court under s. 53 Act XX of 1866 so far as the terms of the decree are concerned was to give a decree for the sum mentioned in the obligation with interest and costs A prayer for a declaration of right to sell property pledged by the obligation cannot be given RAMMOHUN MOOKERJEE v. NIL MONEE MITTER 11 W R., 222

Nor any declaration against the property pledged nor to make the sureties of the bond liable POORNOO CHUNDER GHOSE v. GOBIND CHUNDER MOOKERJEE . . 22 W R., 28

REGISTRATION ACT (XX OF 1866) —*continued.*

12. ———————— *Suit for instalments due more than a year before suit.*—In a suit on a bond registered under s. 53, Act XX of 1886, one instalment of which had fallen due more than a year before the institution of the suit, the plaintiff sued for that instalment, and also included another instalment which he might have recovered in a summary way. The Judge came to the conclusion on the evidence that the bond had not been executed by the defendant, nor duly registered. *Held* that the plaintiff was not entitled to waive the first instalment and get a decree for the second, as if he had enforced the summary remedy on the bond. DHUNUNJOY GHOSE *v.* BEMAL DHARA BAGDEE [17 W. R., 514

13. ———————— *Decree on bond—Interest.*—No sum as interest from the date of decree to the date of realization could be awarded by a decree under s. 53, Act XX of 1866: a decree under that section could only award a sum not exceeding that mentioned in the bond, together with interest at the rate specified (if any) to the date of decree, and a sum for costs to be fixed by the Court. MAHCUM CHUND *v.* MAHTAB [3 Agra, 318

BHAIRO SINGH *v.* BUCHOO . 3 Agra, 393

14. ———————— *Bond specially registered —Interest.*—Where a bond was specially registered under the provisions of Act XX of 1866, the creditor was entitled, on observing the procedure there prescribed, summarily to have a decree for the amount specified including interest up to the date of such decree. If the creditor intended to secure interest at the rate stipulated after suit and decree, it was not enough to insert the customary phrase "date of realization" in the instrument, as such phrase must be held controlled by other parts of the agreement as expressed in the bond. ADUR MONEE DEBIA *v.* KOOLO CHUNDER CHATTERJEE . 21 W. R., 140

15. ———————— *Effect of decree on registered bond.*—A decree under s. 53 of Act XX of 1866 had all the effect of a decree in a regular suit under the Code of Civil Procedure. GUNGA NARAIN CHATTERJEE *v.* RADHA KRISHNA DUTT [25 W. R., 322

16. ———————— and s. 55—*Specially registered bond—Setting aside of summary decree.*—A decree obtained by the plaintiff upon a specially registered bond under s. 53 of Act XX of 1866, and set aside under s. 55 of that Act, *held* not to bar a regular suit upon the bond. UTSHAB NARAYAN CHOWDHRY *v.* CHITTRA RAKA GUPTA [8 B. L. R., Ap., 92

S. C. OOTSHUB NARAIN CHOWDHRY *v* CHITTRA RECKA GOOPTA . . . 17 W. R., 154

17. ———————— *Bond—Appeal.*—A petition for payment of a bond, which had been specially registered under Act XVI of 1864, was presented on the 3rd April 1866. *Held* that it must be considered as having been presented under s. 53 of Act XX of 1866 by virtue of the 3rd section of that Act, which repealed Act XVI of 1864; consequently the decision of the Principal Sudder Ameen, to whom the petition was presented, was, under s. 55 of Act XX of 1866, final. There could be no appeal from that decision; therefore the Judge had no jurisdiction to reverse the Principal Sudder Ameen's decision. GRISH CHUNDRA DUTT *v.* BUZULUL-HUQ [3 B. L. R., A. C., 68 : 11 W. R., 412

———————— s. 55.

See APPEAL—ACTS—REGISTRATION ACT.
[18 W. R., 512
I. L. R., 12 Calc., 511
23 W. R., 328
24 W. R., 225
I. L. R., 1 All., 377

See MANAGER OF ATTACHED PROPERTY.
[15 W. R., 477

1. ———————— *Setting aside or staying execution of decree.*—Under s. 55, Act XX of 1866, the Court might after decree, on a representation by the judgment-debtor, set aside the decree, and stay or set aside execution. KRISTO KISHORE GHOSE *v.* BROJONATH MOZOOMDAR 6 W. R., Civ. Ref., 11

2. ———————— *Suit to set aside decree on registered bond—Grounds for setting aside decree under s. 55, Act XX of 1866.*—Decrees on two specially registered bonds were obtained against plaintiff under s. 53 of the Registration Act (XX of 1866). He petitioned the Civil Court, under s. 55, to set aside these decrees, on the ground that the bonds were executed on consideration of something to be done by the obligee, who had wholly failed to perform his part. The Judge dismissed the petitions, because he thought the matter was a more proper one for investigation in a regular suit. His successor dismissed the suit when brought, because, in his opinion, it did not lie. *Held* on appeal (by the majority of the Court) that no suit lay. The effect of ss. 52 to 55 was to make a decree under them of precisely the same validity as any other decree, to make it enforceable by the same process, but *to render it impeachable on the special grounds referred to in s. 55. Held* also that the matters alleged were not such as, if proved, would have justified the setting aside of the decree. The special circumstances must be such as to show a vice in the mode in which the contract to submit to decree and the special registration were obtained, and an infirmity in the original obligation will not do. SINIA TEVAR *v.* RANGASAMI AIYANGER . 7 Mad., 112

3. ———————— *Right to sue to cancel deed and enforce it.*—The powers conferred on the Courts under the Registration Act, 1866, for enforcement by process of execution of the payment of a bond are not inconsistent with the right to sue to cancel and annul the deed as fraudulent. SREERAM *v.* HOKOOM SINGH [2 N. W., 467

The summary procedure provided for in ss. 52 to 55 of this Act has been omitted in the latter Acts.

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See ADMISSION—MISCELLANEOUS CASES.
[15 W. R., 280

REGISTRATION ACT (XX OF 1866) —concluded

—— ss 83 and 84

See APPEAL—ACTS—REGISTRATION ACT
[6 B L R 578 note
7 W R., 130

—— s 84

See APPEAL—ACTS—REGISTRATION ACT
[3 Bom, A C 104
8 W R 266
9 W R, 122

See PLEADER—REMUNERATION
[7 Bom, A C, 132

—— s 91

See JURY—JURY IN SESSIONS CASES
[14 W R, Cr 32

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT 1866
[5 Bom, Cr, 7

—— s 93

See FALSE PERSONATION
[7 W R., Cr, 99
2 B L. R., A Cr, 25

—— s 94

See SENTENCE—GENERAL CASES
[8 W R., Cr, 16

—— s 95

See MAGISTRATE JURISDICTION OF—SPECIAL ACTS—REGISTRATION ACT 1866
[5 Bom, Cr, 7

REGISTRATION ACT (VIII OF 1871)

See GENERAL CLAUSES CONSOLIDATION ACT
s 6 I L. R., 4 Calc, 536
[I L R., 3 Calc., 727

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT 1871 ART 168
[24 W R, 372

See CASES UNDER REGISTRATION ACT 1877

[illegible] was to keep in force all the provisions of Act XX of 1866 relating to the procedure for the recovery in a summary way of the amount of an obligation upon agreements recorded under s 52 of that Act before the 1st day of July 1871 LACHAIPERUMAL CHETTI v NAVAYYAR AUDONI KURUSU LAYYEL 6 Mad., 351

The sections of this Act correspond substantially with those of the present Act III of 1877, under which therefore the cases will be found.

REGISTRATION ACT (VIII OF 1871) —concluded

—— s 76

See APPEAL RIGHT OF APPEAL EFFECT OF REPEAL ON I L. R., 3 Calc., 727

—— s 80

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY
[18 W R, Cr., 3

REGISTRATION ACT (III OF 1877)

See APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON I L R, 3 Calc, 727

— Operation of Act —The provisions of Act III of 1877 apply to all documents tendered in evidence on or after 1st April 1877 RAJU BALU v KRISHNARAV RAMCHANDRA
[I L R, 3 Bom, 273

But *see* OGHRA SING v ABLAKH KOER
[I. L. R, 4 Calc, 636

1 —— s 3 (1871, s 3)—*Lease* —The expression [illegible] used in s 3 [illegible] word lease [illegible] to the lessee [illegible] APU BUDGAVDA v NARHARI ANNAJEE
[I L. R., 3 Bom, 21

2 —— (1866, s 2)—*Moveable property—Trees* —Trees are to be held moveable property for the special purposes of the Registration Act but they are not ordinarily so regarded in Indian Acts CHOWDHRY ROOSTUM ALI v DHANDOO
[3 Agra, 157

3 —— *Lease to take juice from date trees* —The right to take juice from date trees is not according to s 2 Act XX of 1866 a right to immoveable property but falls under the definition of moveable property JALU NAMDAR v BHICHA NAMDAR 3 B L. R, A. C, 391

S C JANOO MUNDUR v HUCHA MUNDUR
[12 W R., 366

4 —— and s. 84—*District Court—Jurisdiction of High Court North West Provinces* —For the purposes of Act XX of 1866, "District Court" meant "the principal Court of original jurisdiction in a district and included the High Court in its ordinary original civil jurisdiction" The High Court of the North West Provinces which has no ordinary original civil jurisdiction was not a "District Court" to which a petition might be presented under s. 84 of the Act, and an order passed by that Court on such a petition directing the registration of a deed was made without jurisdiction. MUKHUN LALL PANDAY v KOONDUN LALL 15 B L. R., P C., 228 24 W R., 75
[L. R. 2 I. A., 210

5 —— (1866, s 3)—*Timber—Standing timber—Mango tree—Custom of a locality* —By the term "timber" is meant properly such trees only as are fit to be used in building and

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[15 W. R., 280

REGISTRATION ACT (XX OF 1866)
—*concluded*

—————ss 83 and 84

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[6 B. L. R , 578 note
7 W. R., 130

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[3 Bom , A C., 104
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[7 Bom., A. C , 132

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[14 W. R , Cr , 32

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————— s. 93.

See FALSE PERSONATION
[7 W. R., Cr , 89
2 B. L. R., A. Cr , 25

————— s 94

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[8 W. R., Cr., 16

————— s 95.

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REGISTRATION ACT (VIII OF 1871).

See GENERAL CLAUSES CONSOLIDATION ACT, s. 6 . . I. L. R., 4 Calc , 536
[I. L R., 3 Calc , 727

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT, 1871, ART 168
[24 W. R., 372

See CASES UNDER REGISTRATION ACT, 1877

————— s. 2—*Stamps on petitions under s 53, Registration Act, 1866—Court Fees Act, 1870, sch I, art 3*—The effect of the first and fourth clauses of s 2 of the Registration Act of 1871, read with the provision in the first schedule as to the extent of the repeal of Act VII of 1870, was to keep in force all the provisions of Act XX of 1866 relating to the procedure for the recovery in a summary way of the amount of an obligation upon agreements recorded under s 52 of that Act before the 1st day of July 1871 PACHAIPERUMAL CHETTI *v.* SAVATTAR AUDONI KURUSU RAYYEL . . 6 Mad., 351

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REGISTRATION ACT (VIII OF 1871)
—*concluded*

——— s 76

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——— s. 80

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY
[18 W. R., Cr., 3

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1 ——— s 3 (1871, s 3)—*Lease*—The [illegible]
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S C. JANOO MUNDUR *v.* HUCHA MUNDUR
[13 W. R., 366

4. ————— and s 84—*District Court—Jurisdiction of High Court, North West Provinces*—For the purposes of Act XX of 1866, "District Court" meant "the principal Court of original jurisdiction in a district and included the High Court in its ordinary original civil jurisdiction" The High Court of the North-West Provinces which has no ordinary original civil jurisdiction was not a "District Court" to which a petition might be presented under s. 84 of the Act, and an order passed by that Court on such a petition, directing the registration of a deed, was made without jurisdiction MUKHUN LALL PANDAY *v.* KOONDUN LALL 15 B. L. R., P. C., 228: 24 W. R., 75
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5 ————— (1866, s. 3)—*Timber—Standing timber—Mango tree—Custom of a locality*—By the term "timber" is meant properly such trees only as are fit to be used in building and

REGISTRATION ACT (III OF 1877) —*continued.*

repairing houses. A mango tree, which is primarily a fruit tree, might not always come within the term "standing timber" used in the definition of immoveable property in s. 3 of the Registration Act (XX of 1866, but it may be classed as a timber tree where, according to the custom of a locality, its wood is used in building houses. KRISHNARAO *v.* BABAJI [I. L. R., 24 Bom., 31

6. ———————— *District Court—Jurisdiction of High Court.*—Where the property, the subject of a deed presented for registration, was without the jurisdiction of the High Court, but the order of refusal was made by the Registrar General, who was within such jurisdiction,—*Held* the High Court was the District Court under s. 84 of Act XX of 1866 to which the petition should be made. IN THE MATTER OF THE INDIAN REGISTRATION ACT (XX OF 1866). IN THE MATTER OF WYNDHAM [6 B. L. R., 576

7. ———————— *District Court — Regulation provinces.*—The Registration Act of 1871 gives power to the Government to appoint districts and sub-districts for the purposes of registration; but the "District Courts" mentioned in the Act (except where the High Court, when exercising its local jurisdiction, is said to be a District Court within the meaning of the Act) must, in the case of a regulation province, be taken to import the ordinary Zillah Courts. IN THE MATTER OF THE PETITION OF ABDOOLLAH. REASUT HOSSEIN *v.* ABDOOLLAH [I. L. R., 2 Calc., 131
26 W. R., 50: L. R., 3 I. A., 221

———— s. 17 (1864, s. 13; 1866, s. 17; 1871, s. 17).

See CASES UNDER S. 18.

See CASES UNDER S. 49.

1. ———————— *Operation of section—Document not registrable under Registration Act (XX of 1866), but requiring registration under Act III of 1877—Immoveable property—Hereditary allowance attached to office of desai—Deed of gift of such property.*—S. 17 of the Registration Act, III of 1877, should not be construed as requiring a document to be registered which would not have required registration when it was executed. *Raju Balu* v. *Krishnara, I. L. R., 2 Bom., 273,* distinguished. An instrument which did not require registration under Act XX of 1866 is not inadmissible in evidence by reason of Act III of 1877. Dues incidental to an office such as that of a desai, which is capable of being held by a person other than a Hindu, were not immoveable property when Registration Act XX of 1866 was enacted. DESAI MOTILAL MANGALJI *v.* DESAI PARASHOTAM NANDLAL [I. L. R., 18 Bom., 92

2. ———————— *Kabuliat—Act XVI of 1864, s. 13.*—Neither s. 17 of Act III of 1877 nor the similar sections of the preceding Acts had the effect of rendering a document, which was not compulsorily registrable under Act XVI of 1864, inadmissible in evidence under the succeeding Acts without registration. RAM KOOMAR SINGH *v.* KISHARI [I. L. R., 9 Calc., 68: 11 C. L. R., 318

3. ———————— *Document executed before Act XVI of 1864 came into operation—Hibbanama.*—A hibbanama executed before Act XVI of 1864 came into operation was admissible as evidence, though not registered. S. 13 did not apply to deeds executed before 1st January 1865, and s. 17 contained no penalty for non-registration. BAMA SOONDUREE DOSIA *v.* MADHUB CHUNDER GOOHOO [8 W. R., 269

4. ———————— *Kabuliat executed when registration was unnecessary.*—An unregistered kabuliat is not inadmissible as evidence if it was executed at a time when the law did not require registration. SHEO RAM SINGH *v.* SEWAK RAM . 20 W. R., 83

5. ———————— and s. 49—*Registration Act, 1871, s. 17—Decrees—Instrument—Admissibility in evidence.*—A decree by which immoveable property was charged did not need Registration under s. 17 of the Registration Act, 1871, in order to make it admissible in evidence under s. 49. Such decrees are now expressly excluded by s. 17, Registration Act, 1877. PURMANANDAS JIWANDAS *v.* VALLABDAS WALLJI . . I. L. R., 11 Bom., 506

6. ———————— cl. (a)—*Deed of gift—Immoveable property.*—All instruments of gift of immoveable property must be registered, whatever be the value of the property. PUTONA KOLITA *v.* MUTIA KOLITA . . . 2 B. L. R., Ap., 46

S. C. PROTONA KOLITA *v.* MOTTEA KOLITA [11 W. R., 334

7. ———————— *Judicial proceedings—Petitions—Pleadings—Order by Court, etc.*—S. 17 of the Registration Act III of 1877 does not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties or orders made by the Court. BINDESRI NAIK *v.* GANGA SARAN SAHU . . . . I. L. R., 20 All., 171
[L. R., 25 I. A., 9
2 C. W. N., 129

8. ———————— *Unregistered agreement incorporated into a judicial proceeding.*—A prior suit between the same parties, now contesting the right to part of an ancestral estate, claimed another part of the same estate, without comprising the lands now in suit, which, at the time when the first suit was brought, were outstanding under a mortgage. A decree had been made by consent, excluding the lands now sued for. The defendant's case was that the lands now claimed, together with those decreed by consent, had been made the subject of a compromise of which the terms had been stated in two written agreements not registered. Also that, according to the compromise, each of the parties was to take a moiety of the whole estate. Each had obtained possession; but the decree was limited to the part of the estate for which the prior suit, then disposed of, was brought; and only one of the agreements—

REGISTRATION ACT (III OF 1877) —*continued.*

that one which related to the lands then in suit—

not require registration The order was pronounced in terms of it But as regarded the lands now in suit, excluded as they had been from the decree in the former suit, the defendant's title to them had been left to stand or fe
The latter by
no title, and
LAKSHMI AN

9 ——————— *Deed of gift—Hibba bil-awaz—Nominal consideration* — A hibba bil

10 ——————— cl (b)—*Determination of*

11. ——————— *Computation of value for purposes of registration—Deed of sale—Consideration* —The consideration mentioned in a deed of

12. ——————— *Statement in will—Words not purporting or operating to extinguish an interest in the present or in future—Evidence Act (I of 1872), s 32 cl. (6)* —S 17, cl (b), of the Registration Act (III of 1877) does not render a passage in a will inadmissible in evidence if the words of it do not purport or operate to extinguish an interest in the present or in future, but state only past facts Such a statement would, if proved be admissible also under s 32 cl. (6), of the Indian Evidence Act (I of 1872) CHAMANBU JAVJE MAHOMED ALI BHORI *v* MULTANCHAND SHIVRAM [I. L. R., 20 Bom., 562

13 ——————— *Consideration—Assignment of mortgage—Stamp* —*A* executed to *B* an assignment of a mortgage It was stamped with a stamp of R168, and recited that *B* had instituted a *suit against C to recover R3 000, interest and costs* and that an agreement had been come to between *B*

that *A* had, at *C*'s request agreed to assign it to *B* By the operative part, *A*, in consideration of R5 paid to *A* by *B* and "in consideration of the premises," assigned the mortgage to *B*. *Held* that the consideration for the deed of assignment was not merely R5 paid to *A*, but the assignee's agreement to withdraw the suit if *A* assigned the mortgage to him upon the instrument, that the money value of the latter part of the consideration was the amount covered by the stamp put by the parties themselves; and as it exceeded R100, the deed of assignment was inadmissible in evidence for want of registration (s 17 of Act VIII of 1871) NAGO KANATCHIA *v* BABAJI KATARI . I. L. R., 8 Bom., 610

14. ——————— *Agreement relating*

declared by such instrument, and it was proved that the actual value of the whole of the immoveable property mentioned in the document exceeded R100 but there was no evidence to show that the value of the widow's right exceeded that sum,—*Held* that, for the purpose of registration under Act XX of 1866 the actual value of the whole immoveable property named in the document must not be taken to be the value of the right so created or declared NILAVA KOM RACHAPPA *v* RUDRAYA BIN RACHAPPA 13 Bom., 141

15. ——— *Agreement to prevent acquisition of easement—Document not creating, etc, right in immoveable property—Chance of acquiring easement—Immoveable property* —The chance of acquiring a right to light and air is not immoveable property within the meaning of the Registration Act, nor can a pecuniary value be put upon it A document, therefore, which limits or extinguishes the chance of acquiring such an easement does not require registration SULTAN NAWAZ JUNG *v* RUSTOMJI NANABHOY [I. L. R., 20 Bom., 704

16. ——————— *Change of name in Government records—Mortgage or conditional sale—Subsequent agreement to re-transfer land in Government records on payment of debt—Document creating a right in land* —In 1877, the plaintiff, being indebted to the defendant, transferred certain land to the defendant's name in the Government records. In July 1879 the defendant executed the following document to the plaintiff reciting the previous transfer and agreeing to retransfer the land to the plaintiff's name on the 12th July 1880, if the debt which would then be due should be paid off: "In the village of Berhampur is your (plaintiff's) field, Survey No. 116 measuring 5 acres 3 gunthas, bearing assessment R16. *You (plaintiff) have got it transferred to our name* That field therefore stands in our (defendants') name in the Government records You owe a debt to us On account of that debt, you have transferred it to our name . . . The field shall be retransferred to your name when you repay the said debt to me You have cultivated the field for the produce of Samvat 1936 and a lease in respect thereof you have this day passed

REGISTRATION ACT (III OF 1877) —*continued.*

to me. And a stamp paper was purchased at the time of the transfer for the execution of this agreement, but no agreement was then passed. This agreement is therefore this day passed to you when the lease in executed. And you owe me (a) debt bearing interest. I will pay out of my pocket the expenses to be incurred at present in cultivating the field. The debt due to me would in all amount to R100. If you repay all these rupees due to me till the Vaishakh Shudh 6th. Samvat 1936, I will take them and transfer the field to your name. And if you fail to pay (them) till Vaishakh Shudh 4th, you will have no claim whatever to the said field. I shall not take the rupees after the 4th (chauth), nor shall I give (or transfer) the field to you. . . . I shall lease the field to any one I like without keeping any claim of you as regards cultivation, manure, and hedge. You have no claim or right whatever. . . . ." This document was not registered. The plaintiff brought this suit to redeem the land, alleging that it had been mortgaged to the defendant, and that the debt had been paid off. The defendant contended that the transaction in 1877 was not a mortgage, but a sale of the land to him, and that the document of July 1879 was an agreement to resell it to the plaintiff, which was not admissible in evidence, as it was not registered. *Held* that the document of the 11th July 1879 did not require registration. It created no rights in land, but only amounted to a personal covenant to effect a mutation of names in the Government books when the debt due by the plaintiff was satisfied. PATEL RANCHOD MORAR *v.* BHIKABHAI DEVIDAS . . I. L. R., 21 Bom., 704

17. ——— *Document providing for payment of hereditary allowance—Interest in immoveable property—Registration Act (III of 1877), s. 3—Bombay General Clauses Act (Bom. Act III of 1886).*—Plaintiffs sued in the Court of Small Causes at Poona to recover R400 for arrears alleged to be payable to them under an agreement by the defendant's father to pay R150 per annum, of which R50 were for maintenance of plaintiffs' mother, and the residue was to be applied towards defraying the expenses of a temple. The terms of the agreement showed that it was intended that the payment for the expenses of the temple should be continued in perpetuity. The Judge dismissed the suit, holding that, being for a hereditary allowance, it was a claim for immoveable property, and came within the meaning of ss. 3 and 17 of the Registration Act, and that the document creating it required registration, and, not being registered, was inadmissible in evidence. On application by the plaintiffs to the High Court under s. 25 of the Provincial Small Cause Courts Act (IX of 1887),—*Held*, reversing the decree, that the document did not require registration, as it was not an instrument purporting or operating to create or declare an interest in immoveable property within the meaning of s. 17, or create an hereditary allowance in the sense in which that expression is used in s. 3 of the Registration Act. VISHNU GANESH JOSHI *v.* YESHVANTRAO [I. L. R., 21 Bom., 387

REGISTRATION ACT (III OF 1877) —*continued.*

18. ——— *Bond creating charge on immoveable property—Larger sum payable on contingency.*—The words in s. 17 of the Registration Act (VIII of 1871), "present or future," "vested or contingent," point, not to the value or its ascertainment, but to the right or interest in the land which is to be created as a security. If the charge or interest created is of a value less than R100, registration is needless. NARASAYYA CHETTI *v.* GURUVAPPA CHETTI . . I. L. R., 1 Mad., 378

19. ——— *Valuation of right, title, and interest created by mortgage.*—The value of the right, title, or interest created by a mortgage is estimated by the amount of the principal money thereby secured. The words "or in future" in s. 17 of Act XX of 1866 and s. 17 of Act VIII of 1871 have reference to estates in remainder or in reversion in immoveable property, or to estates otherwise deferred in enjoyment, and not to interest payable in future on principal moneys lent on the security of immoveable property. NANA BIN LAKSHMAN *v.* ANANT BABAJI . . I. L. R., 2 Bom., 353

20. ——— *Bond creating interest in land—Mode of testing value.*—For the purpose of registration, the value of the interest created in immoveable property by a mortgage-bond is that sum by the payment of which the interest could be determined. TIYAGARAJA PADYACHI *v.* RAMANUJAM PILLAI . . . . I. L. R., 6 Mad., 422

21. ——— and s. 49—*Mortgage*—The value of the interest created by a mortgage of immoveable property is estimated, for the purposes of the Registration Act of 1871, not by the amount of the principal money thereby secured, but by the amount of such money and the interest payable thereon. Consequently, a bond, dated the 9th August 1873, which charged certain immoveable property with the payment on the 31st May 1874 of R98, and interest thereon at the rate of one per cent. per mensem, should have been registered. *Darshan Singh* v. *Hanwanta, I. L. R., 1 All., 274,* followed. *Nana bin Lakshman* v. *Anant Babaji, I. L. R., 2 Bom., 353,* differed from. RAJPATI SINGH *v.* RAM SUKHI KAUR . . . . . I. L. R., 2 All., 40

22. ——— *Bond hypothecating immoveable property.*—The registration of a bond hypothecating immoveable property to secure the repayment of R95-14-0, with interest at eighteen per cent. per annum, the principal to be paid in four annual instalments, three of R23-5-4, and the fourth of R25-14-0, and the whole of the interest to be paid on the date of the last instalment, without any provision that the debtor should be at liberty to anticipate the payment of any instalment, is compulsory, inasmuch as the lowest sum which the debtor could compel the creditor to accept is in excess of R100. The proper test for determining the value of the interest created by a mortgage for the purpose of registration is the amount of the least sum recoverable, and not the consideration for the bond. Although an unregistered mortgage-bond which creates an interest in land in excess of R100 is of no effect as a mortgage,

REGISTRATION ACT (III OF 1877) —*continued.*

it may be received as evidence of the personal obligation. *Seshathri Ayyengar* v. *Sankara Ayen*, 7 *Mad.*, 296, followed. KATTAMURI JAGAPIA *v.* VADAPI LATCHAPPA . . I. L. R., 5 Mad., 119

perty is hypothecated to secure repayment of the debt, need not be registered. SADAGOPA AYYANGAR *v.* DORASAMI SASTRI . I. L. R., 5 Mad., 214

24. ——————— — *Bond creating charge on immoveable property—Mortgage.*—A bond which charged immoveable property with the payment on

[I. L. R., 1 All., 274

DEOJIT *v.* PITAMBAR . I. L. R., 1 All., 275

25. ——— *Bond under R100—Compulsory registration—Priority—Mortgage-bond.*—A mortgage-bond for R99 repayable in nine months and eleven days, with interest at the rate of

S. C. KORBAN ALI MIRDHA *v.* PITUMBARI DASI [13 C. L. R., 256

26.——————— *Bond—Principal and interest.*—A bond for the payment of R83-8-0 on demand, together with interest thereon at the rate of 2 per cent. per mensem, which charges immoveable property with such payment, does not, though the amount due on it may in time exceed R100, purport to create an interest of the value of R100 within the meaning of the Registration Act, and its registration is therefore optional. KARAN SINGH *v.* RAM LAL . . . . I. L. R., 2 All., 96

27. ——————— *Bond hypothecating immoveable property—Amount together with interest over R100.*—A bond which secures by the hypothecation of immoveable property the repayment, after four months from the date thereof, of a loan of R96-15-0 with interest at the rate of 12 per cent. per annum, is an instrument requiring to be registered under s. 17 of Act XX of 1866. DHERMDEO NARAIN SINGH *v.* NUND LALL SINGH [6 N. W., 257

28. ——————— and cl. (h)—*Instrument creating a charge in the nature of a mortgage*

REGISTRATION ACT (III OF 1877 —*continued.*

—*Admissibility in evidence of documents compulsorily registrable but unregistered.*—A kiranama (agreement), dated 11th day of June 1885, was passed by *A* to *B* to the following effect: "As my father *S* is dead, it has been arranged that I should succeed to his estate . . . . Part of this estate at Vagola, consisting of a house, fields,

unable to pay off this debt; and so you have been put into possession of this property. I shall pass to you a sale-deed in respect of this property, and shall transfer the fields to your name from the year 1888-89." *Held* that the kirarnama required registration. It did not fall within the exception provided for by cl. (*h*) of s. 17 of the Registration Act (III of 1877). It was not a document which merely created a right to demand another document. It created as between the parties to it a charge in the nature of a mortgage. The document of itself declared a right, and the mention of an intention to execute a deed of sale made no difference. An unregistered mortgage bond for one hundred rupees and upwards may be admissible in evidence to prove the simple debt or a personal obligation, but it is inadmissible in evidence to prove any right to the property affected by it. VANI *v.* BANI [I. L. R., 20 Bom., 553

29.——————— — *Document compulsorily registrable—Valuation—Least sum payable—Sum repayable before expiry of stated term—Principal sum without interest.*—A charge on certain property to secure R50 was given by the jenmis in favour

kanom amount when after the expiry of the period of demise of the paramba a renewal is effected or the paramba is caused to be surrendered. The jenmam right over the said paramba has been mortgaged to you for this R50 and the interest thereon." The

expression of intention that the sum of R50 was not repayable except at the end of the previous kanom term. Full effect would and could be given to the

on redemption upon payment of such amount in addition to what might be found due under the kanom. That there was nothing in the document to

REGISTRATION ACT (III OF 1877)
—*continued.*

prevent the interest accruing under it from being paid from time to time, even if the unpaid capital were not repaid until the kanom was redeemable. And that the least sum payable being the test as to whether a document is compulsorily registrable, the document need not be registered under s. 17 of the Registration Act, 1877. *Per* O'FARRELL and MICHELL, *JJ.*, that under cl. (*b*) of s. 17 of the Registration Act, 1877, only the principal amount secured should be taken into consideration. KUNHI AMMA *v.* AHMED HAJI

[I. L. R., 23 Mad., 105

30. ——— *Mortgage—Suit on unregistered bond charging immoveable property.*— The obligor of a bond bearing date the 20th January 1873 agreed to pay the obligee R80, together with interest on that amount at the rate of 2 per cent. per month, between the 2nd April 1874 and the 1st May 1874, and hypothecated immoveable property as collateral security for such payment. On the 15th February 1879 the obligee sued the obligor on the bond to recover R196-8-0, being the principal amount and interest, from the hypothecated property. *Held* by the majority of the Full Bench (STUART, *C.J.*, dissenting) that, for the purpose of registration, the value of the right assigned by the bond to the obligee in the property should be estimated by the amount secured for certain by the hypothecation, and, that amount exceeding R100, the bond should have been registered. *Per* STUART, *C.J.*—That, for that purpose, the value of that right should be estimated by the principal amount of the bond, and, that amount being under R100, the bond did not require to be registered. *Nana bin Lakshman* v. *Anant Babaji, I. L. R., 2 Bom., 353,* and *Narasayya Chetti* v. *Guruvappa Chetti, I. L. R., 1 Mad., 378,* followed. *Per* PEARSON, *J.*, OLDFIELD, *J.*, and STRAIGHT, *J.*—That a suit on a bond for money charged thereby on immoveable property must, where the bond is not admissible in evidence because it is unregistered, fail. HIMMAT SINGH *v.* SEWA RAM

[I. L. R., 3 All., 157

Overruled by HABIBULLAH *v.* NAKCHED RAI

[I. L. R., 5 All., 447

31. ——— and s. 49—*Occupancy tenancy—"Immoveable property"—Mortgage—Act I of 1868 (General Clauses Act), s. 2 (5).*—The obligee of a bond, dated the 29th October 1869, sued to recover the amount due thereunder from the property hypothecated therein. By the terms of the bond the obligor agreed to pay the sum of R75, with interest at 2 per cent. per mensem, on the 12th May 1873. The amount thus secured exceeded R200. The property mortgaged was the tenant holding of the obligor. *Held* that the interest of a tenant in his holding was right or interest to or in immoveable property; that consequently such bond, which affirmed as a security a right of which the value, estimated by the amount secured, exceeded R100, ought to have been registered; that being unregistered it could not affect the "immoveable property comprised therein" or "be received in evidence of any transaction affecting" the same: and that the suit brought on the basis of such bond for the enforcement of the lien must, in the absence of the bond, fail. *Himmat Singh* v. *Sewa Ram, I. L. R., 3 All., 157,* followed. NABIRA RAI *v.* ACHAMPAT RAI . . I. L. R., 3 All., 422

32. ——— *Bond charging immoveable property—Interest.*—The obligors of a bond for the payment of money charging land agreed to pay the principal amount, R99, within six months after the execution of the bond, and to pay interest every month on the principal amount at the rate of 2 per cent., and that, in the event of default of payment of the interest in any month, the whole amount mentioned in the bond should become due at once. There was no stipulation preventing the obligors from repaying the loan at any time within the six months after which it was reclaimable. *Held* that the only amount certainly secured by the bond was the principal, and the bond did not therefore need to be registered. AHMAD BAKHSH *v.* GOBINDI

[I. L. R., 2 All., 216

33. ——— *Bond—Mortgage.*—The immoveable property charged by a bond payable by instalments, dated the 17th December 1866, was charged for both principal and interest, and the first instalment was payable within three years from the date of the bond with the accumulated interest, and the amount then becoming due exceeded R100. *Held* in a suit on the bond, that it was an instrument creating an interest in immoveable property of the value of R100 and upwards, and under s. 17 of Act XX of 1866 required registration. *Rajpati Kuar* v. *Ramsukhi Kuar, I. L. R., 2 All., 40,* followed. BANNO *v.* PIR MUHAMMAD . I. L. R., 2 All., 688

34. ——— *Mortgage of immoveable property—Registered and unregistered documents.*—*Held* by the majority of the Full Bench (STRAIGHT and OLDFIELD, *JJ.*, dissenting) that the principal sum secured by a mortgage of immoveable property is alone to be considered for the purpose of deciding whether the registration of the instrument of mortgage is optional or compulsory under the Registration Act, 1877. The ruling of the Full Bench in *Himmat Singh* v. *Sewa Ram, I. L. R., 3 All., 157,* overruled. *Held* therefore, where an instrument of mortgage by way of conditional sale, dated the 2nd July 1871, secured the payment of a principal sum of R72, with interest at R2 per cent. per mensem, on the 12th May 1873, the whole amount thus secured exceeding R100, that the registration of such instrument was optional and not compulsory. HABIBULLAH *v.* NAKCHED RAI I. L. R., 5 All., 447

35. ——— *Mortgage for sum just under R100 with interest.*—Where the plaintiff sued upon a mortgage to secure R98 with interest at R2-8 per month, it was objected that the mortgage was inoperative as being unregistered. *Held* that the mortgage was one to secure a sum under R100, and did not require registration. PANCHI DASSI *v.* AHMEDULLA . . . 12 C. L. R., 444

KORBAN ALI MIRDHA *v.* PITUMBARI DASI

[13 C. L. R., 256

REGISTRATION ACT (III OF 1877) —*continued.*

S. C Korban Ali Mirdha v Sharoda Proshad Aich . . I. L. R, 10 Calc., 82

36. ——— and s 18 —*N* agreed by an instrument in writing called a 'sattah,' in consideration of a loan of R99 8 0, that *B* should have the right of cultivating indigo on certain land from a certain date for a certain period, that if she failed to make over to him any portion of such land, or interfered with his cultivation of any portion of it, she should be responsible in damages for the loss occasioned to *B* in respect of such default or interference at the rate of R40 per bigha, and for the repayment of such loan, "that if she failed to pay, *B* was at liberty to recover from her person and property, and that, until the conditions of the agreement were fulfilled, she hypothecated her 4 anna share in mouzah *B*" *B* sued *N* upon the 'sattah"

[illegible]

stipulation as to int rest or any other payment by

[illegible]

1871, s 17, require registration *Darshan Singh v Hanwanta, I L R, 1 All, 274,* observed on

[illegible]

37 ——— *Bond for money to be* [illegible] to [illegible] he [illegible] nd [illegible] is

Ledlie . 15 W. R, 364

38 ——— *Bond by which land* [illegible]

[9 W. R, 111

39. ——— *Mortgage deed—Evidence*—*A* executed an instrument in favour of *B*, thereby covenanting to repay *B* the amount of a loan, together with interest and mortgaging certain immoveable property as security for repayment of the same *B* sued *A* for the debt. *Held* that the instrument did not directly create, declare, transfer, or extinguish any right or title in immoveable property; the land was mentioned as a collateral security, and therefore the instrument was not inadmissible in

REGISTRATION ACT (III OF 1877) —*continued.*

evidence under s 13 of Act XVI of 1864 Gopal Prasad v Nandarani

[1 B L R., A C, 192: 10 W. R., 252

40 ——— *Document giving future right in immoveable property* —An agreement for the purchase and sale of certain immoveable property provided that the completion of the contract should be "subject to the approval of the purchaser's solicitors" (naming them), and that, if they should not approve of the title, the vendor should refund the earnest money and pay all costs incurred by the

[illegible]

41. ——— *Deposit of title deeds —Memorandum of deposit on promissory note —Admissibility in evidence* —The defendant deposited certain title deeds with the plaintiff as security for the repayment of R1,200 lent him by the plaintiff at the time when the deposit was made On the evening of the same day, the defendant, by way of further security, gave to the plaintiff a promissory note for the amount of the loan, and endorsed thereon the following memorandum "For the repayment of the loan of R1,200 and the interest due thereon of the within note of hand, I hereby deposit with" the plaintiff "as a collateral security by way of equitable mortgage, title deeds of my property," etc *Held* that the memorandum did not require registration Kedarnath Dutt v Shamloll Khettry

[11 B. L. R., 405: 20 W. R., 150

42. *Instrument intending to create charge on immoveable property.*—Where

[illegible]

money advanced,—*Held* that the instrument operated as a charge upon the property to the extent of R100, and came within the terms of Act VIII of 1871, s 17 Joy Ram Gosain Bhuttacharjee v. Kalee Narain Roy . 20 W. R., 291

43 ——— *Deed covenanting to*

[illegible]

44. ——— *Agreement as to land —Suit for specific performance* —The plaintiff lent defendant R20 000 and received a document in the following terms "On demand we promise to pay S V. Mutu Ramen Chetty and C. T A Chinish Chetty the sum of rupees twenty thousand, value received.' Memo.—"For the above promissory note the grant of the dockyard and offices to be deposited in three days, and a proper agreement drawn out. The

REGISTRATION ACT (III OF 1877)
—*continued.*

time of credit to be one year or eighteen months, the interest at R1-10 per cent. per mensem." In a suit to compel specific performance and for damages for breach of the agreement contained in the above memo.,—*Held* that the document did not contain an agreement creating an interest in land, and registration was not therefore necessary to render it receiveable in evidence under the Registration Act of 1866. CURRIE *v.* MUTU RAMEN CHETTY

[3 B. L. R., A. C., 126 : 11 W. R., 520

45. ———————— *Document concerning right of use of growing trees.*—A document creating and transferring a right of use of growing trees for a term of years is a document which purports to create or transfer an interest in immoveable property within the meaning of s. 13 of Registration Act of 1864; and therefore such document, if not registered, is inadmissible in evidence. SUKRY KURDEPPA *v.* GOONDAKULL NAGIRUDDI . . . 6 Mad., 71

46. ———————— and s. 49—*Hypothecation of crops—"Moveable property"—Act I of 1868, s. 2(6)—Transfer of Property Act (IV of 1882), s. 54.*—*Held* that an assignment by endorsement of a registered bond hypothecating certain crops was a transaction relating to moveable property, and registration of such endorsement was not required by s. 17 of the Registration Act (III of 1877) or s. 54 of the Transfer of Property Act (IV of 1882). KALKA PRASAD *v.* CHANDAN SINGH

[I. L. R., 10 All., 20

47. ———————— *Assignment of decree obtained by mortgagee.*—Where a mortgagee obtained a decree against his mortgagors for the payment of the mortgage-money, and in default for the sale of the mortgaged property, and his heir afterwards executed an assignment of the decree for valuable consideration to the plaintiff, who proceeded to execute the decree by sale of the mortgaged property,—*Held* that the assignment was a document of which the registration was compulsory. GOPAL NARAIN *v.* TRIMBAK SADASHIV . . I. L. R., 1 Bom., 267

48. ———————— *Assignment of mortgage—Extrinsic evidence—Evidence Act (I of 1872), s. 91—Title to sue—Amendment of plaint.*—An equitable mortgage by deposit of title-deeds was created on 15th August 1862. In March 1873 the mortgagee, *P D*, executed an assignment of all his property and of all debts due to him, and all the securities therefor, to the plaintiff. The assignment also contained a power-of-attorney from the mortgagee to the plaintiff, "in the name of the said *P D*, his executors, etc., but for the sole use and benefit of the said *A D* (the plaintiff), to ask, demand, sue for, recover, and receive of and from all and every the person or persons liable in that behalf all and every (*inter alia*) the sum and sums of money and debts hereby assigned or intended so to be or any of them or any part of them, to hold the same unto and to the use and behoof of the said *A D*, his executors, etc." Some days after the execution of the assignment, the title-deeds, which had been deposited in 1862 with the mortgagee, were handed to the plaintiff, in accordance with the terms of an agreement to that effect contained in the assignment. The deed of assignment was not registered. On 13th August 1874 the plaintiff, as the assignee of the equitable mortgage, sued for foreclosure. The Court of first instance held that, as an assignment, the deed required registration, and that, not being registered, it could not be received in evidence; that under s. 91 of the Evidence Act (I of 1872) no evidence, other than that contained in the document itself, could be given to prove the fact of the assignment; and that therefore the plaintiff had failed to show a title to sue as assignee of the equitable mortgage. The Court, however, permitted an amendment of the plaint, by which the plaintiff was described as suing "in his own name and as the constituted attorney of *P D*," and then allowed the deed of assignment to be put in as evidence of the power thereby conferred on the plaintiff to sue for and recover all debts due to *P D*, and therefore to maintain the present suit in respect of the equitable mortgage. On appeal,—*Held* that, if the suit were regarded as the suit of *P D*, the power-of-attorney contained in the deed did not enable the plaintiff to maintain the suit for *P D*, inasmuch as it purported to enable the plaintiff to recover the debts mentioned in the deed on his own account only and not on account of *P D*; and on the other hand, if the suit were regarded as that of the plaintiff, the Court, by treating the power in the deed as enabling him to recover on his own account, virtually gave to that power the full effect of an assignment, and for that purpose such an assignment, whether legal or equitable, should be registered under ss. 17 and 49 of Act VIII of 1871. The Court, however, being of opinion that there had not been any deliberate intention on the part of the parties to the deed, to evade the law of registration, granted the plaintiff an adjournment of the case, in order to complete his title as an equitable mortgagee, by obtaining, registering, and putting in evidence a fresh assignment to himself from *P D*. GANPAT PANDURANG *v.* ADARJI DADABHAI . . . . I. L. R., 3 Bom., 312

49. ———————— *Deed of assignment showing payment of rent as interest—Admissibility of deed in evidence—Limitation Act (XV of 1877), s. 20—Payment of interest as such—Mortgage—Payment of rents to mortgage in lieu of interest on debt.*—By a bond, dated the 15th July 1872, *A* assigned to *B* the "vahivat of assessment" of certain lands belonging to him as security for a loan of R10,000. The bond provided that *B* should receive the assessment, and after making certain payments should retain the balance in lieu of interest until the principal debt should be repaid. The bond was not registered. The assessment was duly received by *B* until April 1887. In February 1890, *B* filed this suit to recover the principal sum from *A* personally, relinquishing his claim against the land, as the bond was not registered. *A* pleaded limitation. *B* contended that the receipt of the assessment in lieu of interest was a payment of "interest as such" within the meaning of s. 20 of the Limitation Act (XV of

REGISTRATION ACT (III OF 1877)
—*continued*

1877) and that the last of such payment having

50 ——————— *Deed of assignment of a decree—Admissibility in evidence—Registration Act, s 49*—S 17 (*b*) of the Registration Act (III of 1877) does not apply to a kobala or deed of assignment of a decree and an unregistered kobala of a decree dealing with immoveable property of more than R100 in value is not inadmissible in evidence under s 49 of that Act *Gopal Narayan v Trimbak Sadashiv, I L R, 1 Bom, 267*, dissented from *Jiwan Ali Beg v. Basa Mal, I L R, 9 All., 108* referred to GHOUS MAHOMED v KHAWAS ALI KHAN I L R., 23 Calc, 450

51 ——————— *Assignment of a right*

ship of the lands should the in ras tenure on which they were held come to an end *Held* that the document purported to assign a right title and interest in immoveable property of the value of more than R100, and as such, required registration under cl (*b*) of s 17 of the Registration Act. ANANDRAO v JOTI I L R, 24 Bom, 615

52 ——————— *Deed of compromise*—*R S R*, a Hindu died in 1811, leaving a will by which he gave his property to his four sons subject to certain charges and, among other things directed that the profits of a portion of it should be dedicated to a certain idol After his death, his sons partitioned the property In 1857, *B*, one of the sons brought a suit in the

A R M, as trustees for the idol. In pursuance of this decree a conveyance was settled by the Master, but it was never executed the parties having come to an agreement to compromise and executed a deed to that effect on 15th March 1866 The deed recited that the parties now agreed to compromise certain suits and to execute mutual releases, etc, as thereinafter declared, and then witnessed that the real property belonging to the idol, which the trustees were entitled to hold under the will, was set forth in a schedule and that it had been agreed that a conveyance should be executed to the plaintiff and others in trust for the idol and that the same should be duly registered provision was then made for the settlement of the dedicated portion when for more than one year, and extending beyond the term of the turn of worship of any one of the parties and there was a declaration that all leases etc made without consent of the parties should only be valid for the turn of worship of such party, that the rents and profits were to pass to and remain with the party or parties who should for the time being be entitled to the turn of worship, and that a house of worship should be built for the idol on the land mentioned in the schedule provision was also made for the forfeiture of interest of any party who should renounce the Hindu religion, and it was declared that a certain portion was not to be considered divided as theretofore, but that it belonged to the plaintiff, and was not liable to be sold *Held* (reversing the decision of MARKBY, J) that the document was one which required registration under s 13 of Act XVI of 1864 RAJKUMAR ROY v KALIKRISHNA ROY

[7 B. L R., 197

53. ——————— *Deed of compromise*—It was held not necessary that a deed of compromise should be registered in order to make it admissible in evidence GUPTA NARAIN DAS v BIJOYA SOONDARI DEBYA . . 2 C W N, 663

See PRAUNAL AMIR v KAHSHIM AMIR
[I L R., 22 Mad, 508
3 C W N., 465
L. R., 26 I. A, 101

54. ——————— *Covenant for title running with the land*—A covenant for title, run

it comes within the exceptive cls. (*e*) to (*l*) of the same section RAJU BALU v KRISHNARAV RAMCHANDRA I L R., 2 Bom, 273

55 ——————— *Contract of mortgage*—*Letter stating terms of equitable mortgage Effect of—Equitable mortgagee his proper remedy*

security for the due payment of R2 000 secured by a promissory note of even date I herewith hand you the title-deeds of my property money borrowed and received in pledge of house," and obtained the balance In a suit on the basis of the documents for foreclosure or for sale of the property, or in the alternative for a conveyance of the legal

REGISTRATION ACT (III OF 1877) —*continued.*

estate,—*Held* that the letter itself was not a contract of mortgage, and was without registration admissible in evidence of the equitable mortgage which had been completed upon deposit of the title-deeds. *Held* also that the fact of the existence of the letter would not prevent the plaintiff from giving any other evidence in proof of his claim. *Kedar Nath Dutt* v. *Sham Lall Khettry, 11 B. L. R., 405,* followed OO NOUNG v. MOUNG HTOON OO

[I. L. R., 13 Calc., 322.

56. ——— *Endorsement on deed of sale of immoveable property.*—*D* sold a house to *P*, and executed a deed of conveyance, which was duly registered. *P* did not pay the purchase-money, and therefore did not get possession. Shortly after the conveyance had been registered, *P* returned it to *D*, with an endorsement thereon to the effect that it was returned because *P* was unable to pay the purchase-money The right, title, and interest in the house were subsequently attached and sold under a decree obtained against him by the plaintiff. The plaintiff became the purchaser. *Held,* in a suit by him against *D* for possession, that the endorsement on the conveyance, not having been registered, could not affect the property. UMED MAL MOTIRAM v. DAVU BIN DHONDIBA . . I. L. R., 2 Bom., 547

57. ——— *Endorsement on a sanad returning the sanad to the grantor—Evidence—Admissibility.*—The plaintiff sought to attach a certain hak as belonging to his judgment-debtor *K*. The defendant, who was the original grantor of the hak, pleaded a regrant of the hak to himself. In support of this plea, the defendant produced from his possession the original sanad bearing the following endorsement by *K*: "You have passed me a receipt for the sanad. I have accordingly given you the ownership of the sanad. Therefore over the said sanad I have no right or title." The defendant offered to put in this endorsement, and also tendered the evidence of *K*'s brother. This evidence was rejected by the Court, on the ground that the endorsement, which had the effect of extinguishing the grant, was not registered. *Held* that the endorsement did not require registration. It did not itself rescind the grant to *K*, nor constitute a re-grant to the defendant. It was simply an endorsement returning the sanad to the defendant, and therefore passed no interest in any property. HERAMBDEV DHARNIDHARDEV v. KASHINATH BHASKER I. L. R., 14 Bom., 472

58. ——— *Letter depositing title-deeds—Admissibility in evidence of unregistered document.*—The defendant deposited certain title-deeds with the plaintiff as security for money due on a bond executed by the defendant in favour of the plaintiff. The deeds were sent with the following letter from the defendant to the plaintiff's attorney: 'I have the pleasure of handing to you the title-deeds of a house, 56 Lower Circular Road, as a collateral security for R20,000, which falls due this day. Please accept them from my manager." In a suit for an account of what was due to the plaintiff on the security of

REGISTRATION ACT (III OF 1877) —*continued.*

he deed,—*Held* that the letter needed registration, as being a document which created an interest in land, and therefore, being unregistered, was inadmissible in evidence. DWARKANATH MITTER v. SARAT KUMARI DASI . . . 7 B. L. R., 55

59. ——— *Letters containing contract—Acknowledgment of receipt of consideration—Evidence Act, s. 91—Oral evidence, Admissibility of—"Instruments."*—An advertisement appeared in the *Bombay Gazette* newspaper of the 9th March 1874, advertising for sale certain moveable and immoveable property situate in the village of Angur, near Junnar, in the district of Poona. On reading that advertisement, plaintiff entered into a negotiation with the solicitors of the widow and administratrix of the owner of the said property for the purchase of a certain portion of it. On the 26th May 1874 the plaintiff wrote a letter to the solicitors, offering to purchase the said property for R14,000 on certain conditions, and proposing to pay a deposit of R1,000 as earnest-money if the offer was accepted. On the following day the solicitors informed plaintiff, in writing, that the widow accepted his offer, and requested him to deposit the earnest-money offered by him in his letter. Plaintiff accordingly deposited the earnest-money (R1,000) with the solicitors on the same day, and obtained from them a receipt, bearing a one-anna receipt stamp. The receipt mentioned the money as being in part payment of the sum of R14,000, the amount for which the plaintiff had agreed to purchase the property. Instead of completing the contract of sale with the plaintiff, and putting him in possession of the property, the widow sold it to other persons. In a suit of the nature of a suit for specific performance brought by the plaintiff, as first purchaser, against the widow and the other purchasers to set aside the subsequent sale of the property, and to compel the widow to execute a conveyance thereof to the plaintiff, the following documents were produced and tendered in evidence, *viz.*, the advertisement of the 9th March, the plaintiff's letter of the 26th May (exhibit No. 3), the solicitors' reply (exhibit No. 4), and their receipt of the 27th May 1874 (exhibit No. 5), and it was contended that three of the four documents—*viz.*, exhibits Nos. 3, 4, and 5—required registration under the Registration Act (VIII of 1871), s. 17. *Held* that the plaintiff's letter (exhibit 3) offering to purchase the property in question, and the letter of acceptance (exhibit 4) written on behalf of the vendor (defendant No. 1) by her attorneys, did not fall within cl. (*b*) of the 17th section of the Registration Act (VIII of 1871), and were admissible in evidence to prove the contract of sale, although not registered. The acceptance of the plaintiff's offer was conditional on his payment of the R1,000 as earnest-money, and therefore, until that sum was paid, no estate, legal or equitable, in the property passed to the plaintiff. *Quære*—Whether the letters between the parties (exhibits Nos. 3 and 4), even if they did constitute a complete contract for sale unincumbered by the necessity for the payment of the deposit by way of earnest, could be regarded as

REGISTRATION ACT (III OF 1877)
—*continued*

"instruments" within the meaning of s 17 of the Registration Act (VIII of 1871) WAMAN RAMCHANDRA *v* DHONDIBA KRISHNAJI

[I. L. R., 4 Bom., 126

60. ———— and s 49—*Letters of one partner to another transferring to the latter the share of the former in the assets of the firm, including the mortgages, but not mentioning them—Necessity of registering such letters—The words "document" and "instrument" in the Registration Act* —By two mortgage-bonds, dated respectively 25th July 1866 and 19th September 1870, certain

not having been registered *Held* that, indepen

tion of *S* as a partner being once established, his right to the property followed by operation of law, and no other proof of title was required *Per* JARDINE, *J* —"To lay down that the three letters in

REGISTRATION ACT (III OF 1877)
—*continued.*

I am, on the whole, disposed to hold that the principle of those authorities applies to cases where immoveable property is held by a firm not in full proprietorship, but only by right of mortgage Upon the whole I should, if necessary, have been disposed to hold that the letters in question, not being registered, were rightly treated by the Court below as being inadmissible in evidence to prove directly a transfer of the share of *G* in the partnership to *S*" *Per* TELANG, *J* —A perusal of various sections of the Registration Act seems to show that the Legislature has used the words "document" and "instrument" interchangeably. JOHARMAL *v* TEJRAM JAGRUP

[I. L. R., 17 Bom , 235

61. ———— *Deed of partition* —S 17 of Act XX of 1866 extended to a deed of partition, and this was not prevented by such an instrument being enumerated in s 18 amongst those which were optionally registrable SHANKAR RAMCHANDRA *v* VISHNU ANANT . I. L. R , 1 Bom., 67

62 ———— *Deed of division of immoveable property* —The registration of a deed of division of immoveable property of the value of more than R100 executed by members of an un-

63. ———— *Deed of partition.* —A deed of partition need not be registered NEM ROY *v* LALMUN ROY 25 W R , 376

Instruments of partition made by revenue officers require registration under s 17, cl (*k*), of the Registration Act of 1877

64. ———— and cl. (c) and s. 49 —*Unregistered document—Document to contradict witness—Meaning of word "declare" in s 17 of Act III of 1877—Acknowledgment, Necessity for registration of*—*S* and *R* sued their brothers *M* and *V* in 1880 for partition of the family property. The defendants pleaded that the property had been

words ... is building new houses on property appertaining to his share . . . To the same we three persons

and in sound mind. ... registered, and was therefore inadmissible as evidence of the alleged partition. In cross-examination of the plaintiff *R*, he was interrogated as to the circumstances under which the mortgage was made by *M* on the 13th January 1877. He said "I was present when the mortgage was made, but I was ill

REGISTRATION ACT (III OF 1877) —*continued.*

in bed. . . . This was on the 13th January 1877. . . . I did not say on that day that I had no claim to the property." He was then shown the above document, and admitted his signature. The document was then tendered in evidence, not as a release, but to contradict the witness. *Held* that the document was admissible for that purpose, as it was not a document which itself declared a right in immoveable property in the sense intended by s. 17 of the Registration Act (III of 1877). It was an acknowledgment that there had, in time past, been a partition between the brothers who signed it and the defendant *M*, but it was not itself the instrument of partition. That an acknowledgment of a partition is distinct from the instrument of partition, is to be gathered from cl. (*c*) of s. 17 of the Registration Act (III of 1877). Had the terms of cl. (*b*) of that section been satisfied by a mere acknowledgment, cl. (*c*) would have been superfluous. Its operation is to require an acknowledgment in the form of a receipt to be registered, but not an acknowledgment in any other shape as distinguished from the instrument of the transaction. The word "declare" in s. 17 of the Registration Act (III of 1877) is to be taken in the same sense as the words "create, assign, etc." used in the same section, *viz.*, as implying a definite change of legal relation to the property by an expression of will embodied in the document referred to. It implies a declaration of will, not a mere statement of a fact, and thus a deed of partition which causes a change of legal relation to the property divided amongst all the parties to it is a declaration in the intended sense; but a letter containing an admission, direct or inferential, that a partition once took place, does not "declare" a right within the meaning of the section. It is not the expression or declaration of will by which the right is constituted. *Quære*—Whether, if the above document were itself a release operating or intended to operate as a declared volition constituting or severing ownership, it could be received even for the purpose of contradicting a witness who had denied that he had previously made a statement inconsistent with his evidence. SAKHARAM KRISHNAJI *v.* MADAN KRISHNAJI **I. L. R., 5 Bom., 232**

65. ——————— *Release.*—In June 1875 *L* executed a bond in favour of *S*, in which he mortgaged, amongst other property, a village called Chand Khera, as security for the payment of certain moneys. He subsequently sold such village to *A*, concealing the fact that it had been mortgaged to *S*. On this fact coming to the knowledge of *A*, he threatened *L* with a criminal prosecution, whereupon *L* proposed to *S* in writing that the security of a share in a village called Kelsa, which he alleged was his property, should be substituted for the security of Chand Khera. *S* accepted this proposal by a letter in which he referred to *L*'s proposal in terms. It subsequently appeared that the share in Kelsa did not belong to *L*, but to another person. *S* having sued upon his bond, claiming to enforce thereunder a lien upon Chand Khera, *A* set up as a defence to the suit that *S* had agreed to substitute Kelsa for Chand Khera in the bond, producing *S*'s letter as evidence of the agreement. *Held* that such letter operated as

REGISTRATION ACT (III OF 1877) —*continued.*

a release, and should therefore have been stamped and registered. SAFDAR ALI KHAN *v.* LACHMAN DASS . . . **I. L. R., 2 All., 554**

66. ——————— *Release from mortgage —Agreement for fresh consideration, between mortgagee and third person, for release of property from mortgage—Release not required to be in writing and registered.*—The mortgagee of immoveable property under a hypothecation-bond entered into an agreement with one who was not a party to his mortgage to release part of the property from liability under his mortgage. This agreement was not in writing and registered. The mortgagee subsequently sought to enforce the hypothecation against the whole of the mortgaged property. *Held* that the agreement, being a new contract for a fresh consideration between persons who were not parties to the mortgage, was not, as between the parties to the mortgage, a release which the law required to be in writing and registered. GURDIAL MAL *v.* JAUHRI MAL . . . . **I. L. R., 7 All., 820**

67. ——————— *Widow's right to maintenance, Release of—Releases affecting property.*—A widow's right to maintenance constitutes no interest, vested or contingent, in the immoveable property of an undivided Hindu family within the meaning of the Registration Act XX of 1866, and a release thereof did not require to be registered under cl. 2, s. 17 of that Act. *Semble*—Under Act XX of 1866, s. 17, cls. 2 and 3, releases affecting immoveable property above R100 in value had to be registered, and the releases mentioned in cl. 7 of s. 18 are releases relating to moveables. The ruling in *Anonymous Case, 6 Mad., Ap., 9*, dissented from. KALPAGATHACHI *v.* GANAPATHI PILLAI **I. L. R., 3 Mad., 184**

68. ——————— *Document registered under the Dekkan Agriculturists' Relief Act (XVII of 1879), ss. 56 and 60—Deed of release by adopted son.*—The plaintiff was adopted in 1880 by *K*, the widow of one *G*. In June 1885 he executed a document which recited that he and *K* had not been on amicable terms, and that his adoption had consequently been cancelled, and that she had adopted another son (defendant No. 1) to whom she had given all rights of heirship and declared that in consideration of R200 paid by *K*, he delivered back to her the rights which he had obtained by virtue of his adoption and heirship. This document was not registered under the General Registration Act (III of 1877), but was registered under s. 56 of the Dekkan Agriculturists' Relief Act (XVII of 1879), which section applied to the district in which the transaction took place. *K* died in October 1885, and the plaintiff brought this suit, as adopted son, to recover the property of *G*. The first defendant, who had been adopted by *K* subsequently to the plaintiff's adoption, contended that he had been validly adopted, and that he was entitled to the property. He relied (*inter alia*) upon the release executed by plaintiff in June 1885. It was contended that the release in question was not admissible in evidence, not having been registered under the General Registration Act (III of

REGISTRATION ACT (III OF 1877) —*continued*

1877) *Held* that the document was admissible It was a conveyance within s 56 of the Dekkan Agriculturists' Relief Act (XVII of 1879), and the law in force as to its registration was contained in ss 56 and 60 of that Act. MAHADU GANU *v* BAYAJI SIDU [I. L. R., 19 Bom, 239

69 ——————— and s. 49—*Deed of*

...

FATTEH CHAND SAHA [3 B. L. R., A. C., 310: 12 W. R, 222

70 ——————— *Shebaitnamah*—A

...

koor, was not a deed requiring to be registered under Act XVI of 1864 GIREEDHUR DASS *v* NITTO GOPAL DASS . . 19 W. R., 291

...

decree, which exceeded one hundred rupees, within one year, and hypothecated such property as security for the payment of such amount S having sued upon the document claiming to recover the amount of the decree by the sale of such property,—*Held* that

... not being tainable "such ... the separate ... been made in accordance with the terms of the document, was held not to require registration, remarked upon and distinguished by SPANKIE, J. SURJU PRASAD *v* BHAWNI SAHAI . . I. L R., 2 All, 481

72. ——————— and s 18—*Deed of surrender—"Acknowledgments"*—An istifanamah, or deed of surrender, surrendering pledged property of which the party executing it was in possession, on receiving back the amount of a bond-debt, comes under cls 2 and 3, s 17 of Act XX of 1866, and must be registered to be admissible in evidence "Acknowledgments," in cl 7 of s. 18, refer to transactions of quite a different description BHYRUB CHUNDER DASS *v* KALEECHUNDER CHUCKERBUTTY [16 W. R, 56

REGISTRATION ACT (III OF 1877) —*continued*.

73. ——————— *Surrender of interest by tenant to landlord—Act XVI of 1864, ss 13, 14*

...

[19 Bom, 248

74. ——————— *Deed of relinquishment by tenant to landholder in consideration of waiver of right to arrears of rent*—An instrument ... consideration of ... arrears of rent ... d to him, is not admissible in evidence, unless it is registered in accordance with law, although it may have been drawn up and delivered to the servants of the zamindar before he had signified his consent to waive his right to the arrears. RANGAYYA APPA RAU *v* KAMESWARA RAU I. L. R., 20 Mad., 367

75 ——————— cl (c)—*Document acknowledging receipt of consideration money for conveyance*—A document which acknowledges the receipt of consideration-money for the conveyance of immoveable property cannot be received as evidence unless it is registered SREENATH CHURN SOOR *v* NILKANTO DEY . 22 W. R., 309

7 ... *of rece* ... to ... the dee ... which ... to certain circumstances therein mentioned, should be made and delivered by *J T* to *I* twenty days thereafter The writing further acknowledged the receipt

...

deed of sale to *T* and to register the same as promised in the writing of 28th April 1874 —*Held* that the writing required registration under Act VIII of 1871, s 17, cls 2 and 3, as it distinctly acknowledged the receipt of R100 as part of the consideration for the sale of the house to the plaintiff for the sum of R1,500, and operated to create an interest in the house of the value of R100 and upwards.

...

THOMAS . . . . I. L. R., 1 Bom., 100

77. ——————— *Receipt for earnest-money—Consideration*—Where the plaintiff proposed to purchase property, moveable and immoveable, for R14 000 and to pay a sum of R1 000 as earnest-money, and his offer was accepted and the earnest money deposited, a receipt was given for it stamped with a one-anna receipt stamp. The receipt

REGISTRATION ACT (III OF 1877)
—continued.

mentioned the money as being in part payment of the sum of R14,000, the amount for which the plaintiff had agreed to purchase the property. Instead of completing the contract of sale with the plaintiff and putting him in possession, the defendant sold it to other persons. In a suit to set aside the sale to them and to compel the defendant to execute a conveyance to the plaintiff,—*Held* that the receipt for R1,000 earnest-money (exhibit No. 5) fell within cl. (3) of s. 17 of the Registration Act (VIII of 1871), as being an acknowledgment of the receipt or payment of consideration on account of the creation of a right, title, or interest in immoveable property of the value of upwards of R100, and was therefore inadmissible in evidence, not having been registered; but that under s. 91 of the Evidence Act (I of 1872) oral evidence was admissible to prove the payment, notwithstanding the existence of the written receipt. The third clause of s. 17 of the Registration Act (VIII of 1871) includes within its scope a payment of a part of the consideration as well as a payment of the whole of it. WAMAN RAM CHANDRA *v.* DHANDIKA KRISHNAJI [I. L. R., 4 Bom., 126

78. ——— and s. 20—*Receipt—Declaration of title.*—The defendant passed to the plaintiff a document worded, in substance, as follows: "Your fields . . . . are entered in my name. Ever since they came into your possession, I have received from you the assessment due upon them. I have now no claim upon you for any balance of assessment. . . . . I will cause the aforesaid two fields to be entered in your name. Nothing remains due by or to either of us in respect of the produce of these fields." The document was stamped as a receipt with a stamp of one anna. *Held* that, for the purpose of establishing satisfaction of all claims which the plaintiff and the defendant had upon one another, the document was admissible in evidence; but that, if used as evidence of title, it came within the provisions of s. 17 of the Registration Act (XX of 1866) and the corresponding provisions of the Registration Act (III of 1877), and was inadmissible unless duly registered. FAKI *v.* KHOTU . I. L. R., 4 Bom., 590

79. ——— *Receipt—Release of claim secured by mortgage.*—*Held* that a document, called a receipt, but intended to be used to prove the release of a claim secured by mortgage, required registration under s. 49 of Act VIII of 1871, inasmuch as it affected immoveable property. BASAWA *v.* KALKAPA . . . I. L. R., 2 Bom., 489

Contra GUGUNFUR ALI *v.* MAHOMED YASEEN [20 W. R., 334

80. ——— *Receipt by mortgagee—Admissibility of evidence.*—The defendant tendered in evidence a receipt for R250, to show that the interest of his co-mortgagee (the plaintiff) in the mortgage had been extinguished. The receipt was objected to on the ground that it had not been registered. *Held* that the receipt, being tendered to show that the interest of the plaintiff in the mortgage had been extinguished, required registration, and was inadmissible without registration. *Shidlingapa v. Chenbasapa, I. L. R., 4 Bom., 235,* distinguished. RAMAPA *v.* UMANNA . I. L. R., 7 Bom., 123

81. ——— *Document acknowledging receipt of consideration—Parol evidence.*—In a suit for possession where plaintiff's case was that a kut-mirash (usufructuary mortgage-deed) had been granted to defendant, who had promised upon repayment of the money consideration to surrender the pottah and give back the land, and where plaintiff produced a receipt in proof that such repayment had been effected,—*Held* that the receipt, being an instrument acknowledging receipt of the consideration on account of extinction of interest in land, came within the terms of Act VIII of 1871, s. 17, cl. 3, and was not admissible as evidence without registration. But oral evidence was receivable in proof of the receipt of the money. SOORJO COOMAR BHUTTACHARJEE *v.* BHUGWAN CHUNDER ROY [24 W. R., 328

82. ——— *Memorandum—Receipt—Extinction of mortgagee's lien, Evidence of.*—A document purporting to have been passed by a mortgagee to his mortgagor, and reciting the demand of the former for re-payment of his mortgage-money before the due date of the mortgage, and the compliance with that demand by the latter by means of a fresh loan upon a second mortgage of the same property; and reciting also the fact of the delivery of possession of the property by the original to the second mortgagee; and purporting, in conclusion, to contain a declaration by the original mortgagee that nothing remained due to him in respect of his mortgage, is a document which, under cls. 2 and 3 of s. 17 of Act XX of 1866, as well as under cls. 2 and 3 of s. 17 of Act VIII of 1871, requires registration, and, if unregistered, is, by s. 49 of the same two Acts, inadmissible as evidence of any transaction affecting any property comprised therein. The fact of the extinction of the original mortgagee's lien may, however, be proved by other documentary or proper oral evidence. MAHADAJI *v.* VYANKAJI GOVIND [I. L. R., 1 Bom., 197

83. ——— *Receipt for sums paid on bond hypothecating immoveable property.*—A receipt for sums paid in part liquidation of a bond hypothecating immoveable property must be registered under the provisions of s. 17 of Act VIII of 1871 to render it admissible as evidence under s. 49 of the said Act. DALIP SINGH *v.* DURGA PRASAD . . . I. L. R., 1 All., 442

84. ——— *Receipt for money paid under an hypothecation-bond.*—A receipt acknowledging as a fact part-payment of a sum due under an hypothecation-bond does not require registration under s. 17, cl. (c), of the Registration Act, unless the fact is referred to as a consideration for a contractual engagement, whereby the interest created by the prior registered instrument is limited or extinguished. A mere receipt does not acknowledge the receipt or payment of a consideration. *Dalip Singh v. Durga Prasad, I. L. R., 1 All., 442,* dissented from. *Venkatarama Naik v. Chinnathambu-*

REGISTRATION ACT (III OF 1877) —*continued*

Reddi, 7 Mad., 1, approved. VENKAYYAR *v* VENKATASUBBAYYAR . I. L. R., 3 Mad., 53

85.———————— and cl. (b)—*Receipts by mortgagee*.—Receipts passed by a mortgagee for sums paid on account of the mortgage debt, and [illegible]

[illegible]

mortgagee The payment reduces the sum due at the time on the mortgage and thus modifies the [illegible]

[illegible]

principal and interest secured on the mortgaged premises by some one or other of the remedies available for that purpose Money paid on account of a mortgage-debt is not the consideration for the limitation or extinction of so much of the interest in the land created by the mortgage, and a receipt for such a payment need not therefore be registered under s 17, cl (*b*), of the Registration Act III of 1877 *Dalip Singh v Durga Prasad, I. L R., 1 All., 442*, dissented from SHIDLINGAPA *v.* CHENBASAPA [I L R., 4 Bom., 35

86. ———————— *Receipts given by mortgagee for payments on account of the mortgage debt*.—Unregistered receipts given by a mortgagee to a mortgagor for sums paid on account of the mortgage-debt are not inadmissible in evidence under cl. (*c*), s 17 of the Registration Act III of 1877 *Shidlingapa v. Chenbasapa, I. L R., 4 Bom., 235*, followed ANNAPA *v* GANPATI [I. L. R., 5 Bom., 181

87. ———————— *Receipt for payment of mortgage-money*.—The payment of money by a [illegible]

[illegible]

is compulsory, and which, if unregistered, is inadmissible in evidence under s 49 *Dalip Singh v. Durga Prasad, I L. R., 4 All., 442*, *Basawa v. Kalkaja, I. L R., 2 Bom., 489; Mahadaji v Vyankaji Govind, I. L. R., 1 Bom., 197*; and *Ramapa v Umanna, I L. R, 7 Bom., 123*, followed *Shidlingapa v Chenbasapa, I. L. R., 4 Bom., 235*, dissented from *Mallongeny Dassee v Ramnarain Sadkhan, I L R., 4 Calc., 83*, referred to. IMDAD HUSAIN *v.* TASADDUK HUSAIN [I. L. R., 6 All., 335

88 ———————— *Receipt by mortgagee setting forth a settlement of mortgage accounts—Evidence Act (I of 1872), s 92, cl 4*.—In 1875 certain lands were mortgaged for R675 The mortgage bond [illegible]

[illegible]

the mortgage, that R100 was paid on the day of the receipt, that a further sum of R100 was to be paid in a month and a half, and that the rents and profits of the property were in future to be taken for the interest on the balance of R325 only In 1896 the mortgagor sued for redemption, and relied on the receipt in support of his case *Held* that the receipt did not require registration It purported to be a mere settlement of accounts, and was not intended to modify or supersede the original mortgage contract Cl 4, s 92, of the Evidence Act (I of 1872) had therefore no application to the case LAKSHMAN *v* DAMODAR [I L R., 24 Bom., 609

89 ———————— and s. 49—*Mortgage bond—Indorsement of part payment—Receipt*.—The strictest construction should be placed on the prohibitory and penal sections of the Registration Act, which impose serious disqualifications for non-observance of registration An instrument to come within s 17 (*b*) of the Registration Act (III of 1877) must in itself purport or operate to create, declare, assign, limit, or extinguish some right title, or interest of the value of R100 or upwards in immoveable property To come within s 17 (*c*), it must be on the face of it an acknowledgment of the receipt of payment of some consideration on account of the creation, declaration, assignment, limitation, or extinguishment of such a right, title, or interest In a suit by a mortgagee for the sale of immoveable property mortgaged in certain simple mortgage bonds for amounts severally exceeding R100, the defendant pleaded that he had made certain payments in respect of the bonds and in support of his plea relied on indorsements of payment upon them, one of which was as follows "Paid on the 21st December R200" The other indorsements were in similar terms *Held* by the Full Bench (STRAIGHT, J, doubting) that the indorsements, even if assumed to be receipts, did not fall within s 17 (*b*) of the Registration Act, inasmuch as a receipt [illegible]

[illegible]

the actual part-payment of the mortgage-debt *Held* also that the indorsements did not fall within s. 17 (*c*) of the Act, inasmuch as, taken by themselves, they were merely memoranda made by the mortgagee, and could not be treated as acknowledgments, nor, even if assumed to be such, did they show, upon their face, that they were acknowledgments, of the receipt or payment of any consideration for the limitation or extinguishment of any interest

REGISTRATION ACT (III OF 1877)
—*continued.*

of the mortgagee in the mortgaged property. *Held* therefore that the indorsements did not require be registered in order to make them admissible in evidence of the payments to which they related. *Mahadaji* v. *Vyankaji Govind, I. L. R., 1 Bom., 197; Basawa* v. *Kalkapa, I. L. R., 2 Bom., 489; Faki* v *Khotu, I. L. R., 4 Bom., 590; Waman Ram Chandra* v. *Dhondiba Kishnaji, I. L. R., 4 Bom., 126; Futteh Chund Bahoo* v. *Leelumber Singh Doss, 14 Moore's I. A., 129;* and *Imdad Husain* v. *Tasaddak Husain, I. L. R., 6 All., 335,* distinguished. *Dalip Singh* v. *Durga Prasad, I. L. R., 1 All., 442,* referred to. JIWAN ALI BEG *v.* BASA MAL . . . I. L. R., 9 All. 108

90. ——— and s. 49—*Agreement to renew a kanom and to credit as renewal fees a sum of money then due by plaintiff to defendant—Portion of agreement severable from rest—Admissibility in evidence of portion though unregistered.*—A written agreement to renew a kanom and to credit as renewal fees a sum of money then due is not an acknowledgment of money paid for the creation of an interest in land within the meaning of s. 17 (*e*) of the Registration Act, and therefore is admissible in evidence, though unregistered. *Held* that in such an agreement the agreement to renew is severable from the rest of the agreement, and the document, though unregistered, is admissible in evidence of the agreement to renew, even if it were inadmissible for other purposes. KRISHNAN NAMBUDRI *v.* AMAN MENON I. L. R., 20 Mad., 484

91. ——— *Receipt showing payment of money—Document proving extinction of mortgage right.*—Plaintiff purchased a portion of certain land from two persons who owed him money on mortgage bonds and took a mortgage over another portion, taking possession of the whole estate as security for the balance of his debt. He then permitted defendants to purchase a portion and to take a mortgage over the remainder of the lands, and gave them possession, on condition that they should pay to him the said balance that was due. Plaintiff, alleging that defendants had failed to pay him the balance, now filed this suit to recover possession of the land. Defendants contended that the balance had been duly paid, and in support of that contention produced a receipt which, however, was held to be inadmissible in evidence for want of registration. Oral evidence of the alleged payment was also excluded. *Held* that the receipt had been wrongly excluded. It did not purport to extinguish the mortgage right, and, even if it did so, it was receivable as evidence of the payment, oral evidence as to which was also admissible. APPAMMA NAYURALU *v.* RAMANNA . I. L. R., 23 Mad., 92

92. ——— and cl. (h)—*Receipt for purchase-money—Document creating or extinguishing a right to immoveable property.*—The plaintiffs sued to recover the property sold to them by the defendants. The defendants set up a re-purchase and produced a receipt passed to them by the plaintiffs which stated that the plaintiffs had no longer any interest in the property, and that they would execute a new sale-deed. The plaintiffs contended that the receipt required registration. *Held* that, as the receipt created or declared or extinguished a right to the property with a superadded covenant to execute a stamped document to the same effect on a future occasion, it required registration. PARASHRAM *v.* GANPAT . . . I. L. R., 21 Bom., 533

93. ——— cl. (d)—*Unregistered lease.*—By Act XVI of 1864, no unregistered lease for a term exceeding a year could be received in evidence in any civil proceeding, however small the value of the property leased. OMAR *v.* ABDOOL GUFFOOR . . . . . 9 W. R., 425

94. ——— *Kabuliat—Lease.*—A kabuliat was not a "lease" within the meaning of s. 13, Act XVI of 1864. AMJED ALI *v.* ALA BUKSH . . . . . 9 W. R., 537

HUR CHUNDER GHOSE *v.* WOOMA SOONDUREE DOSSEE . . . . . 23 W. R., 170

95. ——— *Lease for more than a year—Liability under unregistered lease.*—Where a house is let for a term exceeding a year, the registration of the kabuliat is compulsory; and no action will lie for the recovery of the rent stipulated to be paid under the kabuliat if that document is unregistered. A party who retains and holds a building under such unregistered kabuliat is nevertheless bound to pay a reasonable compensation for the use and occupancy thereof. PUROMA SOONDUREE DOSSEE *v.* PROLLAD CHUNDER DASS . 12 W. R., 289

96. ——— *Agreement between landlord and tenant—Pottah—Mad. Act VIII of 1865.*—An agreement between a landlord and tenant in the Presidency of Madras for more than one year is a pottah within the meaning of Act VIII of 1865, and consequently exempted from registration under Act XX of 1866. VAKATY RAMAREDDY *v.* DUVVURU AYAPPAREDDY . . 7 Mad., 234

97. ——— and s. 49—*Agreement for lease—Evidence.*—Under cl. (*d*), s. 17, of the Registration Act III of 1877, an agreement for a lease needs registration if the parties to such agreement intend to create a present demise. Although the agreement may contemplate a formal document being subsequently executed, the paramount intention, as gathered from the whole of the instrument, must prevail. PURMANANDDAS JIWANDAS *v.* DHARSEY VIRJI

[I. L. R., 10 Bom., 101

98. ——— *Lease—Agreement for lease—Doul durkhast—Proposal—Acceptance—Contract.*—Every lease, or agreement for a lease in writing, must be registered before being given in evidence. But a proposal in writing to take a lease of certain lands on certain terms, made by one person to another, need not be registered, unless the proposal in writing has been so accepted that the proposal and acceptance constitute a contract in writing. SUFDAR REZA *v.* AMZAD ALI

[I. L. R., 7 Calc., 703: 10 C. L. R., 121

REGISTRATION ACT (III OF 1877) —*continued.*

LUCHMISSUR SINGH v DAKHO. LUCHMISSUR SINGH v. RUNGLAL
[I. L. R., 7 Calc , 708 : 10 C. L. R , 127

99. ——— *Proposal to pay rent —Doul darkhast — Lease — Agreement to lease* —Where a doul darkhast am unts to nothing more than a proposal by a tenant to pay a certain rent for certain land, it does not amount to a lease or to an agreement for a lease, and does not therefore require registration But if the proposal has been so accepted that the proposal and acceptance constitute a contract in writing, then such contract must be registered *Choonee Mundur* v. *Chundee Lall Dass, 14 W R , 178,* and *Meheroonissa* v *Abdool Gunee, 17 W R , 509,* distinguished LAL JHA v NEGROO
[I. L. R., 7 Calc , 717

100. ——— *Agreement to execute lease* —Where defendants had contracted to execute a maurasi pottah of certain land at a given rent for a consideration of which a portion was paid as

deed under which the plaintiff sued was a pottah, and under cl 2, s 17 of Act XX of 1866, an instrument the registration of which was compulsory. As an unregistered document, it could not hold its ground against a registered pottah put in by intervenors. NUND RAM GHOSE v MAUNOO BIBEE
[10 W. R , 177

101. ——— *Lease or agreement to lease* —In a suit for possession of certain property and for the execution of a pottah, it appeared that two of the defendants had executed an agreement which was duly registered, by which they acknowledged the receipt of a portion of the salami, and covenanted to execute a pottah on a certain day This agreement was afterwards confirmed by two of the defendants who were minors when it was entered into the confirmation was by deed, which was duly registered Subsequently all the defendants executed a document, which provided for the payment of a portion of the salami on the day when possession should be given as provided in the first agreement, and for the payment of the remainder by instalments which were to carry interest This document was not registered *Held* that it was not a " lease or agreement to lease " within the meaning of s 17 of the Registration Act, and was admissible in evidence. KEDARNATH MITTER v SURENDRO DEB ROY
[I. L. R., 9 Calc., 865 : 13 C. L. R., 58

102 ——— *Lease—Usufructuary mortgage - Act XVI of 1864, ss 13, 14* —B sued for possession of certain lands on a contract embodied in a document which purported to grant B possession of these lands for a period of six years on payment of R99 *Held* that the document in question was not a lease, but a usufructuary mortgage, and that; the consideration money being less than R100, its

REGISTRATION ACT (III OF 1877) —*continued.*

registration under Act XVI of 1864 was merely optional ISHAN CHANDRA v SUJAN BIBI
[7 B. L R., 14 : 15 W. R , 331

103. ——— *Lease—Agreement to lease—Contract of special nature* —*Held* that certain letters forming a correspondence which had passed between the parties did not require registration, for they did not amount to a lease or an agreement for a lease, but were evidence of a contract of a special character not coming within any of the definitions in the Registration Act PORT CANNING LAND COMPANY v SMITH
[21 W. R., 315 : L. R., I I A., 124

104 ——— *Settlement papers given by raiyats* —Settlement papers prepared at the

105 ——— *Lease at an annual rent.*—A lease for no definite time, but fixing an annual rent (sone bosone) falls within cl 4 of

106. ——— *Lease for more than a year —Condition which may shorten term* —A lease for more than a year is not the less a lease because a condition is attached to the consideration, and because its term may be lessened on the payment of a sum of money by the lessor Such a lease can not be used in evidence unless it is registered. BUKSH ALI BOOHEAN v NUBOTARA . 13 W. R., 468

107. ——— *Lease with provision extending term* —Where a kabuliat for one year

108. ——— *Lease with agreement for renewal on expiration* —A kabuliat in which a raiyat agreed to hold land under a pottah for a specified year, the agreement between the parties being that at the close of that period a fresh settlement would be made, was held to be a lease for one year, and not to need registration under Act XX of 1866 as being a lease for more than a year, although a clause intervened between the above clauses to the effect that year by year the raiyat would pay rent at the above rate JUGDESH CHUNDER BISWAS v ABEDOLLAH MUNDUL . . 14 W. R., 68

109. ——— *Lease for more than a year—Lease with option of renewal* —Where a lease is only for one year with option to the lessor to allow the lessee to continue his tenure on the old conditions after expiration of the year,—*Held* that the

REGISTRATION ACT (III OF 1877) —*continued.*

absolute right of the lessee is restricted to one year, and that the lease is therefore a one year's lease, the registration of which is not necessary. SOUTHO PURSAD DASS *v.* PARASU PADHAN. SOUTHO PURSAD DASS *v.* RUGHCO PADHAN . . 26 W. R., 98

110. ——— *Lease for so long as tenant continues to pay.*—A lease for so long as the lessee or tenant continues to pay the stipulated rent is a lease not limited to a year, and must be registered under s. 17 of the Registration Act of 1866, and, not being registered, cannot be received in evidence under s. 49 of that Act. SHLOOHOLAM *v.* BUDDREE NATH [4 N. W., 36

111. ——— *Zur-i-peshgi lease —"Leases not exceeding one year," Meaning of.*—Leases which were exempted from the operation of s. 17, cl. 2, Act XX of 1866, were leases the term of which was one year certain. Where a zur-i-peshgi lease was granted for one year, but with a stipulation that unless the loan were repaid within that time it should continue in force, —*Held* that such a lease came within the words of s. 17, cl. 4, Act XX of 1866, "leases of immoveable property for any term exceeding one year" of which registration was compulsory. BHOBANI MAHTO *v.* SHIBNATH PARA . . . I. L. R., 13 Calc., 113

112. ——— *Lease for one year —Lease exceeding one year—Option of renewal.* —A lease for one year, containing an option of renewal for a further period of one year, is not a lease for a term exceeding one year within the meaning of cl. (*d*), s. 17 of the Registration Act, so as to render registration thereof compulsory. Certain correspondence passed between the plaintiff and the defendant relating to a lease of a flat in premises in occupation of the plaintiff which admittedly contained an agreement for a lease for one year with an option of renewal for another year. The terms in which the option was given were as follows: The defendant in one letter wrote, "So I expect you will give me the option of renewal for another year, respectively five months, on same terms." To which the plaintiff replied, "You may have the option of retaining it (the flat) for another year on the same terms, but not for a shorter period." In pursuance of an arrangement, the defendant had a draft lease prepared embodying the terms agreed on, which he sent to the plaintiff for approval, and which was in due course returned by him "approved." The defendant then had the lease engrossed and properly stamped, but the plaintiff eventually refused to execute it, and it was never signed by the defendant. The option of renewal was given in the unexecuted lease in the following terms: "Also with option to renew for another twelve months certain." The defendant having entered into possession and disputes having arisen, the plaintiff gave him notice to quit and sued to eject him, alleging that at the most he was a mere monthly tenant. The defendant pleaded that under the lease he was entitled to hold for a year. The year expired before the suit came on to be heard, and the defendant, not having exercised the option to renew, vacated the premises. At the hearing the defendant, in support of his case, tendered the *correspondence* and the stamped unexecuted lease. It was objected that the correspondence was inadmissible in evidence, because the option to renew made the period for which the lease was to run exceed one year, and therefore rendered registration compulsory. On behalf of the defendant it was urged that registration was unnecessary, as the option did not make the lease one for a longer period than one year, and that the stamped unexecuted lease must be treated as part of the correspondence. *Held,* following *Hand* v. *Hall, L. R., 2 Ex. D., 355,* that the existence of the option did not create a lease for a term exceeding one year within the meaning of cl. (*d*). s. 17 of the Registration Act, and that consequently the correspondence did not require registration. *Bhobani Mahto* v. *Shibnath Para, I. L. R., 13 Calc., 113,* dissented from. BOYD *v.* KREIG [I. L. R., 17 Calc., 548

113. ——— *Lease reserving annual rent — Tenancy-at-will.*— The defendant executed to the plaintiff a rent-note under which he rented two houses from the plaintiff at a rent of R18 per annum. The document provided that the defendant was to live in the said houses so long as the plaintiff permitted him to do so, and so long as he should pay the rent. He was to vacate when asked to do so by the plaintiff. *Held* that the lease created a tenancy-at-will, and did not require registration, although an annual rent was reserved thereby. JIVRAJ GOPAL *v.* ATMARAM DAYARAM [I. L. R., 14 Bom., 319

114. ——— *Lease for one year at a rental of more than R100—Evidence—Transfer of Property Act (IV of 1882), ss. 4 and 107.*—The owner of certain land exchanged it for certain other land, but took a lease for one year of the former land, and paid the rent thereof, and received and retained the rents of the land he had acquired by the exchange. *Held,* in a suit for recovery of possession on the expiry of the lease, that the fact that such a lease recites the fact of the exchange of the lands does not evidence the exchange, and as such create a title in land. Nor does the fact that the rent reserved under the lease is more than R200 create an interest in land of R100 and more in value, so as to necessitate registration of the lease under s. 17 of the Registration Act. Such a lease falls under s. 107 of the Transfer of Property Act, the provisions of which sections are, by s. 4 of the Act, supplemental to the Registration Act. SEETHARAMA RAJU *v.* BAYANNA PANTULU . I. L. R., 17 Mad., 275

115. ——— *Lease for life of the lessee.*—A lease of immoveable property for the life of the lessee is a lease for a term exceeding one year. It therefore requires registration. PARSHOTAM VISHNU *v.* NANA PRAYAG [I. L. R., 18 Bom., 109

116. ———*Transfer of Property Act (IV of 1882), ss. 4 and 107—Lease of a shop for three years.*—Leases falling under s. 107 of the Transfer of Property Act are compulsorily registrable

REGISTRATION ACT (III OF 1877)
—*continued.*

notwithstanding the Government notification issued under the proviso to s 17 (*d*) of the Registration Act. VAIRANANDA NADAR v MIYAKAN ROWTER
[I. L. R , 21 Mad , 109

117. ——————— *Kabuliat or lease—Lease for so long as landlord might leave land with tenant* —A kabuliat or lease, under which the tenant might claim possession of the land for one year, but was to pay rent to the landlord so long as the land lord might leave the land with the tenant, did not require registration JAGJIVANDAS JAWHERDAS v NARAYAN LAKSHMAN PATIL
[I. L. R., 8 Bom., 483

118. ——————— *Lease—Compulsory registration* —Where a lease deed contained a clause whereby the tenancy thereunder was absolutely determinable at any moment at the option of the lessor, it was held that such deed was not c mpulsorily registrable under s 17 of the Registration Act, notwithstanding that it also contained provisions for an "annual rental," and for payment of "rent in

Hall, L. R , 2 Ex D 355, referred to and approved RATNASABHAPATHI v VENKATACHALAM
[I. L R , 14 Mad , 271

119 ——————— *Bhadekhat—Lease* —*Held* that a bhadekhat is an agreement between a lessee and a lessor in the nature of a counterpart of a lease, and that an instrument of this character must,

lease was granted, as to the conclusion of that term the lessee would be only monthly tenant of the lessor, and therefore it did not require registration under s 17 of Act XX of 1866. MORO VITHAL v TUKARAM VALAD MALHARJI . 5 Bom , A. C , 92

120 ——————— and s. 49—*Lease—Lease from year to year* —In a suit for possession of a piece of land, and for rent of the same, the plaintiff produced in support of his claim two sarkhats or kabuliats purporting to be executed in his favour by the defendants, and dated respectively in January 1875 and June 1876 These documents were not registered The first, after reciting that the executant had taken the land from the plaintiff on a specified yearly rent and promised to pay the same yearly, proceeded as follows " If the owner of the land wishes to have it vacated, he shall give me

REGISTRATION ACT (III OF 1877)
—*continued*

thus "And if the said Shaikh wishes to have the land vacated within the said term he shall first give us fifteen days' notice, and we will vacate it without objection" The lower Courts held that the sarkhats were not admissible in evidence, as they required registration under s 17 (4) of the Registration

121. ——————— *Lease—Exemption from registration by Government* —Leases for a term not exceeding five years, with a rent reserved not exceeding R50, being exempted by the local Government from registration,—*Held* that a pottah for one fasli *to remain in force until another pottah is* granted, with a rent reserved of R110, did not fall within the exemption *Held* also that such a pottah was a lease for a term exceeding one year and not a lease for a year, and therefore subject to the general provision of cl (*d*) s. 17 of the Registration Act, 1877 VENKATACHELLAM CHETTI v AUDIAN
[I. L R., 3 Mad., 358

122 ——————— *Exemption from registration—Lease for one year and till another lease is executed* —A muchalka executed for one

123. ——————— *Interest in immoveable property—Registration Act, s 3—Document giving right to "cut and enjoy trees"—Lease—Specific Relief Act (I of 1877), s 3—Injunction.* —The plaintiff (who held on lease a share in a village and in the trees standing in the village tank), in considerati n of R200 and a promissory note for R3,200, executed in favour of the defendant a document by which he assigned to the latter the right "to cut and enjoy the trees, etc" for a period of four years from its date The instrument was not registered. The defendant felled the trees which were mature at the date of the instrument, and subsequently felled others since matured. The plaintiff

REGISTRATION ACT (III OF 1877) —*continued.*

now sued for a declaration of his title to the remaining trees and for an injunction to restrain the defendant from intermeddling therewith, alleging that he had sold to the defendant orally the right to fell only such trees as were then matured. *Held* that the unregistered instrument purported to convey an interest in immoveable property, and was not a lease and was inadmissible in evidence: and that the plaintiff was not entitled to relief by way of injunction or otherwise. SEENI CHETTIAR *v.* SANTHANATHAN CHETTIAR . I. L. R., 20 Mad., 58

124. ——— cl. (h)—*Agreement for a lease.*—An agreement for a lease does not require registration. BHAIRABNATH KHETTRI *v.* KISHORI MOHUN SHAW . . . 3 B. L. R., Ap., 1

ABDUL VIDONA JONAS *v.* HARONE ESMILE [7 B. L. R., Ap., 21

125. ——— *Dowl-durkast—Document preliminary to lease.*—A dowl-durkast, being only a preliminary to a lease, does not require registration. MEHEROONISSA *v.* ABDOOL GUNEE [17 W. R., 509

126. ——— *Dowl or amulnama.*—The registration of a dowl or an amuldaree, which are mere preliminaries to a lease, was not compulsory under s. 13, Act XVI of 1864. GOLUCK KISHORE ACHARJEE CHOWDHRY *v.* NUND MOHUN DEY SIRCAR [12 W. R., 394

127. ——— *Dowl-durkast—Proposal by tenant to pay rent.*—Where a dowl-durkast amounts to nothing more than a proposal by a tenant to pay a certain rent for certain land, it does not amount to a lease or an agreement for a lease and does not therefore require registration. But if the proposal has been so accepted, that the proposal and acceptance constitute a contract in writing, then such contract must be registered. *Choonee Mundur* v. *Chundee Lall Doss, 14 W. R., 178,* and *Meheroonnissa* v. *Abdool Gunee, 17 W. R., 509,* distinguished. LALL JHA *v.* NEGROO [I. L. R., 7 Calc., 717

SUFDAR REZA *v.* AMZAD ALI [I. L. R., 7 Calc., 703: 10 C. L. R., 121

LUCHMISSUR SINGH *v.* DAKHO. LUCHMISSUR SINGH *v.* RUNGLAL [I. L. R., 7 Calc., 708: 10 C. L. R., 127

128. ——— *Intention to create present demise—Intention to execute more formal document.*—An agreement for a lease needs registration if the parties to such agreement intend to create a present demise. Although the agreement may contemplate a formal document being subsequently executed, the paramount intention as gathered from the whole of the instrument must prevail. PURMANAND DAS JIWANDAS *v.* DHARSEY VIRJI [I. L. R., 10 Bom., 101

129. ——— *Petition asking for lease.*—S. 17, Act XX of 1866, does not provide for the registration of a petition asking for a lease. CHOONEE MUNDUR *v.* CHUNDEE LALL DOSS [14 W. R., 178

S. C. on review . . . 14 W. R., 334

130. ——— *Agreement to mortgage—Equitable mortgage.*—Documents amounting to an equitable mortgage when creating an interest in land of the value of R100 or upwards require registration under s. 17 of the Registration Act; but documents, when amounting merely to an agreement to mortgage, do not require registration under that section. Such documents are therefore available in evidence as argeements to mortgagee without registration, but for the purpose of proving an equitable mortgage they must be registered before they are available in evidence. BENGAL BANKING CORPORATION *v.* MACKERTICH I. L. R., 10 Calc., 315

131. ——— *Agreements preliminary to main contract.*—It was not intended that compulsory registration under s. 13, Act XVI of 1864, should apply to deeds, like amuldustuks, which are merely preliminary to the main contract or engagement, or that deeds which are steps in, or mere parts of, a transaction, should be registered before they can be used as evidence. BUNWAREE LAL *v.* SUNGUM LAL [7 W. R., 280

See RAMTONOO SURMAH SIRCAR *v.* GOUR CHUNDER SURMAH SIRCAR . . . 3 W. R., 64

and SHIBKISHEN DOSS *v.* ABDOOL SOBHAN CHOWDHRY . . . . . . 3 W. R., 103

132. ——— *Deed of agreement to sell at future time—Act XIX of 1843.*—A deed of agreement to sell at some future period may be registered under Act XIX of 1843. SHIBKISHEN DOSS *v.* ABDOOL SOBHAN CHOWDHRY 3 W. R., 103

See RAMTONOO SURMAH SIRCAR *v.* GOUR CHUNDER SURMAH SIRCAR . . . 3 W. R., 64

NUDDEAR CHAND SEIN *v.* KISHOREE LALL CHUCKERBUTTY . . . . . 7 W. R., 463

133. ——— *"Bargain-paper"—Agreement for sale of land contemplating future deed.*—A "bargain-paper" for the purchase of immoveable property above the value of R100, which contemplates the execution of a future conveyance, does not require registration. JUSAB HAJI JAFAR *v.* GUL MUHAMMAD . . . 12 Bom., 175

134. ——— *Document not itself creating an interest in immoveable property—"Bargain-paper."*—An agreement, or "bargain-paper," in writing, for the sale of a house by the defendants to the plaintiff, stated that the defendants had agreed to sell, and the plaintiff to buy, the house in question for R15,225, on the following conditions,—that the plaintiff should, on the execution of the bargain-paper, pay R1,000 as earnest-money, and that the defendants were duly to make out a good title to the house, and get approved by the plaintiff's solicitors, "as being of good title," a deed of sale thereof, prepared according to law, within two months, the cost

REGISTRATION ACT (III OF 1877)
—*continued*

Held that the document was admissible in evidence, though unregistered, as coming within the provisions of cl (*h*) of s 17 of the Registration Act III of 1877 CHUNILAL PANALAL *v* BOMANJI MANCHERJI
[I L R, 7 Bom, 310

135 ——— *Document giving*

earnest money, and provided that within two months the vendor would execute a proper conveyance and thereupon receive the balance of the purchase-money and give up possession *Held* that the document did

money HORMASJI MANEKJI DADACHANJI *v* KESHAV PURSHOTAM I. L R, 18 Bom, 13

See KARALIA NANUBHAI MAHOMEDBHAI *v* MANSUKHRAM VAKHATCHAND
[I. L R, 24 Bom, 400

136 ——— *Document creating a right to obtain another document—Agreement to sell equity of redemption*—By an unregistered writing dated the 17th April 1889 *A* agreed to sell to *B* certain landed property on his (*B's*) paying off the mortgage debt due upon it and a further sum

upon the agreement the lower Court held that the

agreement did not require registration SHRIDHAR BALLAL KELKAR *v* CHINTAMAN SADASHIV MEHENDALE I. L R., 18 Bom, 396

137 ——— *Suit for specific performance of contract to sell land—Person claiming by subsequent title—Notice of prior contract—Transfer of Property Act (IV of 1882) s 54—Contract for sale—Bainanamah—Specific Relief Act (I of 1877), s 27—Legal and equitable rights—Registration Act (III of 1877) ss 48 50—Document creating a right to obtain another document—Unregistered document—Admissibility of evidence.*—On the 27th December 1895 *S* executed an unregistered document bearing a one-anna receipt stamp in favour of *J* agreeing to execute a deed of conveyance of certain immoveable property in favour of *J* within a certain time, and acknowledging receipt of earnest money Subsequently on the 3rd January 1896 *S* executed a registered bainanamah in respect of the same property in favour of *R* and *H* which was followed by a registered deed of conveyance in their favour, dated the 9th January 1896 and delivery of possession although *R* and *H* had notice of the

Specific Relief Act in a suit for the specific performance of contract brought by *J* neither the bainanamah nor the deed of conveyance in favour of *R* and *H* could prevail against the prior unregistered contract of *J* *Held* further that the unregistered document of the 27th December 1895 came under s 17 cl (*h*) of Act III of 1877, and was not inadmissible in evidence for want of registration and that the registered bainanamah of the 3rd January 1896 did not take effect against it under s 50 of that Act HURNANDUN SINGH *v* JAWAD ALI
[I L R., 27 Calc, 468

138 ——— and cl (b) *Document creating a right to obtain another document—Pleading admission—Effect of admission in pleading of execution of contract—Evidence to prove an admitted document not necessary—Evidence*—By an agreement, dated 2nd August 1890 the defendant agreed to sell to the plaintiff a certain piece of land with a dwelling house for R1 900 At the time of the execution of this agreement the plaintiff paid the defendant R100 earnest money, and the agreement provided that the remaining

expenditure in respect of the deed (or) documents and transferring (the property) to your name you are duly to make on your account . On these terms this informal bargain paper, having been written is agreed to and delivered.' The plaintiff sued for specific performance, and tendered the agreement in evidence although unregistered *Held* that the document, although unregistered was admissible in evidence under cl (*h*) of s 17 of the Registration

obtain another document which would, when executed' effect the desired purpose if the execution were accompanied with registration The right given

REGISTRATION ACT (III OF 1877) —*continued.*

by the agreement was merely a right *in personam*, and the agreement was admissible in evidence to show the contract entered into for another conveyance, though not as a conveyance itself. BURJORJI CURSETJI PRATHAKA *v.* MUNCHERJI KUVERJI [I. L. R., 5 Bom., 143

139. ———— *Ikrar agreeing to execute deed—Optional registration—Admissibility of evidence.*—Where a party borrowing money gave the lender an ikrar agreeing to execute a conveyance of certain landed property,—*Held* that the instrument was in substance an agreement the registration of which was optional, and which might be given in evidence in a suit for specific performance of the agreement to execute the conveyance for which it stipulated. ASGUR ALI SHIKDAR *v.* MOTHOORA NATH GHOSE . . . . 15 W. R., 354

140. ———— and cl. (b)—*Document giving right to obtain another document.*—Where by an ikrarnama tenants conjointly promised that they would sign, and have registered, kabuliats for rents at rates mentioned,—*Held* that the document did not come under cl. (*b*) of s. 17 of the Registration Act III of 1877, as operating to create or declare an interest, but came under cl. (*h*) as a document merely creating a right to obtain another document, which would, when executed, create or declare an interest PERTAP CHUNDER GHOSE *v.* MOHENDRANATH PURKAIT . . I. L. R., 17 Calc., 291 [L. R., 16 I. A., 233

141. ———— and cl. (b)—*Document showing that a further deed was in contemplation as to same rights—Admissibility in evidence—Partition, Deed of.*—Where a deed of partition between a mother and her son declared certain existing rights in her over moveable and immoveable property above the value of R100,—*Held* that, although the deed showed that the execution of another deed with reference to those rights was in contemplation, yet the deed was one the registration of which was compulsory under s. 17 of the Registration Act, and, being *unregistered*, was not admissible in evidence of the mother's title to either the moveable or immoveable property. LAKSHMAMMA *v.* KAMESWARA [I. L. R., 13 Mad., 281

142. ———— *Letter acknowledging payment of consideration on account of creation of interest in land.*—*A* wrote a letter to *B* stating that an agreement had been made between them that *A* should sell certain land to *B* for R4,500, that *A* had received R500 of this sum, and was only entitled to receive the balance after executing the sale-deed within a certain date, and had no connection whatever with the land. *Held* that the letter, not being registered, was not admissible in proof of the agreement to convey RAMASAMI *v.* RAMASAMI [I. L. R., 5 Mad., 115

143. ———— *Document containing covenants for title—Suit for breach of covenant.*—A document containing covenants for title, though, no doubt, embodying "a transaction affecting immoveable property," is admissible in a suit for damages for breach of such covenants, provided the document conform to the requirements of the exceptive clause of s. 17 of Act III of 1877; but where, as in the present case, the evidence of the covenant is contained in a document itself purporting to assign an interest in immoveable property,—the covenant being ambiguous and uncertain without reference to such assignment,—the document is not excepted from the necessity of registration. RAJU BALU *v.* KRISHNARAV RAMCHANDRA . . I. L. R., 2 Bom., 273

144. ———— cl. (n) and s. 18—*Receipt not affecting mortgage debt.*—Although under the Registration Act (III of 1873), s. 17, cl. (*n*), a receipt given by a mortgagee purporting to extinguish the mortgage-debt does require registration,—*Held* that the language of the receipt in the present case did not indicate any intention to extinguish or limit the mortgagor's interest, and that therefore registration was unnecessary. UPPALAKANDI KUNHI KUTTI ALI HAJI *v.* KUNNAM MITHAL KOTTAPRATH ABDUL RAHIMAN . . I. L. R., 19 Mad., 288

145. ———— *Receipt purporting to extinguish mortgage—Receipt only covering interest of one co-mortgagee.*—The provisions of s. 17, cl. (*n*), of Act III of 1877 do not apply to a receipt which purports to extinguish not the entire mortgage, but only the rights under the mortgage of one of the co-mortgagees. SRI RÁM *v.* KESRI MAL [I. L. R., 18 All., 338

and *see* CASES UNDER CL. (*c*) OF THIS SECTION.

146. ———— cl. (o)—*Certificate of sale—Sale of immoveable property.*—A certificate of sale of immoveable property of the value of more than one hundred rupees must be registered, and the fact of sale cannot be proved except by the production of such certificate. MULJI BECHAR *v.* ANUPRAM BECHAR . . . . 7 Bom., A. C., 136

PADU MALHARI *v.* RAKHMAI . 10 Bom., 435

ANONYMOUS CASE . . 6 Mad., Ap., 40

147. ———— *Certificate of sale—Priority of registered over unregistered deeds—Bom. Reg. IX of 1827, s. 3, cl. 2.*—*Held* that a certificate of sale was not a document of such a character as to be entitled by law to priority, by virtue of its being registered, over an unregistered lease, but that it came within the class of documents described in Regulation IX of 1827, s. 3, cl. 2, as judicial process, which may, at the option of the holder, be registered, but the force and effect of which is in no wise to depend on their being registered. FAKIRCHAND GOVINDRAM *v.* KAHANDAS BHAGVANDAS [3 Bom., A. C., 167

148. ———— *Certificate of sale.*—A certificate of sale requires registration under s. 17 of the Registration Act in order to make it admissible in evidence under s. 49. HARKISANDAS NARANDAS *v.* BAI ICHHA [I. L. R., 4 Bom., 155

REGISTRATION ACT (III OF 1877)
—*continued.*

149. ———— *Certificate of sale—Civil Procedure Code, 1882, s 316.—Held* that a sale certificate granted under s 316 of the Civil Procedure Code is not a document the registration of which is compulsory under the Registration Act, 1877, s 17 (*b*) MASARAT-UN NISSA *v* ADIT RAM [I L R., 5 All, 568

HUSAINI BEGUM *v* MULO I. L. R., 5 All, 84

150 ———— *Certificate of sale—Construction of Act—Maxim "Optimus legis interpres consuetudo"*—Sale certificates granted under the provisions of s 259 of Act VIII of 1859 are not documents the registration of which is compulsory under the provisions of s 17 of the Registration Act of 1871. PROKASH CHUNDER DASS *v* TARACHAND DASS I. L R, 9 Calc, 82 12 C L R., 1

151. ———— *Certificate of sale—*

Per NANABHAI HARIDAS, J.—An unregistered certificate of sale is not only inadmissible in evidence, but invalid PADU MALHARI *v* RAKHMAI [10 Bom., 435

LALBHAI LAKHMIDAS *v* KAMALUDIN HUSEN KHAN . 12 Bom., 247

See HARKISANDAS NARANDAS *v* BAI ICHHA [I. L. R., 4 Bom., 155

in evidence without being registered ... BISWAS *v* RADHA KANT KOBIRAJ [I. L. R, 5 Calc., 228

153. ———— *Certificate of sale—Quære*—Does a certificate of sale need registration? BENODI LAL GHOSE *v* TAMIZUDDIN [7 C L. R., 115

See RAJKISHEN MOOKERJEE *v* RADHA MADHUB HALDAR . . 21 W. R., 340

154. ———— *Certificate of sale—Memorandum declaring person to be purchaser at sale.*—What operates to create the property recognized as a right of occupancy is the revenue sale and consequent entry of the occupant's name in the Collector's books A memorandum therefore declaring a person to be the successful bidder at the sale is not an instrument creating or declaring an interest in immoveable property and requiring registration under s. 17 of Act XX of 1866 GHELABHAI BHIKABIDAS *v*. PRANJIVAN ICHHARAM . 11 Bom., 218

155 ———— *Certificate of sale—Civil Procedure Code, 1859, s 259.*—Under Act VIII of 1859, s 259, and Act XX of 1866, s 17 and s 42, it was necessary to register the certificate of sale itself, and not merely the memorandum of the certificate of sale. SRINIVASA SASTRI *v* SESHAYANGAR I. L. R., 3 Mad., 37

156 ———— *Certificate of sale—Mortgage.*—Where the Subordinate Judge of Dehra

the Court on the 23rd November 1875, in the case of *N* and *K*, plaintiffs, against *L*, for self and as

and upwards it required to be registered *Held per* OLDFIELD, J.—That as the instrument operated to assign the deed of mortgage to the auction purchasers, it for the same reason required to be registered KANAHIA LAL *v* KALI DIN I. L. R., 2 All., 392

157 ———— *Certificate of sale*

(XIV of 1882) *Held* that, although the four lots purchased by the plaintiff at the auction sale were included in one certificate of sale such certificate, although one instrument in form, should, for the purpose of registration be regarded as four separate certificates of the four several lots, each of which did not require registration DEVIDAS JAGJIVAN *v* PIRJADA BEGAM . . I. L. R., 8 Bom., 377

REGISTRATION ACT (III OF 1877)
—*continued.*

———— s. 18 (1871, s. 18; 1866, s. 18).

See CASES UNDER s. 17, CLS. (*b*) AND (*d*).

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[I. L. R., 16 Calc., 622
I. L. R., 22 Calc., 179

1. ———— *Deed of assignment of mortgage—Consideration less than R100—Mortgage for R100 or more.*—A deed of assignment, for a consideration of less than R100, of a mortgage for a consideration of R100 or upwards, does not need registration. SATRA KUMAJI *v.* VISRAM HASGAVDA
[I. L. R., 2 Bom., 97

2. ———— *Lease expressing tenant's willingness to continue tenant after a year—Lease.*—A lease for one year certain containing an expression, on the tenants' part, of readiness to hold the land longer at the same rent if the landlord should desire it, is a lease for a term not exceeding one year, the registration of which is optional under s. 18 of the Registration Act (VIII of 1871). APU BUDGAVDA *v.* NARHARI ANNAJEE I. L. R., 3 Bom., 21

3. ———— *Lease for one year—Lease exceeding one year.*—A kabuliat dated the 6th May 1880, and executed by the lessee of a house in favour of the lessors, set forth that the house was let to the former at an annual rent of R3 for a term of one year. It also contained this stipulation: "I (the lessee) do declare that I shall continue to pay the annual rent every year, and that, if I should fail to pay the rent in any year, the owners of the house shall be at liberty to recover the rent through the Court." The lease was not registered. In a suit by the lessors against the lessee for possession of the house and for R7-8 arrears of rent, the defendant pleaded that, according to the right construction of the lease, he was entitled to occupy the house and the lessors were not entitled to eject him therefrom, so long as he paid the annual rent of R3; that he had duly paid rent at the agreed rate from the 6th May 1880 to the 6th May 1884; and that, under these circumstances, the plaintiffs were not entitled to either of the reliefs claimed. *Held* that the lease was for one year only, and thus falling under s. 18 of the Registration Act (III of 1877), it was admissible in evidence without registration; that the defendant had been a mere tenant-at-will since the expiry of the year 1880-81; and that the plaintiffs were therefore entitled to possession of the house. *Hand* v. *Hall, L. R., 2 Ex. D., 355,* referred to. KHAYALI *v.* HUSAIN BAKHSH
[I. L. R., 8 All., 198

4. ———— *Admissibility in evidence of unstamped and unregistered document—Entry in book showing extent of holding and rate of rent—Admission.*—A lessor having let certain lands to a lessee under a verbal agreement, the lessee entered upon possession. Afterwards, and during the lessee's occupation, an entry showing the extent of the holding and the amount of rent payable in respect of it was made in a book of the lessor and signed by the lessee. In a suit subsequently brought by the lessor against the lessee for arrears of rent, the lessee did not deny that he was a tenant of the lessor, but disputed the extent of his holding and the rate of rent. *Held* that the entry in the book of the lessor did not, although signed by the lessee, amount to a lease or to an agreement for a lease, but to an admission only, and could therefore be used as evidence against the lessee, although neither stamped nor registered. NARAIN COOMARY *v.* RAMKRISHNA DASS . I. L. R., 5 Calc., 364: 6 C. L. R., 286

5. ———— *Dowl fehrist—Memorandum of rate of rent.*—A dowl fehrist being merely a memorandum by a zamindar's agent of the rates of rent agreed upon, and to which the tenants affix their signatures in token of such agreement, is not a contract, and does not require to be stamped or registered. GUNGAPERSAD *v.* GOGUN SING
[I. L. R., 3 Calc., 322

S. C. KARTICK NATH PANDAY *v.* KHAKUN SINGH
[1 C. L. R., 328

6. ———— *Principal sum under R100—Interest—Interest in immoveable property.*—A deed purporting to secure the sum of R95 advanced on certain properties, giving the lender possession for a fixed period at a yearly rent of R8-12, R6-12 out of such rent being retainable by the lessee as interest on the sum advanced, does not require registration. RAM DOOLARY KOOER *v.* THACOOR ROY
[I. L. R., 4 Calc., 61: 2 C. L. R., 547

7. ———— *Transfer of Property Act (IV of 1882), ss. 8 and 54—Assignment of debts secured on land—Unregistered instrument of assignment.*—In 1879 the defendants executed a hypothecation-deed, which was registered to secure the repayment with interest of a loan of R87. In 1884, the obligee transferred his rights to the plaintiff, in consideration of R70, under an instrument which was not registered. At the date of the transfer the debt amounted with interest to R137. The plaintiff now sued to recover R129, being the principal and interest due on the hypothecation-bond at the date of suit. *Held* that registration of the deed of transfer was not compulsory, and the plaintiff was not precluded from proving the instrument of transfer and establishing his rights thereunder to a personal decree and to a charge on the land by reason of its not having been registered. *Satra Kumaji* v. *Visram Hasgavda, I. L. R., 2 Bom., 97,* referred to. SUBRAMANIAM *v.* PERUMAL REDDI
[I. L. R., 18 Mad., 454

8. ———— *Subsequent written agreement to abate rent—Variation of lease—Transfer of Property Act (IV of 1882), s. 107—Form of decree.*—In the year 1879 the plaintiff granted a lease of certain land to the father of the defendants. In May 1889 he agreed in writing to allow the defendants an abatement of rent to the extent of R100 per annum. This agreement was not registered, but was stated in the plaint in a previous suit brought by the plaintiff. He subsequently brought a suit against the defendants for the recovery of the entire amount of the original rent. *Held* that the agreement did not operate as a lease, but was merely

REGISTRATION ACT (III OF 1877) —*continued.*

a variation of the lease, and that therefore registration was not necessary. *Held* therefore, varying the order of the District Judge, that the decree for the entire amount of the original rent must be set aside, and a decree made for the amount of rent due at the reduced rate SATYESH CHUNDER SIRCAR *v* DHUNPUL SINGH . I. L. R., 24 Calc., 20

9. ———— *Document varying amount of rent*—A document given by the owner of land to his tenant varying the term of tenancy with reference to the amount of rent to be paid, is not an instrument relating to an interest in immoveable property, and does not require registration OBAI GOUNDAN *v* RAMALINGA AYYAR [I. L. R., 22 Mad., 217

———— s. 20—*Refusal of executing party to initial alteration—Registrable document*—Refusal by the executing party to initial an apparent alteration not materially affecting the instrument, unaccompanied by any suggestion that the alteration was improperly made after execution, does not render the document non-registrable IN THE MATTER OF THE PETITION OF VENKATASAMI NAIK 4 Mad., 101

1 ———— s. 21 (1871, s 21; 1866, s 21) —*Requisites for registration—Description of property*—The only two things which are absolutely required by s 21 of Act XX of 1866, as conditions without compliance with which registration is prohibited are, first, that the instrument shall contain a description of the property sufficient to identify it; and, secondly, that if the instrument contains a map, a copy or copies of the map shall accompany the instrument when presented for registration The other provisions of s 21 are directory only The circumstance therefore that the description of the parcels in the instrument does not specify the registration district, or sub-district, or division, or [illegible] PILLAI . . . . . . 4 Mad., 91

2 ———— *Presentation of two instruments—Description of property only in one*—Where two instruments are contained in the same paper and relate to the same property, and are both [illegible] Though in the later of two instruments there are no words directly referring to the first, yet the frame of the document showing that the second document should be taken to refer to the first, the second document must be taken to contain a sufficient reference to the first IN THE MATTER OF THE PETITION OF VENKATASAMI NAIK . . 4 Mad., 101

3. ———— and ss. 7 and 28—*Description of property in deed—Deed referring to land not in the sub-district of registering officer, a Sub-Registrar*—Certain property was described in a mortgage-bond as bearing town No. 10, as [illegible] ever, within the area of the district of Bhagulpur The mortgage-bond was registered by the Sub-Registrar of Bhagulpur, who was, under s 7 of the Registration Act, authorized, in addition to his own duties to exercise and perform the duties and powers of the Registrar of Bhagulpur *Held* by PIGOT, O'KINEALY, MACPHERSON, and GHOSE, JJ (PETHE- [illegible] therefore no registration of the document had been effected within the provisions of the Registration Act *Held* by PETHERAM, C.J., that the description was sufficient to identify the property, and that, [illegible] NATH TEWARI *v* SHEO SAHOY BHAGUT [I. L. R., 18 Calc., 556

4. ———— and s. 60—*Description of property not contained in the body of the deed of conveyance, but inserted as a foot-note*—A conveyance of immoveable property did not contain in the body of the deed a description of it sufficient to identify it. In a foot note, however, such a description was given, and it was signed by the assignee only The deed was accepted by the Registrar, and was registered and a certificate to that effect was given under s 60 of the Registration Act (III of 1877) The deed, being tendered in evidence, was objected to on the ground that it ought to be treated as unregistered, since it had been improperly accepted for registration *Held* that the error in accepting it, if error there was, did not invalidate the registration see *Sah Mukhun Lal Panday v. Sah Koondun Lal, 15 B L. R., 228; L. R., 2 I. A., 210* ADAM ISUPBHAI *v* JAMNADAS RANCHORDAS . . I. L. R., 17 Bom., 94

5. ———— *Defective description of property—Deed affecting land registered in wrong book—Suit by purchaser for value.*—In a suit for land, forming part of the self acquired property of a deceased Hindu, it appeared that in 1885 his widow and his cousin had (on the death without issue of [illegible] tained no such description of the property as to

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued*

59 ——————*Suit by heir after suit by his father for same cause of action*—A suit by an heir on the same cause of action on which a suit was previously brought by his father, and for property which, though different, might have been included in that suit, is barred by s 7, Act VIII of 1859 SOORUJ PERSHAD TEWARY v SAHEB LALL TEWARY 3 W R, 25

60 ——————*Civil Procedure Code (1882), s 43—Relinquishment by guardian of minor of part of claim—Subsequent suit for part relinquished*—While plaintiff was a minor, his guardian had sued for and obtained a decree for arrears of shrotriem in respect of Faslis 1300 and 1301 Having attained his majority, plaintiff now sued for similar arrears alleged to be due in respect

portion relinquished from being subsequently brought, on the attainment of his majority, by the person on whose behalf the guardian had acted *Held* that it

of a suit must be upheld unless it be sho ... as they were unreasonable or improper GOPAL RAO v NARASINGA RAO I L R, 22 Mad, 309

61. ——————*Civil Procedure Code 1859, s 7—Suits for property purchased at*

M, another of the members at another time the

62 ——————*Suit for share of property not included in former suit because the permission of Government was necessary to sue*—The plaintiff brought a suit in 1860 against the

the date of the former suit the land in respect to which the present suit was brought was subject to the provisions of Regulation IV of 1831, and the Civil Courts had no jurisdiction to try the suit in respect to such land without the permission of the Government It did not appear that the plaintiff

63 ——————*Separate claims in same right—Civil Procedure Code, 1859 s 7*—Where the plaintiff claimed by right of inheritance for partition of one out of a number of villages left by his ancestor and the lower Court dismissed the claim as untenable under s. 7, Act VIII of 1859—*Held* that that section though it might operate as a bar to any future claim by plaintiff for partition of the remaining villages by right of inheritance could not be held to bar the present claim CHOE SINGH v BAHADOOR SINGH 1 Agra, 55

64 ——————*Suits for property possessed under different rights—Distinct causes of action*—Where a lessee in one case, after resuming certain rent free lands on behalf of his landlord retained them in his own possession and in another case, retained portions of land which he had obtained by way of lease—*Held* that though the lessor's title to recover was the same the causes of action were entirely distinct DOORGA NATH ROY CHOWDHRY v ROY KALEE NARAIN ROY 24 W R, 212

65 ——————*Suits by heir to cancel alienations made at various times*—A widow of a deceased Mahomedan alienated her husband's property by two deeds to different persons at different times A suit was brought by the heirs of the deceased first to set aside the second alienation and then a second suit to cancel the first alienation *Held* that s. 7, Act VIII of 1859 did not bar the second suit. The heir's cause of action against different alienees who have acquired possession under alienations made at different times and under different circumstances, was not one and the same the question of right of succession to the deceased and widow's competency to alienate arising equally in both the cases notwithstanding It was not obligatory on the heirs to make all the alienees parties to the first suit upon pain of forfeiting all future right of suit against them by reason of such omission. JEHAN BEBEE v SAIYUK RAM

(1 Agra, F B, 100 Ed 1874, 82

66 ——————*Suit to set aside alienations of portions of estate*—A Hindu whose share in an ancestral estate had been alienated by a co-proprietor, instituted simultaneously three different actions against the co proprietor, and the persons to whom the alienations had respectively been made, to recover several distinct parcels of land which constituted his share *Held* that as the plaintiff had but one single cause of action against the co-proprietor, he ought to have brought but one suit against him, and either included all the alienees in this suit or brought separate actions against the alienees fo the

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

several pieces of land in their possession, and caused the proceedings in these suits to be stayed till the suit against the co-proprietor was determined. The course of procedure last indicated is the more correct course. VITHU v. NARAYAN DADHULKAR

[5 Bom., A. C., 30

67. ———————— *Civil Procedure Code, 1877, s. 43—Act VIII of 1859, s. 7—Suit for partition of portion of property.*—If a person intentionally omit to sue for any portion of his claim, the provisions of s. 43 of Act X of 1877, as well as the provisions of s. 7 of Act VIII of 1859, bar the institution of a second suit for the portion so omitted, so that, where a family property consisted of lands as well as debts, and the plaintiff at first sued for a partition of debts only, and then compromised and withdrew the suit without the permission of the Court, it was held that his second suit to demand a partition of the whole property was not maintainable. UKHA v. DAGA . . . . **I. L. R., 7 Bom., 182**

68. ———————— *Different cause of action—Suit for share of undivided property—Subsequent suit for partition of whole of the property.*—In applying the provisions of s. 7 of the Code of Civil Procedure, 1859, the first thing to be considered is whether the cause of action in the second suit is the same as the cause of action in the first. If the cause of action be the same, the second suit is barred in respect of any portion of the claim omitted from the first suit, but not otherwise. Accordingly where the plaintiff, as a member of an undivided Hindu family, sued for a share of a particular portion of the family property leaving the rest undivided, and his suit was rejected, as it had not been brought for his whole share, it was held that the suit was no bar to a second suit to have the whole property divided, as the causes of action in the two suits were entirely distinct. KAKAJI BIN RANOJI v. BAPUJI BIN MADHAVRAV

[8 Bom., A. C., 205

69. ———————— *Suit for partition between co-owners—Former suits for partition of parts of property—Different causes of action.*—The plaintiff was the Zamorin of Calicut, and he sued in 1887 for a moiety of certain property in Malabar alleged to belong in equal undivided shares to his stanom and that of the defendant and to be in the occupation of tenants. The cause of action was stated to have arisen in 1881 when partition was demanded by the Zamorin and refused by the defendant. In some instances the tenants in occupation represented the family, a member of which was at one time admitted by the Zamorin under a demise or kanom, and had attorned to the defendant; in other instances they were shown to have been admitted by the defendant on paying off the former tenant who had been admitted by the Zamorin. It appeared that the Zamorin had previously brought suits and obtained decrees for partition of certain parcels of land as belonging equally to the two stanoms, the defendant in each suit being the present defendant and the tenant in occupation of the land then in question.

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

And on these facts a defence was raised under the Civil Procedure Code, s. 43. *Held* that the suit was not barred by s. 43 by reason of the previous suits. ITTAPPAN v. MANAVIKRAMA

[I. L. R., 21 Mad., 153

70. ———————— *Suit for partition of family property—Second suit for partition of property held jointly by family and others—Civil Procedure Code (Act XIV of 1882), ss. 13 and 43.*—A suit brought by some members of a family against the other members of the same family for partition of the joint family property does not preclude a second suit by the same plaintiffs for partition of other property belonging jointly to their family and strangers. PURUSHOTTAM v. ATMARAM JANARDAN . . . . **I. L. R., 23 Bom., 597**

71. ———————— *Civil Procedure Code, 1859, s. 7—Suit for partition omitting mortgaged lands—Subsequent suit for share of mortgaged lands.*—The plaintiffs in 1863 sued the defendants for the plaintiff's share in certain undivided family property, and did not include in their claim certain lands then in the possession of mortgagees which lands had been mortgaged by one of the defendants as manager of the family. The defendants subsequently redeemed the mortgaged lands. The plaintiffs then filed a suit to recover their share of the lands so redeemed. *Held* that they were entitled to maintain such suit, as the mortgaged lands had not been available for an actual partition at the time of the former suit. BALKRISHNA VITHAL v. HARI SHANKAR . . . . **8 Bom., A. C., 64**

72. ———————— *Omission of mortgaged field in suit for partition—Subsequent suit.*—In 1861 the plaintiff brought a general partition suit (No. 1363) to recover his share of the family property in the possession of the first defendant, and did not include in that claim a field then in the possession of a mortgagee. The field was subsequently redeemed by the first defendant who again mortgaged it to the second defendant. The plaintiff then filed the present suit to recover his share in the field. The first Court allowed the plaintiff's claim, but the District Judge on appeal threw it out, on the ground that it was barred both by s. 7 of the Civil Procedure Code, 1859, and by the "law of limitation." The Judge based the latter finding on certain allegations made by the plaintiff in suit No. 1363, and in another suit brought by him against the first defendant and the then mortgagee of the field, from which allegations the Judge inferred a separation between the plaintiff and the first defendant. *Held* in special appeal that the claim was not barred by s. 7 of the Civil Procedure Code, because the mortgaged field was not available for an actual partition at the time of the former suit, No. 1363 of 1861. The true question for consideration in cases of this kind is whether the former suit was one in which the plaintiff might have recovered precisely that which he seeks to recover in the second, and where the former suit is one for an actual division of property, the plaintiff is not bound in it to ask for a

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

declaration defining his right in property not then capable of division *Balkrishna Vithal* v. *Hari Shankar, 8 Bom, A C*, 64, followed NARAIN BABAJI DABHOLKAR v PANDURANG RAMCHANDRA DABHOLKAR . . . 12 Bom, 148

See KRISTAYYA v NARA SUNHAM [I. L R., 23 Mad, 608

73 — — *Civil Procedure Code, s 43—Declaration of title to continue to enjoy separate possession of land—Suit for partition* —The plaintiffs, having obtained a declaration of title to continue to enjoy separate possession of certain lands, sued the former defendants again for partition of the same lands. *Held* that the suit was unnecessary, and should be dismissed *Per cur* —The claim and the remedy mentioned in s 43 of the Code of Civil Procedure have reference to the cause of action litigated in the previous suit ANGI v. THATHA [I. L. R., 10 Mad, 347

74. — — *Civil Procedure Code, 1882, s. 43 —Relinquishment of part of claim —Suit for maintenance and suit for a share of the inheritance, distinguished—Cause of action—Election, Doctrine of—Succession Act (X of 1865), s. 172, excep* —A testator bequeathed all his property to his nephew, in which he included the share of his brother's widow in the ancestral property, but at the same time made a suitable provision for her maintenance and worship. The widow at first sued [illegible] much as the two claims were distinct, and indeed inconsistent, and did not arise out of the same cause of action PRAMADA DASI v LAKHI NARAIN MITTER [I. L. R., 12 Calc, 60

75 — — *Civil Procedure Code, s 43—Suit to charge maintenance on land after suit for maintenance* —The plaintiff, having obtained a decree against the defendants for the payment to her of a monthly sum for her maintenance, subsequently sued to have it constituted a charge on certain land *Held* that the claim in both suits arose out of the same cause of action, and therefore the [illegible]

76 — — *Civil Procedure Code, s 43—Maintenance—Suit to declare maintenance fixed by a decree a charge on land* – A Hindu woman, having obtained a decree for maintenance against her husband, now alleged that he had alienated part of his property with a view to defeat her claim for maintenance, and sued him for a declaration that certain land which he had not alienated was liable for her maintenance *Held* that no cause of action was shown but if there were one, it was barred by s 43 of the Civil Procedure Code SAMINATHA v RANGATHAMMAL I. L. R., 12 Mad., 285

77. — *Suits to recover money misappropriated by manager of joint estate—Civil Procedure Code, 1859, s 7* —In a suit by members of a Hindu family which had become separate in 1867, to recover certain moneys said to have been misappropriated by the defendant while manager of the joint estate, it appeared that the plaintiffs had previously sued him since the separation to recover certain other moneys belonging to the said joint estate also said to have been misappropriated by him while manager, and obtained a decree. *Held* that the present claim should have been included in the former suit, and whether the omission was by mistake or not, it must be taken to have been relinquished and under s 7 of Act VIII of 1859 could not now be entertained GANESH CHANDRA CHOWDHRY v RAM COOMAR CHOWDHRY 3 B L. R., A. C, 265

S C RADHA KISHORE DYBIA v RAM COOMAR CHOWDHRY . 12 W. R., 70

78. *Suit to recover money misappropriated by agent* – In a suit to recover certain sums of money misappropriated by defendant as plaintiff's general agent where a similar suit had been brought against the same party upon a like allegation as to other sums of money,—*Held* that all the acts of misappropriation, having occurred before plaintiff called upon defendant to render an account, constituted a claim arising out of one and the same cause of action MONOHUR DAS v SETTI PERSHAD . 23 W. R, 418

79. —— *Relinquishment of lands in another taluk—Civil Procedure Code 1859, s 7* [illegible] the exclusion of such land from the former suit was not a relinquishment within the meaning of s 7, Act VIII of 1859, so as to affect the right of the plaintiff to maintain a suit for the land so excluded PROSUNNO CHUNDER BANERJEE v KALLY PERSAUD GHOSE . . W. R., 1864, 134

80. —— *Estates in different districts—Civil Procedure Code, 1859, s 7* – The plaintiff claimed two estates as belonging to her deceased husband, from which she alleged she was dispossessed by the principal defendant and others claiming under her The estates were situated in different districts, A and B. She obtained a decree for possession of the estate in A In a subsequent suit for the estate in B she alleged a different act of dispossession, but the defendants were the same *Held* the cause of action in both suits was the same and that, as she could have proceeded under s. 12 of the Code and brought one suit for both estates in either A or B, the suit was barred by s 7

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

of the Code. JUMOONA DASSEE CHOWDHRANEE *v.* BAMASOONDEREE DASSEE CHOWDHRANEE

[2 W. R., 149

81. ——— *Civil Procedure Code, 1877, s. 43—Suit on mortgage of property in different districts—Former suit on one portion only.*—*A, B, C,* and *D* were the proprietors of a 2 annas 13 gundas share in mouzah E, and also of a 2 annas 13 gundas share in mouzah F, both in the district of Bhagulpore. On the 19th September 1872 *A* mortgaged a 1 anna 4 pies share of E to *H*. On the 20th September 1872 *A, B, C,* and *D* mortgaged their shares in E and F, together with property in the district of Tirhoot, to the plaintiff. On the 24th March 1873 *A* mortgaged his share in E and F to *J*. On the 13th November 1874 *A* and *B* mortgaged their shares in E to *K*. On the 25th March 1874 *J* obtained a decree on his mortgage, and the interests of *A* and *B* were purchased on the 5th January 1875 by *L*. On the 17th April 1874 *M*, to whom the first mortgage had been assigned, obtained a decree and attached the property mortgaged. *L* objected that he had already purchased the interest of *A*, and, on the objection being allowed, *M* instituted a suit against *L* for a declaration of priority, and obtained a decree on the 9th August 1876. In execution of this decree, the property first mortgaged was sold on the 4th March 1878, and after satisfying the mortgage a surplus of R7,664 remained. After the institution of the first suit and before *L's* purchase, the plaintiff instituted a suit upon his mortgage in the Tirhoot Court without having obtained leave to include that portion of the mortgaged property situate in the Bhagulpore district. On the 17th July 1874 a decree was made in this suit. On the 17th January 1877 *K* obtained a decree on his mortgage, and the shares of *A* and *B* in E were sold, and purchased on the 3rd September 1877 by *N*. The plaintiff had his decree transferred for execution to the Bhagulpore Court, and he attached the surplus sale-proceeds and a 1 anna 9 gundas share in E. This attachment was withdrawn on the objection of *L*, who drew out the surplus sale-proceeds. The share purchased by *N* was also released from attachment. The plaintiff now sued *L, N,* and the mortgagors for a declaration that his decree of the 17th July 1874 affected the E property, to recover the surplus sale-proceeds from *L* and, in case the decree should not be valid to the extent mentioned, for a decree declaring his prior lien on the property in E. *Held* that the cause of action had been split. *Girish Chunder Mookerjee* v. *Ramessoree Debia, 22 W. R., 308,* and *Kurun Singh* v. *Mahomed Fyaz Ali Khan, 10 B. L. R., 1,* followed. BUNGSEE SINGH *v.* SOODIST LALL

[I. L. R., 7 Calc., 739 : 10 C. L. R., 263

82. ——— *Civil Procedure Code, 1859, s. 7—Multifariousness.*—S. 7 of Act VIII of 1859 does not bar a suit for a declaration that property in the defendant's possession is subject to the mortgagee's lien, on the ground that such property was part of the property mortgaged, and was not included in a previous suit against other parties for other portions of the property. IN THE MATTER OF THE PETITION OF HURRY MOHUN PARAMANICK

[14 B. L. R., 418 note : 15 W. R., 486

83. ——— *Suit to set aside mortgage by Hindu widow—Civil Procedure Code, 1859, s. 7.*—A Hindu widow executed deeds of gift in which her late husband's mother, the nearest reversioner, concurred. After the death of the widow, but in the lifetime of the mother, the next presumbale reversioner sued to set aside the deeds and for possession. Such suit was held to be no bar to a second suit by the same plaintiff to set aside a mortgage by the widow and the mother of the deceased of a portion of the property which was the subject of the first suit, although in that suit the property was described as subject to the mortgage, and the name of the mortgagee was mentioned. The true test of the application of s. 7 of Act VIII of 1859 is, whether there has been a splitting of the cause of action. GOLAB SINGH *v.* KURN SINGH. KURUN SINGH *v.* MAHOMED FYAZ ALI KHAN

[10 B. L. R., P. C., 1
14 Moore's I. A., 176, 187

84. ——— *Suit for declaration of lien—Surplus sale-proceeds—Civil Procedure Code, 1859, s. 7.*—A mortgagee brought a suit against the mortgagor to have a declaration of his lien over the mortgaged properties, and obtained a decree. He afterwards brought another suit against certain attaching creditors of his mortgagor, to have a declaration of his lien over certain surplus moneys in the hands of the Collector, who, previously to the institution of the first suit, had sold certain of the mortgaged properties free of all incumbrances for arrears of Government revenue. *Held* that the second suit was not barred under Act VIII of 1859, s. 7. KRISTODASS KUNDOO *v.* RAMKANT ROY CHOWDHRY

[I. L. R., 6 Calc., 142 : 7 C. L. R., 396

85. ——— *Suit for redemption—Omission of claim for improvements and accretions—Civil Procedure Code, 1859, s. 7.*—A suit for redemption of land, without specification of details, includes a claim for restoration of all accretions and improvements which it may have received while in the hands of the mortgagee; and if the Court omits to adjudicate upon part of the claim, the mortgagor is not precluded, by s. 7 of Act VIII of 1859, from bringing a second suit in respect of that part. BAKSHIRAM GANGARAM *v.* DARKU TUKARAM

[10 Bom., 369

86. ——— *Suit for overpayments to mortgagee in possession after suit to redeem—Civil Procedure Code, 1859, s. 7.*—Where a mortgagor filed a suit to redeem mortgaged lands, alleging that the mortgagees in possession had been overpaid, but did not in that suit claim to recover the overpayments, which were therefore not awarded to him, it was held that he could not recover such

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued*

overpayments in a fresh suit brought for that purpose, as his claim was barred by s 7 of the Code of Civil Procedure. BALOJI TAMAJI POTHAR v. TAMANGOUDA BIN GHANASYAM GOUDA [6 Bom, A. C, 97

87. ———— *Suits for posses-*

assignment when he paid R400 into Court for N. In 1883 *K* bought the remaining three eighths from the mortgagor and sued *N* and *M* to recover possession thereof. *M* pleaded that the suit was barred by s 43 of the Code of Civil Procedure, inasmuch as *K* might have recovered the five-eighths in the suit against *N* *Held* that this plea was bad BRAHANNAYAKI v KRISHNA . I. L R, 9 Mad, 92

88. ———— *Civil Procedure Code, 1877, s. 43—Leave to omit to sue for any remedy—First hearing of suit* —The plaintiff held a mortgage of certain immoveable property given to him by the defendant to secure the repayment of a loan of money with interest The plaint stated the fact of the mortgage, but prayed only for a money-decree The mortgage contained a personal undertaking to repay. Plaintiff's counsel, directly upon the case being called on for hearing and before the

[I. L. R., 6 Bom., 100

89 ———— *Civil Procedure Code, 1877, s 43—Res judicata—Dekkan Agriculturists' Relief Act, XVII of 1879—Mortgagor—Mortgagee—Suit for account merely—Subsequent suit for possession.*—Where there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely, a subsequent suit for possession on payment of the money declared to be due is barred under either s. 13 or s. 43 of the Code of Civil Procedure BABU BALAJI v. HARI NILKANTHRAV [I. L. R., 7 Bom., 377

90. ———— *Civil Procedure Code, 1877, s 43—Bond for the payment of money hypothecating property as collateral security for such payment—Omission of claim* —The obligee of

bond debt He subsequently sued to enforce his lien *Held* that under s 43 of Act X of 1877, as amended by s 7 of Act XII of 1879, he could not be permitted to sue to enforce his lien GUMANI v. RAM PADARATH LAL . I. L R., 2 All, 838

91. ———— *Civil Procedure Code, 1877, s 43—Omission to sue for one of several remedies—Mortgage* —A mortgagee had two remedies in respect of the mortgagor's breach to pay the stipulated interest at the time fixed by the contract

property He sued for the first remedy in respect of

inasmuch as the mortgagee was not at the time of his suing for the first remedy "a person entitled to more than one remedy," not being "entitled" to the first, but only to the second, his omission at that time to sue for the second remedy was not, under s. 43 of Act X of 1877, a bar to his afterwards suing for it PIARI v KHIALI RAM [I. L R., 3 All, 857

92. ———— *Civil Procedure Code, 1877, s 43—Lease by usufructuary mortgagee of mortgaged property to mortgagor—Hypothecation of mortgaged property as security for rent—Suit for rent in Revenue Court—Suit for enforcement of lien in Civil Court.*—The usufructuary mortgagee of certain land gave a lease of it to the

HASAN v ABADI BEGUM I. L R., 4 All., 180

93. ———— *Civil Procedure Code, 1877, s 43—Mortgage—Decree enforcing lien—Suit against purchaser to enforce decree* —The obligee of a bond for the payment of money, in which certain property was mortgaged as collateral security, sued the obligor for the money due on such

decree in the suit for the sale of such property Being resisted in bringing it to sale by the purchaser, he sued the purchaser to have it declared that such property was liable to be sold under his decree *Held* that such second suit was not barred by the

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

several persons who might have succeeded to it liable for the payment of his debt, but he was not bound to bring his suit in such a shape as to include the whole of the representatives and the whole of the property at the risk of being precluded from all future suits. PURUMSOOKH *v.* SOOBHAN . 2 Agra, 323

106. ——— *Civil Procedure Code, 1877, s. 43—Stamp Act, 1879, s. 41—Duty and penalty under Stamp Act—Costs—Suit to recover amount paid.*—The plaintiff in a suit on an instrument not duly stamped was compelled to pay the amount of duty and penalty: the proper stamp on the instrument ought to have been paid by the defendant. In a suit with reference to s. 41 of the Stamp Act to recover the amount paid,—*Held* that the plaintiff could not have recovered the amount as costs of the former suit in which it was paid, and that a fresh suit to recover it was maintainable. ISHAR DAS *v.* MASUD KHAN I. L. R., 6 All., 70

107. ——— *Mortgage for securing payment of rent—Decree of Revenue Court for arrears of rent—Suit for sale of mortgaged property—Civil Procedure Code, s. 43.*—In 1874 the plaintiff leased certain immoveable property to the defendant, and the latter executed a deed by which he covenanted to pay the annual rent and fulfil other conditions of the lease, and gave security in R3,000 by mortgage of landed property. In 1874 the plaintiff obtained decrees in the Revenue Court for arrears of rent, and the decrees were partially satisfied and then became barred by limitation. In 1884 the plaintiff brought a suit to recover the balance due by enforcement of the mortgage security against the purchasers of the mortgaged property. *Held* that the plaintiff had two separate rights of action, one on the contract to pay rent and the other on the mortgage security; that he could only enforce the first by a suit in the Revenue Court for arrears of rent, and the second by suit in the Civil Court; and consequently there could be no bar to the latter suit by reason of the suit instituted in the Revenue Court, with reference to s. 43 of the Civil Procedure Code. CHUNI LAL *v.* BANASPAT SINGH [I. L. R., 9 All., 23

108. ——— *Suit under colour of suit for rent to try question of title—Civil Procedure Code, 1859, s. 7.*— Where a suit for possession would be met by a plea in bar, the plaintiff cannot be permitted to have the question of title tried under colour of a rent suit, such a proceeding being opposed to the principle laid down in Act VIII of 1859, s. 7. RAM TUNOO KOLOO *v.* SHARODA PERSHAD MULLICK. GOLAM MAHOMED SHAHA *v.* SHARODA PERSHAD MULLICK . 19 W. R., 91

See DAYAL CHAND SAHOY *v.* NABIN CHANDRA ADHIKARI . 8 B. L. R., 180 : 16 W. R., 235

109. ——— *Suit for abatement of rent—Subsequent suit for excess of rent paid.*—A plaintiff who has sued for and obtained a decree for an abatement of rent payable in respect of a patni held by him may afterwards sue for a refund of the rent paid by him before instituting the suit for abatement of rent, in excess of the amount justly payable, notwithstanding that he might, if he had chosen, have included this claim in his suit for abatement of rent. OKHOY KOOMAR CHUTTOPADHYA *v.* MAHATAP CHUNDER BAHADOOR [I. L. R., 5 Calc., 24

110. ——— *Civil Procedure Code, 1882, s. 43—Enhancement of rent, Suit for—Subsequent suit for rent.*—Under ss. 42 and 43 of the Civil Procedure Code, plaintiffs must bring their entire claim and every remedy enforceable in respect of that claim into Court at once, and, if they fail to do that in any suit, they cannot afterwards avail themselves of any remedy on which they have not chosen to insist in the first suit. Suits for enhanced rent, and suits for rent, are claims arising in respect of the same subject-matter, and a plaintiff cannot be allowed, after having unsuccessfully sued for rent at an enhanced rate, to sue for the original rent for previous years. KUNNOCK CHUNDER MOOKERJEE *v.* GURU DASS BISWAS [I. L. R., 9 Calc., 919 : 12 C. L. R., 599

111. ——— *Suit for enhancement of rent—Dismissal of enhancement suit—Rent suit at old rate for year for which rent had been sought at enhanced rate.*—The dismissal of a suit for rent at an enhanced rate is no bar to a subsequent suit for rent at the rate originally fixed. *Kunnock Chunder Mookerjee* v. *Guru Dass Biswas, I. L. R., 9 Calc., 919 : 12 C. L. R., 599,* overruled. SUDDURUDDIN AHMED *v.* BANI MADHUB ROY CHOWDHRY . . I. L. R., 15 Calc., 145

112. ——— *Civil Procedure Code, 1859, s. 7—Suit for arrears of rent.*—A suit for arrears of rent was not barred under Act VIII of 1859, s. 7, by the fact that the plaintiff had split his claim, *i.e.*, the jumma; but the circumstances that a part of the jumma had been omitted would be a bar to the plaintiff suing subsequently for such part. PURSUN GOPAL PAUL CHOWDHRY *v.* POORNANUND MULLICK . . . . . 21 W. R., 272

113. ——— *Suits for arrears of rent—Rent for separate years—Civil Procedure Code, 1859, s. 7.*—Under s. 7 of Act VIII of 1859, it was held that arrears of rent for successive years are several and distinct causes of action, in respect of which a plaintiff may institute separate suits. SUTTO CHURN GHOSAL *v.* OBHOY NUND DOSS [2 W. R., Act X, 31

RAM SOONDER SEIN *v.* KRISHNO CHUNDER GOOPTO . . . . . 17 W. R., 380

KRISTO KINKUR PORAMANICK *v.* RAMDHUN CHATTERJEE . . . . 24 W. R., 326

114. ——— *Suit for rent—Rent of separate successive years.*—At the close of the Bengali year 1283, which was on the 11th of April 1877, the defendant owed to the plaintiff, his landlord, the rents of his holding for the years 1281, 1282, and 1283. The plaintiff, in the month

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued*

of April 1878, before the close of the year 1284, instituted a suit for the rent for 1281 only, and obtained a decree. On the 10th of April 1879 he instituted another suit for recovery of the rents for the years 1282, 1283, and 1284. *Held* that the claim for the years 1282 and 1283 was barred under s 43 of the Code of Civil Procedure, 1877. The cases of *Sutto Churn Ghosal* v. *Obhoy Nund Doss*, 2 *W R*, *Act X*, 31, *Ram Soonder Sein* v. *Krishna Chunder Goopto*, 17 *W. R*, 350, and *Krishna Kinkur Poramanick* v. *Ramdhun Chatterjee*, 24 *W. R*, 326, are overruled by s. 43 of Act X of 1877 TARUCK CHUNDER MOOKERJEE *v.* PANCHU MOHINI DEBYA

[I. L. R., 6 Calc, 791: 8 C L R., 297

See BALAJI SITARAM NAIK *v* BHIKAJI SOYARE PRABHU . . I. L. R., 8 Bom, 164

115 ———— *Civil Procedure Code, 1882, s 43—Suit for arrears of rent—Application of the Civil Procedure Code to suits in Revenue Courts—Relinquishment of part of claim*— The plaintiff sued under the provisions of Act X of 1859 to recover arrears of rent for the years 1287, 1288, and 1289 (1880—1882), after having obtained a decree for the rent due for the year 1286 (1879) in a suit instituted after the rent for the year 1289 (188) had become due *Held* that the provisions of s 43 of the Civil Procedure Code applied, and that the second suit was consequently barred. *Madho* [illegible]

HAPATRO . I. L. R., 12 Calc, 50

116 ———— *Civil Procedure Code, 1882, s. 43 Cause of action Separate suits for rent due for successive years*—Petitioners filed two suits in a Small Cause Court on the same day to recover rent due for two successive years under the same lease The sum of the two claims exceeded the pecuniary limit of the Court's jurisdiction The suit for the rent of the first year was dismissed under s. 43 of the Code of Civil Procedure, on the ground that the claim ought to have been included in the suit for the second year's rent *Held* that, as the petitioners had no intention of abandoning either claim, the proper course was to allow them to withdraw both suits and file a fresh suit in a competent Court ALAGU *v* ABDOOLA

[I. L R, 8 Mad., 147

117. ———— *Suit waiving difference of exchange—Civil Procedure Code, 1859, s 7*—An auction purchaser of a zamindári being entitled to be paid his rents in Arcemabad rupees, and having sued for the same in Company's rupees (the former coinage being more valuable than the latter) his omission to sue for the difference of value was held to be an abandonment of claim under s 7, Act VIII of 1859, and to bar his recovery of it in a fresh suit. MAHOMED SOADUCK GOLESTAN *v* FORBES

[5 W. R., Act X, 90

118. ———— *Civil Procedure Code, 1859, ss 7 and 97—Omission of portion of* [illegible] with a view to bringing a fresh suit which should include a portion which had been omitted of the claim arising out of the cause of action, and such fresh suit was brought, the additional portion of the claim in that suit was not barred by s 7 of Act VIII of 1859 ILAHI BAKHSH *v* IMAM BAKHSH

[I. L. R., 1 All, 324

119. ———— *Civil Procedure Code, 1882, s 43—Act XII of 1881 (N W P Rent Act), s 140—Case struck off with liberty to plaintiff to bring a fresh suit—Omission to sue for part of claim in case struck off—Fresh suit for omitted claim not barred*—A recorded co-sharer of a mehal sued the lambardar for his share of the profits of the mehal for the year 1286 Fasli At the time of the institution of the suit the profits for 1287 and 1288 Fasli also were due, but no claim was then made in respect of them The suit was [illegible] against the same defendant for his share of the profits of the mehal for 1287 and 1288 Fasli *Held* that the suit was not barred by the provisions of s 43 of the Civil Procedure Code MULCHAND *v* BHIKARI DASS . I. L. R., 7 All, 624

120 ———— *Civil Procedure Code (Act XIV of 1882), s 43—Madras Rent Recovery Act (Mad Act VIII of 1865), s 18—Suit by a landlord in the Court of the District Munsif for arrears of rent for two years—Subsequent attachment for rent of a third year accrued due at date of suit*—A zamindar brought a suit in the District Munsif's Court to recover from a tenant on his estate the arrears of rent for two years Rent for the third year was also due No claim for it was included in the suit, but the landlord attached the land by summary process under the Rent Recovery Act to recover it The tenants sued in the Revenue Court under the Rent Recovery Act to have the attachment set aside as illegal *Held* that the zamindar was not precluded by Civil Procedure Code, s 43, from pursuing his remedies under the Rent Recovery Act, and that the attachment was not illegal ESWARA DOSS *v* VENKATAROYER

[I. L. R., 21 Mad, 238

121. ———— *Joint owners—Mortgage of joint property by two co-owners—Subsequent mortgage of part of same property to same mortgagee by one co owner—Suit by mortgagee on second mortgage and sale in execution—Purchase by mortgagee—Effect of such purchase on first mortgage—Subsequent suit by mortgagee on first mortgage*—By a mortgage deed, dated the 21st January 1878, *S* and *P*, two of three brothers constituting an undivided family, jointly mortgaged to the

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

plaintiff *B* a part of the family property On the 28th July 1878 *S* alone further mortgaged to the plaintiff for a fresh advance a portion of the property already mortgaged. Subsequently the three brothers effected a partition among themselves of all the undivided property, and the property jointly mortgaged by *S* and *V* fell, along with other property, to the share of *V* and the third brother *N*. In 1881 the plaintiff *B* sued *S* on the second of the above mortgages, *viz*, that of the 28th July 1878. He obtained a decree, and at a sale held in execution of that decree himself purchased the property comprised in that mortgage. In the meantime, on the 27th January 1882 and on the 6th December 1883, *V* and *N* respectively mortgaged with possession to the defendant *M* portions of the land comprised in the first mortgage of the 24th January 1878. In 1883 the plaintiff filed the present suit upon his first mortgage of the 24th January 1878, claiming to recover R316-14-0 from *S* and *V* personally. He also prayed that the defendant *M*, who had been in possession of the property in dispute, should be prevented from obstructing him in selling the property. *S* and *V* did not appear. The third defendant *M* alone appeared and contended (*inter alia*) that the plaintiff, having sued upon his second mortgage without including the earlier one, was now barred from suing on the latter by ss 13 and 43 of the Civil Procedure Code (XIV of 1882) He also contended that the plaintiff, having purchased part of the lands comprised in the mortgage now sued upon in execution of the decree obtained by him upon his second mortgage, could not now seek to burden the remaining lands included in the mortgage with the whole of the mortgage-debt, but that a proportionate part of that debt must be satisfied. *Held* that the plaintiff's suit was not barred by his previous suit on the second mortgage under the provisions of ss. 13 and 43 of the Civil Procedure Code. MORO RAGHUNATH *v.* BALAJI TRIMBAK . . . **I. L. R., 13 Bom., 45**

122. ——— *Civil Procedure Code (1882), s. 43—Transfer of Property Act (IV of 1882), s. 85—Rights inter se of two mortgagees of the same property from the same mortgagor.*—Two persons each held a mortgage over the same property from the same mortgagor. The mortgages were both executed on the same day. The mortgagees each instituted a suit for sale on the same day and obtained decrees, in execution of which they had the mortgaged property put up for sale, and each purchased it at the sale under his decree respectively. Neither mortgagee made the other a party to the suit on his mortgage. The representative (*S*) of one of the mortgagee decree holders got possession of the mortgaged property and held it as against the other mortgagee decree-holder or his representatives. Thereupon the representatives of the other mortgagee brought their suit for possession of a moiety of the property, or in the alternative for redemption of the other mortgage. *Held* that such suit was not barred either by the provisions of s. 43 of the Code of Civil Procedure, or by reason of those of s. 85 of the

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

Transfer of Property Act, 1882. BALMAKUND *v.* SANGARI . . . **I. L. R., 19 All., 379**

123. ——— *Civil Procedure Code, 1882, ss. 13 and 43—Act XII of 1879, s. 6—Act VIII of 1859, s. 7—Inclusion of whole claim in suit.*—The present suit was preceded by others in which the plaintiff sought to establish a right in the same part of the talukhdari estate that he now claimed to redeem from mortgage. The first suit in which he with another claimed as under-proprietors was dismissed in 1866 on the ground that they had not shown themselves to have held such right under the talukhdars within the period since 1841. Proceedings not to be regarded as judicial, subsequently taken under circular 4 of 1867, resulted in a finding that the dismissal was right upon the merits, the property having been transferred to the talukhdar by a conditional sale which had become absolute. Another suit was then brought to recover the talukhdari right, under the terms of circular 106 of 1869, it being alleged that arrears of revenue paid by the talukhdar had been paid on the plaintiff's account. That suit was also dismissed. *Held* that the present suit to redeem the same property under a mortgage was not barred. The claim to redeem did not arise out of the former cause of action within the meaning of the sections of Act VIII of 1859 relating to the inclusion of the whole claim in a suit. The plaintiff not then being aware of his right when he sued before, it could not be regarded as a "portion of his claim," and he was not precluded, by having omitted it, from bringing it forward. AMANAT BIBI *v.* IMDAD HUSAIN

I. L. R., 15 Calc., 800
L. R., 15 I. A., 106

124. ——— *Civil Procedure Code, 1882, s. 43—First suit to redeem—Second suit to eject—Causes of action not identical.*—*A* filed a suit against *B* to redeem the land in dispute, alleging that it had been mortgaged to *B*, and that the mortgage-debt had been more than paid off. He therefore prayed for an account and restoration of the land on payment of the sum that might be found due. The Court found that the alleged mortgage was not proved, and dismissed the suit. Thereupon *A* filed a suit in ejectment against *B*. *Held* that the ejectment suit was not barred under s. 43 of the Code of Civil Procedure (Act XIV of 1882). Failure in a redemption-suit does not bar a subsequent suit in ejectment, the causes of action in the two suits being essentially different. *Shridhar Vinayak v. Narayan, 11 Bom., 224,* followed. NARO BALVANT *v.* RAMCHANDRA TUKDEV **I. L. R., 13 Bom., 326**

125. ——— *Civil Procedure Code, s. 43—"Distinct cause of action"—Suit for possession after cancellation of Court-sale.*—In execution of a decree, the defendant, who was sued as the representative of her deceased brother, objected, under s. 244 of the Code of Civil Procedure, to the attachment of certain lands to which she set up independent title. The objection was disallowed and the land was sold. She then sued the execution-purchaser to set aside the Court-sale, and obtained a

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued*

decree against which no appeal was preferred She now sued for possession and it was found that at the date of the previous suit she was not aware that the execution-purchaser had obtained possession *Held* that the suit was not barred by the Civil Procedure Code, s 43. AMBU v KETLILAMMA

[I. L. R., 14 Mad., 23

126 ———————— *Civil Procedure Code, s 43— Omit to sue," Meaning of*—The plaintiff, having previously obtained against his brother *defendant 1*, who had been the managing member of their family, a decree for partition of the family property including certain debts scheduled in the plaint therein now sued to recover his share of certain other family debts collected by defendant 1, without the plaintiff's knowledge *Held* that the claim was not barred by the Civil Procedure Code, s 43 MARIATHODI v APPU

[I L R, 15 Mad, 296

127. ———————— *Civil Procedure*

tion of R30 provided that the term of the mortgage should be four years certain, that certain interest should be payable, that the mortgagee should have possession; that the profits should be appropriated first in lieu of yearly interest and any balance appropriated in payment of the principal debt and that the mortgagor should be entitled to redeem if the principal and interest were paid at the expiration of the four years The mortgagee never obtained possession, and in 1882 he brought a suit against the mortgagor to recover the unpaid interest then due and obtained a decree, which was satisfied by the sale of property belonging to the judgment debtor. In 188 he brought another suit for recovery of the principal, together with the residue of interest up to the date of suit *Held* that the cause of action in the suit of 1882 was the mortgagor's non delivery of possession of the mortgaged property by reason of which the mortgagee had been unable to realize his interest from the usufruct that the cause of action accrued to the mortgagee from the moment the instrument came into operation and possession was not delivered that the cause of action to recover the principal accrued at the same time and was the same cause of action that the plaintiff was therefore bound in the suit of 188 to sue for the principal, and that the present suit was consequently barred by s. 43 of the Civil Procedure Code HIKMATULLA KHAN v. IMAM ALI

I. L. R. 12 All., 203

128 ———— *Civil Procedure Code (1882) s 43—Suit for interest on a bond waiving right already accrued to sue for principal —Second suit for principal and interest subsequently accrued* —Certain Mahomedans hypothecated to the plaintiff, to secure repayment of a debt, their interest in lands, which had been enfranchised as a personal inam—a claim that the lands constituted the endowment of certain mosques having been

the 30th October of each year we shall pay in full the principal amount on the 6th October 1878 after clearing off the interest, and redeem this deed should we fail to pay the interest regularly according to the instalments we shall at once pay the principal together with the amount of interest" Default was made in the payment of interest in 1876, and in 1877 the plaintiff sued in a District Munsif's Court for the interest then due, expressly stating in the plaint that he agreed to accept payment of the principal and the subsequent years' interest at the times fixed in the deed, and he obtained a decree as prayed *The plaintiff in 1883 now sued the executants* of the above instrument and their heirs and representatives to recover the principal together with interest up to date *Held* that this suit was not barred by the Civil Procedure Code s 43, although the creditor's election not to seek a decree for the full amount in the suit of 1877 had not been communicated to the debtors before that suit BADI BICI SAHIBAL v SAMI PILLAI I L R, 18 Mad, 257

129 ———————— *Civil Procedure Code (1882), s 43—Covenant to pay interest on mortgage—Suit to recover arrears of interest Subsequent suit for principal and interest* —The breach of

(Act XIV of 1882, bar a subsequent suit to recover the principal and interest by sale of the mortgaged property YASHVANT NARAYAN KAMAT v VITHAL DIVAKAR PARULEKAR I. L. R., 21 Bom., 267

130 *Civil Procedure Code, s 43—Decree against three of four uralans of a devasom—Suit to declare the decree binding on the fourth* —The holder of a bond executed by two uralans of a Malabar devasom obtained a decree, declaring that the devasom property was liable for the secured debt, against the executants of the bond and one other uralan; the fourth uralan intervened in execution of the decree, and objected that the devasom property was not liable to be attached His objection was upheld, and the plaintiff then brought a suit against him for a declaration that the debt was binding on him and on the devasom property *Held* that the suit was not barred under the Civil Procedure Code, s. 43 RAMAN v SRIDHARAN

[I. L. R., 16 Mad., 440

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

131. ———— *Civil Procedure Code, s. 43.*—In 1889 the plaintiff sued the defendant for possession of a piece of land which the defendant had included in her homestead by building walls. In that suit the plaintiff alleged that on that land there were two palm-trees which belonged to him, and that the defendant had wrongfully prevented the pasis from going to those trees to tap them, but he asked in his plaint in that suit for the relief in respect of the trees, only stating that he would bring a separate suit for them. The Munsif dismissed that suit on the ground that the land was within the defendant's tenure, and his decision was affirmed on appeal. In a suit brought in 1890 against the same defendant for declaration of title to and possession of the two palm-trees and for an injunction restraining the defendant from disturbing his possession of them,—*Held* that the claim arose out of the same cause of action as that in the former suit, and that the suit was therefore barred by s. 43 of the Code of Civil Procedure. MAKSUD ALI *v.* NARGIS DYE . . **I. L. R., 20 Calc., 322**

132. ———— *Civil Procedure Code, s. 43—Joint property, Suits for exclusion from and partition of—Co-sharers.*—One co-sharer suing another for exclusion from joint property, and omitting to exclude in his claim a portion of the property of which he seeks possession, is not debarred by s. 43 of the Code of Civil Procedure from suing to have the joint estate partitioned, including the portion omitted from the former suit, the causes of action in the two suits being different. ABDUN NASIR *v.* RASULAN

[I. L. R., 20 Calc., 385

133. ———— *Civil Procedure Code (Act XIV of 1882), s. 43—Onus of proof.*—Where a plaintiff has sustained at the same time an injury in respect of his proprietary or permanent interest in an estate, and also an injury in respect of a temporary or leasehold interest in such estate, and files suits for redress in both causes of action, it cannot be said that the two causes of action are so identical that he is precluded by s. 43 of the Civil Procedure Code from filing separate suits. The onus is on the defendant to show that the causes of action are identical. UPENDRA LAL MUKERJEE *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 20 Calc., 716

134. ———— *Civil Procedure Code (1882), s. 43—Transfer of Property Act, s. 85—Ejectment suit by a mortgagor's vendee against the purchaser under a mortgage decree—Subsequent suit to redeem.*—Certain land mortgaged to *A* was sold to *B*. *A* brought a suit on his mortgage without joining *B* as a party, obtained a decree for sale, and became the purchaser under the decree. *B* then sued to eject him praying for a declaration that the sale was not binding on him. The suit having been dismissed, he now sued to redeem. *Held* that the suit was not barred under the Civil Procedure Code, s. 43, and the plaintiff was entitled to redeem. KUPPU NAYUDU *v.* VENKATAKRISHNA REDDI

[I. L. R., 20 Mad., 82

135. ———— *Civil Procedure Code (1882), s. 43—Suit for money by mortgagee against sons of a deceased judgment-debtor—Former suit on mortgage against father.*—A personal decree on a mortgage was passed against a Hindu (the mortgagor) and his two sons on the 19th October 1877. The decree provided for payment of the secured debt in various instalments by May 1895. The mortgagor died in 1883, having discharged part of the debt. The decree-holder having attached certain family property in execution, the mortgagor's two younger sons, who had not been born at the date of the above decree, objected that their shares were not liable to attachment. This objection prevailed, the Court expressing the opinion that the matter in controversy should be determined in a regular suit. The other defendants in the suit of 1877 had both died in the interval, one of them leaving infant sons. The decree-holder (in whose sole name the mortgage stood) now sued the sons of the mortgagor and their infant nephews for the payment out of the family property of all the unpaid instalments. *Held* that the plaintiff was not precluded from maintaining the suit against the sons of the mortgagor by the Civil Procedure Code, s. 43. RAMAYYA *v.* VENKATARATNAM . . . **I. L. R., 17 Mad., 122**

136. ———— *Civil Procedure Code (1882), s. 43—Suit for specific performance of a contract of sale and to execute a sale-deed—Sale-deed subsequently executed by the Court under s. 262 of the Civil Procedure Code—Suit on sale-deed to recover possession.*—The plaintiff, claiming specific performance of a contract of sale, sued the defendant to compel him to execute a deed of sale, alleging that he had paid the purchase-money to the defendant and had obtained possession, but was subsequently dispossessed. The plaintiff had claimed the value of standing crops or damages for the same. The Court found that the plaintiff had paid the purchase-money, but had not got possession, and ordered defendant to execute a deed of sale. On failure of the defendant to do so, the Court executed a deed of sale in plaintiff's favour under s. 262 of the Civil Procedure Code (Act XIV of 1882). The plaintiff thereupon brought the present suit to recover possession on the strength of the deed of sale. Defendant pleaded that this second suit was barred under s. 43 of the Civil Procedure Code. *Held* that s. 43 was not applicable and did not bar the present suit, because the alleged cause of action was not the breach of the contract, but a new and distinct one arising from the deed of sale which the defendant had contracted to pass. NATHU PANDU *v.* BUDHU BHIKA **I. L. R., 18 Bom., 537**

137. ———— *Civil Procedure Code (1882), s. 43—Decree for specific performance of a contract for sale of land—Subsequent suit for possession.*—The defendant having agreed to sell land to the plaintiff, but failed to

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*concluded*

execute a conveyance the plaintiff sued for specific performance and obtained a decree and the Court executed a conveyance of the land to him He now sued for possession. *Held* that the right to possession having arisen at the same time of the right to the execution of a conveyance the suit was not maintainable *Nathu Pandu* v *Budhu Bhika I L R 18 Bom 537* distinguished NARAYANA KAVIRAYAN v KANDASAMI GOUNDAN [I L. R., 23 Mad., 24

138 ——————— *Civil Procedure Code (1882), s 43—Application for leave to sue in formâ pauperis—Application rejected—Subsequent suit for same relief*—S 43 of the Code of Civil Procedure would not apply so as to bar a subsequent suit where the so called previous suit was not a regular suit but an application for leave to sue *in formâ pauperis* which was rejected NARAIN SINGH v JASWANT SINGH I. L. R., 21 All, 359

139 ——————— *Civil Procedure Code (1882), s 43—Whole claim in respect of cause of action—Mortgage—Redemption Mortgage sued on not proved—Admission by defendants of mortgage right—Subsequent suit on admissions*—In a previous suit plaintiff had sued to redeem a kanom of 1859 The kanom not being established the suit failed At the time of bringing the suit plaintiff was aware that the defendants in possession had in various documents admitted that they were [illegible]

PILLAI I L R, 22 Mad., 259

REMAND

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.
[I. L. R, 18 Mad., 94
I. L. R., 24 Calc., 98
I. L. R., 23 Mad., 447

REMAND—*continued*

See APPELLATE COURT—INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT I. L. R, 1 All., 545
[I. L. R., 11 All., 35

See CIVIL PROCEDURE CODE 1882 s 158 (1859 s 148) 3 B L. R., Ap, 91
[13 W R., 464

See CIVIL PROCEDURE CODE 1882 s. 544.
[I L R., 11 All., 35

See ISSUES—DECISION ON ISSUES
[10 Moore's I. A, 476

See ISSUES—OMISSION TO SETTLE ISSUES
[11 Moore's I. A, 25
2 B L. R., P C, 72
12 Moore's I. A, 495
24 W R., 275

See LANDLORD AND TENANT—PAYMENT OF RENT NON PAYMENT
[I L. R., 18 Bom., 250

See PARTIES—ADDING PARTIES TO SUITS—GENERALLY I. L. R., 16 All., 332

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT
[I L. R, 23 Calc., 179
I L. R., 24 Calc, 98

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—REMAND

See STAMP DUTY REFUND OF
[B L R., Sup Vol., 511
11 B L. R., 372 note

——— entailing delay and expense

See DECLARATORY DECREE SUIT FOR—REQUISITES FOR EXISTENCE OF RIGHT
[I. L. R., 4 Calc, 190

——— Findings on—

See JUDGMENT—CIVIL CASES
[I. L. R., 19 Bom., 551
I L R., 20 Mad, 496
I. L. R., 22 Mad., 344

——— Order of—

See APPEAL—ORDERS
[W R., 1864, 363
W R., 1864 Mis., 30
6 W R., 61
Marsh, 469, 600
7 W. R., 331, 425
I. L. R., 12 Calc., 45
1 W R., 405
I. L R, 3 All, 18
I. L. R., 7 Bom., 293
I. L. R, 10 Calc, 523
I. L. R., 16 All., 375
I L. R., 19 Mad., 107, 391
I. L. R., 23 All., 405
I. L. R., 22 Mad., 172

REMAND—*continued.*

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

[I. L. R., 1 All., 726
I. L. R., 17 All., 112
L. R., 22 I. A., 1

See LETTERS PATENT, HIGH COURT, CL. 15.

[I. L. R., 19 Mad., 422
I. L. R., 20 Mad., 152

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R., 24 Calc., 774
I. L. R., 21 All., 291

— ——— **to take fresh evidence.**

See PRIVY COUNCIL, PRACTICE OF—REMISSION OF CASE TO INDIA.

[I. L. R., 3 Calc., 645

1. POWER OF REMAND.

1. ———— **Appellate Court, Power of—** *Power of Court of special appeal—Irregular order—Civil Procedure Code, 1859, ss. 351, 354, and 355.*—A Court of special appeal has indirectly the same powers as are vested in a Court of regular appeal by ss. 351, 354, and 355, Act VIII of 1859, in respect to a wrong order passed by a lower Appellate Court. WUZEER ALI *v.* KALEE COOMAR CHUCKERBUTTY . . . . 11 W. R., 228

Contra, s. 354 relating to trial of additional issues is only applicable to regular appeals. KEBUL KISHEN MOZOOMDAR *v.* AMBALA . 7 W. R., 326

KALI KRISTO TAGORE *v.* JUDOO LAL MULLICK [24 W. R., 20

2. ———— *Special appeal—Act VIII of 1859, ss. 351, 354, and 355.*—In a suit on a bond executed under a mukhtarnamah, which was not produced, the Court of first instance admitted secondary evidence of it, and decreed the suit. In special appeal, the High Court was of opinion that the secondary evidence had been improperly admitted, and therefore the decree in the plaintiff's favour could not stand. Upon this it was contended that the suit should be dismissed, as the Court hearing a case in special appeal had no power, under such circumstances, either to remand the case or to call for additional evidence. *Held* that, although the powers conferred by ss. 351, 354, and 455 of Act VIII of 1859 on the Court of regular appeal are not directly given to the Court of special appeal, yet the Court, when it found the order of a lower Appellate Court was wrong, could point out the error and direct the lower Appellate Court to make such order as would rectify the error. AZUR ALI *v.* KALI KUMAR CHUCKERBUTTY . 2 B. L. R., A. C., 315

3. ———— *Remand order—Civil Procedure Code (Act X of 1877), s. 562.*—An Appellate Court has no power to remand a case except under the provisions of s. 562 of the Code of Civil Procedure. MUDUN MOHUN PODDAR *v.* BHAGGOMANTO PODDAR . I. L. R., 8 Calc., 923

REMAND—*continued.*

1. POWER OF REMAND—*continued.*

4. ———— *Local investigation.*—An Appellate Court is not competent to remand a case for re-trial after a local investigation. JEEBUN KISHEN ROY *v.* DWARKANATH ROY CHOWDHRY . . . . W. R., 1864, 363

5. ———— *Powers of Courts of first and second appeal—Civil Procedure Code, 1882, ss. 574, 578.*—Observations by MAHMOOD, J., upon the distinction between the duties of the Courts of first appeal and those of the Courts of second appeal in connection with the provisions of ss. 574 and 578 of the Civil Procedure Code, and with the remand of cases for trial *de novo. Ram Narain v. Bhawanidin, I. L. R., 9 All., 29 note,* and *Sheoamber Singh v. Lallu Singh, I. L. R., 5 All., 14,* referred to. SOHAWAN *v.* BABU NAND

[I. L. R., 9 All., 26

6. ———— *Civil Procedure Code, ss. 562, 564—"Suit."*—S. 562 of the Civil Procedure Code authorizes a remand only where the entire suit, and not merely a portion of it, has been disposed of by the Court below upon a preliminary point. BANWARI LAL *v.* SAMMAN LAL

[I. L. R., 11 All., 488

7. ———— *Decision of lower Court not confined to preliminary point—Civil Procedure Code, s. 562.*—Where the Deputy Commissioner of Naini Tal decided that a suit was barred by limitation, but at the same time also came to a definite decision on each of the other issues, and the Commissioner in appeal, setting aside the finding as to limitation, remanded the case under s. 562 of the Code of Civil Procedure,—*Held* further that the suit between the parties not having been confined by the Deputy Commissioner to the preliminary point, it was not, under ss. 562, 564 of the Code of Civil Procedure, open to the Commissioner to make an order under s. 562. HAFIZ ABDUL RAHIM *v.* KHAN HARI RAJ SINGH

[I. L. R., 22 All., 405

8. ———— *Civil Procedure Code, ss. 562, 564—Illegality of remand in contravention of s. 564—Construction of statutes—Distinction between affirmative commands and negative prohibitions—Irregularities and illegalities.*—Where a Court of first instance decided a suit, not upon a preliminary point so as to exclude any evidence of facts, but upon the merits, and upon all the evidence tendered and issues framed,—*Held* by the Full Bench that, with reference to ss. 562, 564 of the Civil Procedure Code, the lower Appellate Court had no jurisdiction to remand the case under the former section, and that both the remand order and all proceedings subsequent thereto were *ultra vires* and illegal. As a principle of the interpretation of statutes, a distinction must be drawn between cases in which a Court or an official omits to do something which a statute enacts shall be done, and cases in which a Court or an official does something which a statute enacts shall not be done. In the former case, the omission may not amount to more than an irregularity in procedure. In the

REMAND—*continued.*

1. POWER OF REMAND—*continued*

latter, the doing of the prohibited thing is *ultra vires* and illegal, and therefore without jurisdiction RAMESHUR SINGH *v.* SHEODIN SINGH [I. L. R., 12 All., 510

9. ———— *Civil Procedure Code, s 562—Civil Procedure Code Amendment Act (VII of 1888), s 49—"Preliminary point"*—It is [illegible]

ing any opinion on the other issues RAMACHANDRA JOISHI *v* HAJI KASSIM. I. L. R., 16 Mad., 207

10. ———— *Civil Procedure Code, 1882, ss 562, 568, 569*—The defendant in a suit on a mortgage applied, on the day fixed for the hearing, for an adjournment on the ground of illness Her application was refused and the Court heard the case *ex-parte* and passed a decree for the plaintiff The defendant appealed to the District Judge, who reversed the decree and remanded the case, on the ground that the defendant's application for an ad- [illegible]

s 562 but ought to have proceeded under ss 568, 569. PARVATISHANKAR DURGASHANKAR *v* BAI NAVAL [I. L. R., 17 Bom., 733

11. ———— *Civil Procedure Code, Chs XLI, XLII, ss 540 587*—The sections in Chs XLI and XLII, Civil Procedure Code, relating to the hearing of appeals, provide the only [illegible]

12. ———— *Civil Procedure Code (1882), ss 562, 566, and 582—Order made on appeal to amend plaint*—On appeal from the decision of a District Munsif in favour of the plaintiffs [illegible]

had not "disposed of the suit upon a preliminary point" and that it was likewise bad under s 582, since there had been no dispute as to the boundaries of [illegible] informa- [illegible] have [illegible] s. 566 [illegible], 187

13. ———— *Civil Procedure Code (Act XIV of 1882), ss. 562, 566*—In a suit for recovery of mesne profits subsequent to the date of suit brought by plaintiff for recovery of possession, the Munsif found that defendant was not in possession, and the Subordinate Judge on appeal reversed the decision and remanded the case under s. 562, Civil Procedure Code, for the determination of the question of the amount of mesne profits. *Held* that s 562 was not applicable, and that the remand ought to have been made under s 566 LALLA CHUNILAL *v* MOHIJI SINGH 1 C. W. N., 340

14. ———— *Suit tried out by Court of first instance—Civil Procedure Code 1882, ss 562, 566*—When a Court of first instance has tried out a suit, the Appellate Court has no jurisdiction to make an order of remand under s. 562, Civil Procedure Code, but if a new issue has to be tried it should proceed under s 566, Civil Procedure Code RAM DAS MONDAL *v* INDROMONI DASI [3 C. W. N., 325

15. ———— *Civil Procedure Code (1882), s 562—Court to which remand must be made*—When a suit is not disposed of on a preliminary point it is not competent to a Court of appeal under s 562 of the Code of Civil Procedure (Act XIV of 1882) to remand the case for a fresh trial The section moreover, contemplates a remand back to the Court which first disposed of the suit, and to no other Court. BAI SHRI MAJIRAJBA *v* MAGANLAL BHAISHANKAR I. L. R., 19 Bom., 303

16 ———— *Remand of case not tried on preliminary issue—Civil Procedure Code (1882), ss 562 and 578—Irregularity affecting the merits*—Where a District Court reversed the District Munsif's decree and remanded the case [illegible] *Held* that this [illegible] *Held* further [illegible] affected the [illegible] dure Code, was inapplicable. MALLIKARJUNA *v* PATHANENI [I. L. R., 19 Mad., 479

17. ———— *Civil Procedure Code (1882), s 562—Dismissal of suit for want of cause of action*—Where a District Munsif, without entering into the merits of the case, dismissed a suit on the ground that the plaintiffs had no cause of action, and on appeal the Appellate Court reversed his decree and remanded the case, *Held* that the suit had been disposed of upon a preliminary point within the meaning of s 562, Civil Procedure Code, and that the remand was right KANAKAMMAL *v* RANGACHARIAR . I. L. R., 20 Mad., 25

18 ———— *Civil Procedure Code (1882), ss. 562 564 and 566—Refusal of Court of first instance to record evidence tendered—Refusal of Appellate Court to record additional evidence*—The plaintiffs in the Court of first instance produced both documentary and oral evidence in support of their claim. The Court, being satisfied with the documentary evidence produced by the [illegible] appealed, [illegible] decree of [illegible] declined to [illegible] see fresh [illegible] tiffs to the

REMAND—*continued.*

1. POWER OF REMAND—*continued.*

High Court, it was held that, though there was no section of the Code of Civil Procedure strictly applicable to the circumstances of the case, the Court was, notwithstanding s. 554 of the Code, warranted *ex debito justitiæ* in setting aside all proceedings of both Courts below and in directing the Court of first instance to re-try the case, admitting all admissible evidence which had previously been tendered to the Court of first instance and which that Court had refused to record. DURGA DIHAL DAS *v.* ANORAJI [I. L. R., 17 All., 29

19. ———— *Civil Procedure Code (1882), s. 566 Issue not disposed of by the lower Appellate Court—Procedure.*—In a suit for money due under a bond, the plaintiff tendered three witnesses in the Court of first instance to prove execution of the bond. That Court, having examined one of such witnesses, declined to examine the others, being satisfied on his evidence of the genuineness of the bond, and passed a decree in favour of the plaintiff. On appeal by the defendant the lower Appellate Court disposed of the sole issue in the appeal, *viz.*, execution or non-execution, in the following words: "I do not think the claim made out by the plaintiff on his own evidence." *Held* that, under the circumstances above described, it was competent to the High Court in second appeal to act under s. 566 of the Code of Civil Procedure and refer an issue as to the execution or non-execution of the bond in suit to the lower Appellate Court, that issue having practically not been tried at all by the said Court. *Kanhai Lal* v. *Mancrath Ram, Weekly Notes, All. (1894), 19; Madho Singh* v. *Kashi Singh, I. L. R., 11 All., 342*; and *Durga Dihal Das* v. *Anoraji, I. L. R., 17 All., 29,* referred to. GANGA PRASAD *v.* LAL BAHADUR SINGH . . . I. L. R., 17 All., 117

20. ———— *Civil Procedure Code (1882), ss. 562, 564—Ex-parte decision in Court of first instance after hearing plaintiffs' evidence—Order by Appellate Court reversing decree and remanding suit for decision after hearing further evidence—Validity of such an order.*—One of three defendants failed to appear at the final hearing of a case at the Court of a District Munsif, and the other two, though they appeared, adduced no evidence. The District Munsif, after hearing witnesses for the plaintiffs, passed a decree in their favour as prayed. The absent defendant applied unsuccessfully, under s. 108 of the Code of Civil Procedure, that the decree might be set aside, and then appealed to the Subordinate Judge, who reversed the decree and remanded the suit for decision after taking such further evidence as the said defendants or other parties might produce. On its being contended that, under ss. 562 and 564 of the Code of Civil Procedure, the Subordinate Judge had no power to remand the suit for re-trial,—*Held* that, notwithstanding ss. 562 and 564, an Appellate Court has inherent power, in such a case, not only to reverse a decree passed on evidence given by the plaintiff only, the defendant being *ex-parte,* but also to direct a re-trial of the case. PERUMBRA NAYAR *v.* SUBRAHMANIAN PATTAR . . I. L. R., 23 Mad., 445

REMAND—*continued.*

1. POWER OF REMAND—*concluded.*

21. ———— *Order reversing decree of lower Court on account of exclusion of evidence.*—A trial took place in the Court of the District Munsif who heard evidence, decided issues, and passed a decree. On appeal, the Subordinate Judge reversed the decree and remanded the suit for re-trial, on the ground that certain documentary evidence which had been tendered by a defendant had been excluded, and plaintiff's witnesses who had been cited in the list had not been examined. *Held* that s. 562 was not applicable to such a case: that the proper course for the Subordinate Judge to take was to act either under s. 568 or 569 by himself taking the evidence which he considered had been wrongly excluded, or to direct the Munsif to take it. *Perumbra Nayar* v. *Subrahmanian Pattar, I. L. R., 23 Mad., 445,* distinguished. SESHAN PATTAR *v.* SESHAN PATTAR [I. L. R., 23 Mad., 447

2. GROUNDS FOR REMAND.

22. ———— Error in law—*Civil Procedure Code, 1859, s. 372.*—To justify a remand, it must be shown that the lower Court has committed some error in law, or that the case comes in some other way within the terms of s. 372, Civil Procedure Code. HURISH CHUNDER SHAHA *v.* HURISH CHUNDER PAUL . . . . . . 25 W. R., 325

23. ———— *Erroneous decision of first Court—Civil Procedure Code, 1859, s. 354.*—Where a Subordinate Judge's decision in appeal was not a right decision (his orders having been impossible of execution), the District Judge was held to have been empowered, under Act VIII of 1859, s. 354, to send the case back, after fixing an issue, for a finding. UMER ALI *v.* RUMZAN ALI [23 W. R., 347

24. ———— Decision given when Court was closed.—The fact that the decision of the Court of first instance was passed on a day when the Court was closed does not necessitate the lower Appellate Court remanding the case. WARRISH ALLY *v.* LALLA RAM SHAHAYE . . 1 Hay, 197

25. ———— Undervaluation of suit—*Pre-emption suit.*—Where a pre-emption suit was valued at R31, though the consideration was R2,000, the High Court, in special appeal, refused to remand the case to enable plaintiff to make up the deficient stamp duty. MEWA LALL *v.* BEHAREE LALL [14 W. R., 195

26. ———— Addition of parties—*Rejection of application to make intervenor a party—Act X of 1859, s. 77.*—Where a Deputy Collector rejects an application by a third party to intervene under s. 77, Act X of 1859, a Judge has no jurisdiction on that party's appeal to remand the case to the Deputy Collector for re-trial, with directions to make the intervenor a party. KHONDKAR KEFAETOOLLAH *v.* MAHOMED KABEL . . . 9 W. R., 345

27. ———— *Question as to validity of alienation—Improper remand by Appellate Court.*—*M*, a Hindu widow, executed a deed of

REMAND—*continued.*

2 GROUNDS FOR REMAND—*continued.*

usufructuary mortgage in J's favour, the property hypothecated being the separate property of her husband in which she only had a life-interest On the latter applying for mutation of names, B objected that he was in proprietary possession under a deed of gift executed by M, and the objection was allowed In virtue of a clause in the deed of mortgage that, in case any demand was made in respect of the property within the mortgage term, the mortgagee was entitled to sue for the mortgage-money notwithstanding the term had not expired, J sued to recover the money by the sale of the hypothecated property B, in addition to an objection to the validity of the mortgage based on the deed of gift, pleaded that it was invalid under Hindu law as against him, the next reversioner to the property, there being no legal necessity for the alienation The lower Appellate Court held that the mortgage was valid as against the deed of gift but invalid as against the next reversioner Finding that B was not the next reversioner, it remanded the case to the Court of first instance, with instructions to make certain persons who had

[illegible]

had rejected, defendants in the suit, as also any other persons who might claim to be near heirs, and to determine as between them who was the next reversioner and to further determine whether such next reversioner had relinquished his rights in favour of B, and whether the validity of the mortgage could be questioned on the ground that M, having only a limited interest, had alienated for an indefinite period It was held that the suit was improperly remanded, and the Court decreed J's claim in respect of the property BULAKI SINGH *v* JAI KISHEN DAS

[7 N. W., 203

28 ———————— *Order of remand —Civil Procedure Code (XIV of 1882), ss 562, 564, and 566—Addition of necessary parties not a ground for remand on a first appeal* - Where a

[illegible]

on the merits on which the order of remand was not based, was not before the High Court on appeal; and, further, that the order of remand was unsustainable under ss 562 and 564 of the Civil Procedure Code (Act XIV of 1882) which are strictly binding on all Courts of first appeal The proper

[illegible]

GANESH BHIKAJI JUVEKAR *v* BHIKAJI KRISNA JUVEKAR . . . I. L. R., 10 Bom., 398

REMAND—*continued*

2. GROUNDS FOR REMAND—*continued.*

29 ———— Examination of witness—*Application to have witness examined—Omission to make order*—Where in the first Court the defendant applied for a witness to be examined but no

[illegible]

apply to it BONOMALEE CHURN MITTER *v* HAFIZUDDEEN 13 B. L. R, 247 note: 12 W. R., 317

30 ———— ——— *Refusal to summon witnesses*—If a defendant's case is not closed, he has a right to have his witnesses summoned and to get an opportunity of producing them if he can do so in time Where such right was refused to a defendant by the first Court, and his objection on that score was not noticed by the lower Appellate Court the High Court, on special appeal remanded the case for a fresh hearing BROJO NATH MOOKHOPADHYA *v* PROTAB CHUNDER THAKOOR 22 W. R., 206

31 ——————— — *Insufficient examination of witness—Bad legal advice* — Where the oral evidence taken fell short of the requirements of the Evidence Act, s 63, only because the witnesses were not properly questioned the High Court on special appeal, held it to be unjust to let the plaintiff suffer on account of the inefficiency of his legal adviser, and so remanded the case for re trial LOCHUN SINGH *v* HET NARAIN SINGH

[24 W R. 232

32 ———— Local inquiry, Order for—*Civil Procedure Code, 1859, ss 351 354 Further evidence*—A Judge on appeal in a suit to open roads leading to a kotee, expressing an opinion that the facts had not been sufficiently ascertained, directed a further local inquiry to be made, and remanded the case to the lower Court to be again decided there after such local inquiry *Held* that he had no authority upon such a ground to remand the case for

[illegible]

33 ———— Necessity of further evidence—*Civil Procedure Code, 1859, ss 351, 352—Cases heard together—Quare*—Whether under ss. 351 and 352, Act VIII of 1859, when several cases are tried together, remand can be allowed for a

[illegible]

34 ——— - Defect in pleadings—*Jurisdiction*—When it did not appear on the face of the pleadings, or on the evidence, under what kind of basta the land in dispute fell, and no plea to the jurisdiction of the Court under Act X of 1859 had been

REMAND—*continued.*

2. GROUNDS FOR REMAND—*continued.*

taken in the Courts below, the High Court would not remand the case to inquire under which class of bastu land the subject-matter of the suit fell, nor entertain the point of jurisdiction on appeal. NAIMUDDA JOWWARDAR *v.* MONCRIEFF

[3 B. L. R., A. C., 283

S. C. NYMOODDEE JOARDAR *v.* MONCRIEFF

[12 W. R., 140

35. ———— Defect in plaint—*Civil Procedure Code, 1859, s. 354.*—Where there is a defect in the allegations in a plaint and the subject-matter of the absent allegation has not been tried in the Court below, the proper course is for the Judge to frame an issue, and refer it to the lower Court for trial under Act VIII of 1859, s. 354. KASSEENAUTH MOOR *v.* REEJOONISSA Marsh., 198: 1 Hay, 467

36. ———— Omission to settle issues—*Remand for re-trial.*—Where no issues have been settled in a suit, the High Court will remand the case for re-trial. JOGESHUR RAE *v.* DOOLUN RAE

[2 N. W., 183

37. ———— Omission to raise material issue—*Suit for arrears of rent—Parties.*—A case was remanded for re-trial on its merits because it was found, on special appeal, that material error had been committed in consequence of the omission on the part of the lower Appellate Court to frame issues between the parties, *e.g.*, the suit being for arrears of rent, the issue *inter aliâ* whether the plaintiffs, who were shareholders with others, were entitled to claim the fraction of the rent for which they sued. SHEO SAHOY SINGH *v.* BECHUN SINGH

[22 W. R., 31

38. ———— *Improper demand by Appellate Court—Raising fresh issues.*—*A* sued to eject a raiyat on the ground of his holding over after the term of his pottah had expired. The raiyat denied that he had ever held under a pottah from *A*, and alleged that the jote belonged to *B*. Plaintiff's allegations were found to be false, and his suit was dismissed. The lower Appellate Court directed *B* to be made a defendant, and remanded the suit to have the question of ownership tried between *A* and *B*, at the same time agreeing with the Court of first instance that the allegations in the plaint were false. *Held* that the lower Appellate Court should have dismissed the case, and was wrong in so remanding it. *Per* CUNNINGHAM, *J.*—The right of framing new issues arises where the issues framed are insufficient to dispose of the matters raised in the plaint. *Ram Dhun Khan* v. *Haradhun Puramanik, 9 B. L. R., 107 note: 12 W. R., 404,* cited and distinguished. BHOOBUN DASS MUNDUL *v.* BILASHMONEY DASSEE

[1 C. L. R., 415

39. ———— Remand on point raised on issue in lower Court.—A case ought not, as a rule, to be remanded upon a point which has been framed as an issue by the Court below, and brought to the attention of the parties, and where they failed at the trial to give any evidence upon it. RAM PROSAD *v.* ABDUL KARIM . I. L. R., 9 All., 513

REMAND—*continued.*

2. GROUNDS FOR REMAND—*continued.*

40. ———— Raising fresh issues—*Appellate Court—Reference of issues for trial.*—An Appellate Court cannot remand a case for trial with instructions to frame new issues It may refer any issues for trial by the lower Court, whose finding and evidence are to be returned to the Appellate Court for a final decision. CHUNDERNATH SURMA *v.* ROMANATH SURMA . . . . . 1 W. R., 69

41. ———— *Appellate Court—Defective or insufficient issues.*—Where no preliminary point has been wrongly decided by the Court of first instance, and no evidence has been excluded, and the Appellate Court considers the issues nevertheless to have been defective or insufficient, it is the duty of the latter not to remand the case, but to re-settle the issues and to determine the case itself. FUTTEHOOLLAH *v.* OOMDANISSA BIBEE

[14 W. R., 69

42. ———— *Civil Procedure Code (1882), ss. 562 and 566—Illegal order of remand—Duty of Appellate Court when fresh parties or addition or amendment of issues is necessary.*—In a suit by mortgagees to redeem a prior mortgage, issues were framed and tried and disposed of in favour of the plaintiffs as to the questions whether the plaintiff's mortgage was valid, whether the mortgage sought to be redeemed had been discharged, and whether the suit was barred by limitation. The Court of first appeal was of opinion that these questions had not been properly considered; and set aside the decree for the plaintiffs, and directed that a fresh trial be held, certain fresh parties being brought on the record. *Held* (1) that the order of remand was illegal, there being no proper ground for it under ss. 562 and 566 of the Code of Civil Procedure; (2) that the lower Appellate Court should have joined the persons necessary for the suit, and should have so altered or added to the issues as to raise all questions properly arising, and should have referred them for trial to the Court of first instance. KELU MULACHERI NAYAR *v.* CHENDU I. L. R., 19 Mad., 157

43. ———— *Trial on erroneous issues—Appellate Court.*—Where the Munsif, acting erroneously, forced the plaintiffs to amend their plaint and, in consequence of that amendment, the Munsif also amended the issues and tried the suit on an entirely erroneous issue, the Judge of the lower Appellate Court, as a Court of equity, should, of his own motion, have sent the case back to the Munsif, directing him to try it on its merits, and pointing out that he had taken a wrong view of the law. GURU PRASHAD ROY *v.* RAS MOHUN MUKHOPADHYA

[1 C. L. R., 431

44. ———— *Wrong issue framed by lower Court—Finding in judgment on the point raised by correct issue.*—Where the lower Appellate Court framed a wrong issue for decision, but it appeared from its judgment that there was a finding on the point which would have been raised if he correct issue had been framed, the High Court in econd appeal refused to remand the case for a new

REMAND—*continued*

2 GROUNDS FOR REMAND—*continued.*

finding on that issue VISHNU RAMCHANDRA *v* GANESH APPAJI CHAUDHARI [I. L. R., 21 Bom., 325

45. —————— *Illegal remand — Civil Procedure Code, 1859, s. 354* —In a suit for a declarati n of plaintiff's ti le to and possessi n of a

daughter's sons of *R* A, remanded the case for a finding on that issue *Held*, with reference to s 354, Act VIII of 1859, that the order of remand was illegal HUROSOONDUREE DEBIA *v* UNNO POORNA DEBIA 11 W. R., 550

46. ——— *Civil Procedure Code (1882), s 566* —The karnavan of a tarwad in Malabar sued to recover property acquired by his sister (deceased) and now in the occupation of the defendants, her children The parties were Mapillas The defendants pleaded (1) that the property had been given to them and their mother jointly, (2) that their mother was not governed by Marumakkatayam

without deciding the second point, remanded the case for the trial of a general issue as to the mode of devolution of self acquired property in Marumakkatayam Mapilla families in North Malabar, and ultimately it dismissed the suit on that issue *Held* that the order of remand was not one which should have been made under the Civil Procedure Code, s. 566 and the proceedings taken under it were irregular ILLIKA PAKRAMAR *v* KUTTI KUNHAMED [I. L. R., 17 Mad., 69

47 Dismissal of case on point not arising—*Suit under s 230, Civil Procedure Code, 1859* Where a lower Appellate Court found that a suit falling substantially under s 230 Act

decision under that section SAHIB KHAN *v*. RAM LUCKHEE CHOWDHRAIN . 10 W. R., 438

48 ——— Remand for further evidence—*Civil Procedure Code, 1859, ss 332 351* —

it is not competent to remand a case for a second decision upon any of the issues, such a course being forbidden by s 352, Act VIII of 1859 *Held* by MARKBY, *J* (dissenting), that a lower Appellate Court has power, under s. 354 to send back a case for trial upon an issue not satisfactorily tried by the Court of first instance. UMBIKA CHURN MUNDUL *v*. RAMDHUN MOHURRIR 11 W R., 35

49 ——— Remand for re trial on particular issue — *Improper remand — Civil Procedure Code, 1877, ss 562 566, 567 — Decision by lower Court on the merits* —A decree in a suit having been passed on the merits by the Court of first instance the Court of appeal, being of opinion that an issue not tried by the former Court ought to have been tried, reversed the decree, and under s 562 of the Civil Procedure Code remanded the case for trial upon that issue. *Held* that the order revers-

50 ——— Obscurity in judgment—*Affirming judgment of lower Court* Where an Appellate Court has considered a case and come to the same conclusion as the Court of first instance, occasional obscurity in the judgment of the former does not constitute a proper ground for a remand BROJO NATH SEN *v* SOORJA KANT SEN [25 W. R., 376

51. —— Omission to try ground of appeal taken—*Review of judgment* Where a ground of appeal stated in the written memorandum is not alluded to when the appeal comes on for hearing, the Court is not at fault if no decision is passed upon it If having had his attention called to it a Judge fails to decide such point, the proper course for the parties aggrieved is to ask him to review his judgment In neither case is the omission ground for remand on appeal. YUSOOF ALI CHOWDHRY *v* FYZOONISSA KHATOON CHOWDHRAIN 15 W. R., 206

52. — — Omission to decide point raised—*Issue, though trifling, left undecided*—Where the lower Courts have come to no decision on a point raised, the plaintiff in special appeal has a right to a remand for the point to be tried even though very trifling MULLICK AMANUT ALI *v* UKLOO PASEE . . 25 W R, 140

53. ——— Improper reception of evidence by lower Court—*Ground for decision, Consideration of.*—On second appeal, the High Court has generally speaking, no right to look at the evidence to decide whether the remaining evidence, in a case other than that which has been improperly admitted, is sufficient to warrant the finding of the Court below. The only cases which can be, with propriety, disposed of under such circumstances without a remand, are those where, independently of the evidence improperly admitted, the lower Court has apparently arrived at its conclusions upon other

REMAND—*continued.*

2. GROUNDS FOR REMAND—*continued.*

grounds. WOMES CHUNDER CHATTERJEE *v.* CHONDEE CHURN ROY CHOWDHRY [I. L. R., 7 Calc., 293

54. ———— **Mistake in admitting or rejecting evidence**—*Error affecting merits.*—An act done by a party with the view of defeating a claim made against him does not estop him from disputing afterwards the validity of that act. BYKUNT NATH SEN *v.* GOBOOLLA SIKDAR [24 W. R., 392

55. ———— **Omission to consider evidence**—*Civil Procedure Code, 1859, s. 372.*—When important evidence has not been carefully examined by the Judge in the lower Court, the Appellate Court will, on special appeal, remand the suit under s. 372 of Act VIII of 1859. DEGUMBER DOSSEE *v.* KISSEN DHUR NUNDY [1 Ind. Jur., N. S., 35

56. ———— **Omission to decide material issue**—*Decree based on point not in issue.*—The lower Appellate Court not having decided material issues and having based its decree on a document not recorded in the case, the decree was reversed, and the case remanded for a fresh decision on the merits. NICHHABHAI PRAGJI *v.* ISSE KHAN HAJI ABDULL KHAN . . 2 Bom., 313: 2nd Ed., 267

DALPAT SINGH *v.* NANABHAI [2 Bom., 323 : 2nd Ed., 306

BAI VIJKOR *v.* FAKIRBHAI [2 Bom., 335: 2nd Ed., 317

CHANDRABHAGABHAI *v.* KASHINATH VATHAL [2 Bom., 341: 2nd Ed., 323

BALAJI VISHVANATH JOSHI *v.* DHARMA [2 Bom., 385: 2nd Ed., 363

LUCHEE RAM *v.* MAHANI RAM . 1 Agra, 10

GOOLJEHAN *v.* BUNNO . . 1 Agra, 252

SHAMA NUND *v.* RAMAVATAR PANDEY [1 Agra, Rev., 1

SAJAN *v.* ROOP RAM . . 2 Agra, 61

SHIAM LALL *v.* NARAIN DAS . 2 Agra, 106

SHALEE RAM *v.* SURMA . . 2 Agra, 110

LUTCHMUN *v.* JOGUL KISHORE . 3 Agra, 99

MUHAMMAD VALAD ABDUL MULNA *v.* IBRAHIM VALAD HASAN . . . 3 Bom., A. C., 160

PARVATI *v.* BHIKU . 4 Bom., A. C., 25

AJURAM MANIRAM *v.* KUSAJI 4 Bom., A. C., 43

GOLUCK CHUNDER DUTT *v.* ANUNT KISHORE GOSSAIN . . . . 25 W. R., 38

57. ———— *Civil Procedure Code.*—After a case is closed in the lower Court and is brought up on appeal to the superior Court, it cannot be remanded for re-trial on fresh evidence, on the ground that the Judge below failed to try one of the issues. The Court of appeal is bound, under s. 353, Act VIII of 1859, to decide the case itself. FUZEELUN BEEBEE *v.* OMDAH BEEBEE [10 W. R., 469

58. ———— **Omission to try issue**—*Reversal of finding on first issue—Omission to decide second issue.*—The finding of the Court below on the first issue being reversed, the suit was remanded for trial of the second issue, the Judge having omitted to determine that, and the defendant not having given the evidence upon it, in consequence of the first issue being found for him on the evidence given by the plaintiff. MAGANBHAI HEMCHAND *v.* MANCHABHAI KALLIANCHAND 3 Bom., O. C., 79

59. ———— *Civil Procedure Code, 1859, ss. 351, 352.*—In remanding a case to a Court of first instance for the trial of an issue which that Court had been directed to try, but had not tried, a Judge was held to have acted with strict propriety and in conformity with the provisions of ss. 351 and 352, Act VIII of 1859. RAM CHAND MOOKERJEE *v.* KAMENEE DEBEA . 10 W. R., 236

60. ———— *Finding on issues framed.*—The High Court will not in a special appeal remand the case where there has been a distinct finding by the District Judge on the only issue framed by him, though he may have omitted to find on another issue raised before the Munsif, but not called for by either party on appeal. MOTI BHAGVAN *v.* HARJIVAN GIRDHURDAS [2 Bom., 34: 2nd Ed., 32

61. ———— *Civil Procedure Code, 1859, s. 352.*—Where the lower Court had decided a case on the merits, and the Appellate Court did not find that there had been any omission to try any issue or determine any question essential to the decision of the case on the merits, or that further evidence was necessary to enable it to determine any such issue or question,—*Held* the Appellate Court was in error in remanding the case under s. 352 for a fresh trial. MAHESH CHUNDRA DAS *v.* MADHAB CHANDRA SIRDAR [2 B. L. R., S. N., 13: 10 W. R., 388

62. ———— **Insufficiency of evidence for decision of material issue**—*Civil Procedure Code, 1859, ss. 351, 354.*—Where there is no sufficient evidence before the Appellate Court for the disposal of an issue which is material to the determination of the suit, the proper course to be followed is to remand the case under s. 354, and not under s. 351. RAM PERSHAD *v.* KISHNA . . 3 Agra, 146

63. ———— *Civil Procedure Code, 1859, s. 354.*—Where an Appellate Court finds that there is no evidence upon the record to enable it to decide a question at issue between the parties, and remands the case under s. 354 of the Code for additional evidence, it ought to require such evidence with the finding of the first Court to be sent up to it for decision. SHUMBOO CHUNDER SURNOKAR *v.* RUSSICK CHUNDER CHUNG . 15 W. R., 346

64. ———— *Absence of evidence on material issue.*—The lower Appellate Court has no power to remand a case, which has come before it on appeal, to the Court of first instance for a second trial, except where the first Court has decided

REMAND—*continued.*

2 GROUNDS FOR REMAND—*continued.*

the case upon a preliminary issue in such a way as to cause an absence of material evidence bearing upon the issues on the merits between the parties LALLA SHOOBH NARAIN *v* NURSINGH NARAIN [20 W. R., 148

65. ——— Case decided on preliminary point—*Hearing on entire evidence.*—Where all the evidence has been taken and the case decided on a preliminary point no remand should be made. RAMA KOER *v* LALLA BHUGWAN LALL [22 W. R., 224

66. ——— Point not raised in Court below—*Sufficiency of evidence for decision*—The

67. ——— Decision on sufficient evidence *Appellate Court—Improper remand*—A case should not be remanded when the Appellate Court is of opinion that the lower Court cannot properly come to a different decision upon the evidence than that to which it has already come BONOMALEE CHURN MATEE *v* SHOROOP HOOTAIT 14 W. R., 60

68. ——— Decision on preliminary point—*Appellate Court having all the evidence*

70 ——— Trial on one of several issues—*Civil Procedure Code, ss 562, 563, 564, 566*—*Reversal on that issue on appeal*—In a suit for possession of property by right of inheritance, the Court framed six issues, four of which it tried and decided With reference to its finding upon the principal of these issues, which related to the plaintiff's legitimacy, the Court dismissed the suit, observing that in the view which it took of the case, the determination of the remaining issues was unnecessary Some of the defendants had filed a statement of defence upon which no issues were framed, and no evidence taken, apparently in consequence of the attention of the Court being directed almost exclusively to the main issue as to the plaintiff's legitimacy There was no formal order

REMAND—*continued.*

2. GROUNDS FOR REMAND—*continued*

excluding evidence on any point On appeal, the High Court reversed the first Court's finding on the issue with reference to which the suit had been dismissed below *Held* by EDGE, C.J, and MAHMOOD, J (STRAIGHT, J, dissenting), that s. 562 of the Civil Procedure Code applied not only to cases where the first Court had expressly excluded evidence, but also to cases where the parties were or might have been misled by the act of the Court as to the issues or the evidence necessary, and where, in consequence of the Court erroneously considering one issue only, the parties did not tender or bring forward their evidence, and that, as in the present case evidence had been excluded in this broad sense, s 562 (the operation of which in such cases should be rather expanded than limited) was applicable, and the case should be remanded for trial of the remaining issues *Held* by STRAIGHT, J *contra*, that with reference to ss 562 563, and 564 the case could not be remanded under s 562 because it had not been disposed of upon a preliminary point, so as to exclude evidence of fact, and the Court should therefore proceed to dispose of it upon the evidence on the record, if any, and that an issue should be remitted to the lower Court under s 566 MUHAMMAD ALLAHDAD KHAN *v.* MUHAMMAD ISMAIL KHAN [I. L. R., 10 All., 289

71. ——— Omission to decide on point

SAKHARLAL *v* GANGADHAR RAGHUNATH DONGRE [2 Bom., 186: 2nd Ed., 178

72. ——— Order of execution on insufficient evidence—*Duty of Appellate Court*—When a lower Court, on insufficient evidence of a decree having been kept in force orders execution, the Appellate Court should not summarily reverse the order, but should remit the case, that the decree-holder may give further proof of the fact NILKUNT CHUCKERBUTTY *v* SHEO NARAIN KOONWAR [8 W. R., 278

73 ——— Omission to decide on merits of case *Suit dismissed on preliminary point Power to decide case if reversed on that point on appeal—Remand*—When a Court of first instance, after taking evidence, dismisses a suit upon a preliminary objection without giving a decision upon the merits of the case, and the decree is reversed on appeal, the Court of appeal, if it considers the evidence on record sufficient, may decide the case and is not bound to remand it for trial under s. 562 of the Civil Procedure Code, 1877 BANGI SUBAYYA *v.* MADALAPALLI SUBANNA I. L. R., 2 Mad., 93

74. ——— Decision by lower Court of preliminary point—*Civil Procedure Code, 1859, s 351*—An Appellate Court is not justified in sending back a case for re-trial under s. 351 of the Code of Civil Procedure, merely because the lower Court has disposed of it upon a preliminary point, unless such point has been so disposed of as to exclude

REMAND—*continued.*

2. GROUNDS FOR REMAND—*continued.*

evidence of fact which appears to the Appellate Court essential to the rights of the parties. JOOGMAYA DEBIA *v.* RAMCHUNDER CHATTERJEE [10 W. R., 378

75. ———— **Evidence insufficient for decision on merits**—*Decision in favour of suit proceeding, Reversing lower Court's.*—The Judge, after disposing of the case on the only point on which the Munsif had decided,—*viz.*, whether there was a cause of action,—and having satisfied himself that there was not sufficient evidence on the record to enable him to pass a proper decision upon the merits, was held clearly right in remanding the case to the Munsif. BROMMO MOYEE DEBIA *v.* KOOMODINEE KANT BANERJEE. BURODA KANT BANERJEE *v.* KOOMODINEE KANT BANERJEE . 17 W. R., 466

76. ———— **Evidence sufficient, but further inquiry necessary**—*Reference of issue for trial—Civil Procedure Code, 1859, s. 354.*—S. 351, Act VIII of 1859, is meant for those cases in which a lower Court has disposed of a case on a purely preliminary point. When abundant evidence has been taken, if the lower Appellate Court think any further inquiry necessary, the proper course is not to remand the case to the lower Court, but to frame an issue, and to refer the same to the lower Court for trial under s. 354. RAM CHUNDER GOOPTA *v.* BHAGESSUR SURMA [W. R., 1864, 357

LUCHMUN LALL DOOBEY *v.* HURSOHOY LALL [W. R., 1864, 361

HUREENARAIN GOSSAIN *v.* SUMBHOONATH MUNDUL . . . . . . 1 W. R., 6

HERRIKOSIMA *v.* STEPHENSON . 1 W. R., 298

HILLS *v.* OSMAN BISWAS . . 25 W. R., 35

BUNGO CHUNDER BANERJEE *v.* CHUNDER NATH CHUCKERBUTTY . . . . 25 W. R., 47

GOLUCK CHUNDER SEN *v.* PURESH MAHOMED [25 W. R., 284

77. ———— **Preliminary issue as to right to bring suit**—*Remand for trial on merits.*—Where a suit for rent was decided and dismissed by the lower Court, on the issue whether or not the plaintiff's title to sue could be made out,—*Held* that it was not competent to the lower Appellate Court to remand the case in order that it might be tried on its merits. GOPAL CHUNDER GOOHO *v.* JUGGODUMBA DOSSIA . . . 10 W. R., 411

78. ———— **Dismissal of suit as brought in wrong Court**—*Suit instituted in Revenue instead of Civil Court—Appellate Court, Duty of—N.-W. P. Rent Act, 1881, s. 208.*—Where a suit instituted in the Revenue Court is dismissed by the Court of first instance, on the ground that it should have been instituted in the Civil Court, and the Appellate Court affirms the decision of the first Court, the Appellate Court should, under s. 208 of the N.-W. P. Rent Act, 1881, remand the case to the Civil Court competent to entertain it for disposal on the merits. AHMAD-UD-DIN KHAN *v.* MAJLIS RAI [I. L. R., 5 All., 438

79. ———— *N.-W. P. Rent Act (XII of 1881), s. 208—Jurisdiction, Suit dismissed on ground of want of.*—An Assistant Collector dismissed a suit without considering the merits, on the ground that it was not cognizable by a Revenue Court. On appeal, the District Judge held that it was unnecessary to determine the question of jurisdiction, as he had power in any event, under s. 208 of the N.-W. P. Rent Act, to remand the suit to the Assistant Collector, and he remanded it accordingly. *Held* that the Judge had rightly construed s. 208 of the Rent Act, and that the remand was proper. *Ahmad-ud-din Khan v. Majlis Rai, I. L. R., 5 All., 438,* distinguished. GIRWAR SINGH *v.* SITA RAM [I. L. R., 10 All., 31

80. ———— *Suit instituted in Revenue instead of Civil Court—N.-W. P. Rent Act, 1881, ss. 207, 208.*—In a suit instituted in the Court of an Assistant Collector, an objection was taken that the suit was not maintainable in the Revenue Court. The objection was allowed, and the suit dismissed. On appeal by the plaintiff, the Assistant Collector's decision was affirmed. The Appellate Court had not before it the materials necessary for the determination of the suit. *Held,* reading together ss. 207 and 208 of Act XII of 1881 (N.-W. P. Rent Act), that though the objection to the jurisdiction was taken in the first Court and repeated before the Appellate Court, the latter should only have *pro tanto* entertained it for the purpose of determining to what Court it should direct its order of remand, and should not have passed an order the effect of which was to maintain the dismissal of the suit. DEBI SARAN LAL *v.* DEBI SARAN UPADHIA [I. L. R., 6 All., 378

SHEO PRASAD *v.* ANRUDH SINGH [I. L. R., 6 All., 440

81. ———— **Reversal of lower Court on point of limitation**—*Trial on merits and limitation—Remand for trial on merits.*—The lower Court found the suit barred by limitation, but also heard and dismissed the suit on its merits. *Held* that, though in appeal limitation be held not to bar the suit, there should be no remand for re-trial on the merits. KERTEENARAIN CHOWDHRY *v.* PERTHENARAIN CHOWDHRY . . . 1 W. R., 32

82. ———— **Suit held not barred by limitation**—*Trial on merits—Civil Procedure Code, 1859, s. 351.*—Where an Appellate Court decides that a suit is not barred by limitation after it has taken evidence and gone into the whole case, the decision is not one within s. 351, and the Court is not competent to remand the case, but ought to try it upon the evidence. HUSSUN ALI CHOWDHRY *v.* MANOOWAR ALI . . . . 21 W. R., 413

83. ———— **Decision on limitation and on the merits**—*Insufficiency of evidence—Civil Procedure Code, 1859, ss. 353, 357—Power to*

REMAND—*continued.*

2. GROUNDS FOR REMAND—*continued*

remand—Where the Court of first instance decides both on the general merits and the plea of limitation and the Judge of the Appellate Court considers that the evidence upon the record is not sufficient to allow of a satisfactory judgment, and that he is in a position legally to order further evidence to be taken, he ought to proceed in the manner provided in ss 354 to 357 of the Code of Civil Procedure, but has no right to set aside the first Court's decree and remand the case for re-trial GOOROO PERSHAD DUTT v SREENATH BANERJEE 15 W. R., 314

84 Decision on merits—*Insufficiency of evidence—Civil Procedure Code, 1859, s 354*—When the decision of a lower Court is not on a preliminary point the lower Appellate Court cannot remand the suit to that Court with directions to take further evidence and to re try the case, but the appeal must be kept pending on the file and the record must be sent to the lower Court, with orders to take the necessary evidence KALLEE SUNKUR ROY v KISHTO POOLAL CHOWDHRY

[W. R., 1864, 296

85 Additional evidence—*Issue, Trial of, by lower Court—Defect of parties—Successor of Judge making remand Power of*—When an Appellate Court remands a case under s 351 of the Civil Procedure Code, 1859, for the trial of an issue which the lower Court may have omitted to raise or to try, it is not limited to the evidence then on the record but may keep the case pending on its own file until the return of the first Court's finding on the issue, with the evidence recorded on the trial thereof or the Appellate Court may itself try the issue so raised Where the evidence is accepted by a Subordinate Judge as sufficient to warrant a decree, [illegible]

[14 W. R., 380

86 —— Decision as to costs—*Power to remand case for trial on merits where appeal is only as to costs* On an appeal as to costs only, the Appellate Court had no jurisdiction to return the case for trial on its merits MUTHRA PERSHAD v BUNDEE ROY 4 N. W., 20

87 — Decision on second trial—*Insufficiency of evidence—Evidence taken at first trial*—In a suit to obtain possession of miras land, the Court of original jurisdiction decreed for plaintiff on the evidence, but on appeal its decision was reversed on the ground that the claim had not been [illegible]

evidence adduced at the former trial The lower Court's decree was therefore reversed and the suit remanded in order that this might be done JOTI BIN NIMBAJI v SOMAJI BIN BAPAJI GURAV

[1 Bom., 188

88 ——— Decision as to admission of evidence—*Additional evidence—Civil Procedure Code, 1859, s 354*—The defendant pleaded payment and produced a letter of acknowledgment said to have been written by the plaintiff The plaintiff denied its genuineness, and the Principal Sudder Ameen rejected the testimony of two pyadas who deposed to the payment. On appeal the Judge remanded the case [illegible]

the evidence and not to have rejected it altogether *Held* also that the Judge was wrong in remanding the case under s 354, Act VIII of 1859, as he could have decided the case himself, taking such additional evidence as might appear necessary RUNPAL SINGH v JOY MUNGUL SINGH 11 W. R., 106

89 — Finding on evidence *Improper remand—Duty of Appellate Court* Where the ground of regular appeal to the lower Appellate Court was that the Court of first instance ought to have found that an ijara existed it was the duty of the Appellate Court to determine whether that fact had been proved and not to remand the case for re-trial MAHOMED AHSAN v MAHOMED YASIN

[9 W. R., 108

90 Issue of minority raised on appeal—*Facts entitling mortgagee to decree* Where, in a suit to make absolute a conditional sale and to obtain a share in a certain village mortgaged to plaintiff (the usual year of grace having been given and money been paid into Court in satisfaction considerably after the term allowed by law) there is no issue respecting the minority of some of the mortgagors the case will not be sent back to the Appellate Court for inquiry whether certain of the mortgagors were minors or whether the others mortgaged for such purposes as would bind the minors notwithstanding one of the lower Courts has found the fact of the minority of one of the mortgagors SURDUT v BULDEO 2 N. W., 23

91 ——— Case inconsistent with plaint—*Power of Appellate Court to remand Civil Procedure Code, 1859, s 354*—If the Appellate Court is of opinion that the plaintiff in argument before itself is endeavouring to obtain something other than what he claims in the plaint it is bound to dismiss the suit; but if it thinks that the plaint can be reconciled with the argument used on the appeal, and the case resulting is supported by the evidence, it is bound to determine the appeal—not to make an order under Act VIII of 1859, s 354. TILUCK CHUNDER DUTT CHOWDHRY v BROJO SOONDUR MITTER 24 W. R., 121

92. — Decision of only portion of claim—*Improper order of remand—Confirmation*

REMAND—*continued.*

2. GROUNDS FOR REMAND—*concluded.*

of portion of case while remanding substantial issue.—A lower Appellate Court which remanded a suit to the first Court for decision of the substantial part of the dispute should not have confirmed the decision of the first Court regarding only one part of the claim. MADHUB CHUNDER DEY *v.* RAM DYAL GUHO . . . . . . 8 W. R., 303

3. SECOND REMAND.

93. ———— **Power of Appellate Court**—*Decree reversed on appeal—Error or defect affecting merits of case or jurisdiction.*—An Appellate Court can remand a case a second time on account of error, defect, or irregularity of procedure in passing a decree or order, provided the error, defect, or irregularity be such as to affect the merits of the case or the jurisdiction of the Court. When a suit has been regularly heard and determined, and on appeal the decree is reversed, the Appellate Court has the discretionary power to remand the case only if the decree should have been upon a preliminary point, and have the effect of excluding the consideration of evidence essential to the rights of the parties MUNIAPPAH NAIDU *v.* IYASAMY MUDELY [5 Mad., 313

94. ———— **Omission to carry out first order of High Court**—*Substantial trial on the merits.*—Where the lower Court had not fully carried out an order of the High Court remanding the case, but the case appeared to have been substantially tried fully on its merits, the High Court thought there should not be a second remand. KASHEENATH DEB *v.* SHIBESSUREE DEBIA . 8 W. R., 503

95. ———— **Remand after trial and decision on evidence**—*Appellate Court, Powers of—Objection taken on appeal—Act VIII of 1859, s. 351—Costs.*—A lower Appellate Court is not competent to remand a case for a second decision, except as provided by s. 351, Act VIII of 1859, and therefore has no power to remand a case when a Court of first instance has investigated the merits of the case and passed its judgment upon the evidence. The objection that a case has been improperly remanded by the lower Appellate Court can be taken in special appeal from the decree passed upon the remand, although a special appeal might have been preferred from the order of remand, but the appellants were held not entitled to their costs MAJORAM OJHA *v.* NILMONEY SINGH DEO [13 B. L. R., 198 : 21 W. R., 326

BRINDABUN DEY *v.* BISONA BIBEE [13 B. L. R., 200 note : 13 W. R., 107

96. ———— **Form of second order of remand**—*Defects in lower Court's judgment on first remand.*—A lower Appellate Court, in remanding a case a second time, ought to state what the main requirements of the first order were, and how the lower Court's decision shows that they have not been carried out. RADHABULLUB SURMA *v.* ANUNDMOYEE DEBEA . . . W. R., 1864, Mis., 39

REMAND—*continued.*

4. PROCEDURE ON REMAND.

97. ———— **Order of remand, Effect of**—*Civil Procedure Code, 1859, s. 354.*—An order of remand to a lower Appellate Court implies a reversal of the first judgment of that Court. KEBUL KISHEN MOZOOMDAR *v.* AMBALA 7 W. R., 623

98. ———— *Re-opening of entire case.*—The effect of an order of remand for a new trial is entirely to nullify the first decision and to reopen the whole case. TARINEE KANT LAHOOREE *v.* KOONJ BEHAREE AWASTEE 12 W. R., 112

99. ———— *Remand for retrial—Re-opening of whole case.*—Where a suit was remanded by the lower Appellate Court for a "re-trial," the intention of the order of remand was held to be that the whole case was to be gone into *de novo*, the plaintiff being allowed to prove her case in any way she could. GUDADHUR DUTT *v.* SHUSHEE MONEE DOSSIA . . . . 21 W. R., 7

100. ———— *Re-opening of case as regards limitation—Res judicata.*—Where a case is sent back for trial on its merits, the order of remand shuts out objections regarding limitation or *res adjudicata.* SHEO SAHOY TEWAREE *v.* RAM PERSHAD NARAIN TEWAREE . 24 W. R., 333

101. ———— **Power of Court hearing remanded cases**—*Remand on particular issue—Power to proceed on other issues.*—A Court to which a case is remanded for re-trial on a particular issue, amongst others, cannot, on remand, allow that issue to be abandoned, and proceed to try the case upon the other issues raised. SHIB CHUNDER LAHIRI *v.* JOYMALA DASI . . . . 7 C. L. R., 103

102. ———— *Remand on one point—Re-opening of others.*—When a case is remanded to the lower Appellate Court for decision of a question—*e.g.*, one of title,—that Court has no authority to go beyond the order of remand and re-open a matter already adjudicated upon between the parties. SHAHEB TEWAREE *v.* KISHOREE SAHOY SINGH . . . . . 24 W. R., 330

103. ———— *Remand for trial of issue under s. 354, Civil Procedure Code, 1859, Effect of.*—Where an Appellate Court, in pursuance of Act VIII of 1859, s. 354, sends an issue down to the first Court in order that such evidence as the parties desired to adduce upon it may be taken and returned, the result is not to remand the case for re-trial, the first Court being *functus officio* in respect to such portion of the matter as it had already considered and determined. GOSSAIN DOWLUT GEER *v.* BISSESSUR GEER . . . 22 W. R., 207

104. ———— *Case remanded for consideration except on one point—Finding of error on that point.*—Where a case was remanded for reconsideration of the whole evidence with the exception of one specified point, and the Judge after consideration came to the conclusion that his finding on that point had been erroneous, it was held that he could not, without a miscarriage of justice, allow that finding to remain unchanged. HUREE NATH SHAHA *v.* ISSEN CHUNDER SHAHA . . 24 W. R., 316

REMAND—*continued*

4 PROCEDURE ON REMAND—*continued*

105 ———————— *Absence of Judge who passed decree—Jurisdiction of his successor* —Where a case is remanded to the lower Court to record reasons for its judgment, if the Judge who passed the decree is absent, the superior Court should be

re-try the case *de novo* MANICK SETT *v* KHETTER MOHUN GOSSAMEE . 1 Ind. Jur, N. S, 101

106 —— —— — *Remand for record of reasons—Re-trial de novo by Judge's successor* —When a case is remanded to a particular Judge merely for him to record the reasons for his finding, his successor, *if the deciding Judge has left* the district, acts without jurisdiction when he re-hears the whole appeal *de novo* BHYRUB SHEET *v* KHETTUR MOHUN GOSSAIN . 5 W R., 124

LALLA BHOYRO LALL *v* LALLA MOKOOND LAL [2 W R, 275

107. ——— ———— *Remand for particular issue—Right to open case in full* —A rent case having been remanded to a lower Appellate Court with a view to its being ascertained whether an amulnamah produced by the plaintiff was the

case, the Judge
pottah was not
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accordingly re-

[10 W. R., 339

108 ———————— *Civil Procedure Code, 1882, s 562—Order of remand—Issues undecided—Procedure* —A Subordinate Judge decided a suit on the ground (1) that it was *res judicata* (2) that it was barred by limitation On

Code to determine whether the decision of the Subordinate Judge on the question of limitation was right or not RAISINGJI *v* BALVANTRAO

[I L. R., 11 Bom, 663

109 —— — *Civil Procedure Code (1882) s 566—Power of Court to disregard findings returned—Appeal under Letters Patent, High Court, N-W P, cl 10* A single Judge of the High Court hearing a second appeal made an order of reference under s. 56 of the Code of Civil Procedure On the return of the reference the appeal came before another Judge, who, holding that the reference was unnecessary and that the original findings of fact in the Court below were sufficient to dispose of the appeal disregarded the findings on the reference, and dismissed the appeal In appeal under s. 10 of the Letters Patent, it was *held* that it was competent to the Judge before whom the appeal had subsequently come to disregard the findings on the order of reference MUBARAK HUSAIN *v* BIHARI I L R, 16 All, 308.

110 *Case remanded on issue of limitation—Right to open whole appeal* —In a case remanded to the lower Appellate Court for trial by the Court of first instance, of the issue of limitation, which the appellant had not been allowed the opportunity of meeting it was ruled that, upon the decision of that issue, it would be open to the parties to appeal upon the whole case, notwithstanding the appeal already had RUGHOO NUNDUN PERSHAD SINGH *v* CHUTTUR PAUL SINGH [10 W R., 335

111. *Re opening of*
lary suit
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Council,
and that so much of the High Court's decision as

WARDS *v* LEELANUND SINGH

[25 W. R., P C., 167

112 — *Case sent by Judge to lower Court for further evidence* — In a suit for enhancement of rent, which had been remanded

it was for the Judge to give an opinion how far the plaintiff was able to rebut that presumption — *Held* that there was nothing objectionable in the Judge directing the first Court to hear further evidence upon the point. LAKHAL CHUNDER TEWAREE *v*. KINOORAM HALDAR 10 W. R., 442

113 *Giving evidence on issue raised on remand* —Where a case is remanded for the trial of an issue which had not been

REMAND—*continued.*

4. PROCEDURE ON REMAND—*continued.*

laid down by the Court which tried the case, the parties are entitled to have the opportunity of giving evidence upon it, although the order of remand contains no express direction to that effect. KISTO CHURN CHUCKERBUTTY *v.* MUGGUN CHUCKERBUTTY [10 W. R., 491

114. ———— *Additional evidence, Power to take.*—Where a case is remanded with a view to some special evidence being taken, the Court receiving the order of remand is not at liberty to allow the parties to produce other additional evidence. RAM JEEWAN LALL *v.* ARJUN CHOWBEY [10 W. R., 303

115. ———— *Object of remand—Civil Procedure Code, 1859, s. 354.*—The object of a remand under s 354, Act VIII of 1859, is not that the Judge should try the issues on the evidence already taken, because that the Court sitting in regular appeal can do for itself, but that he should take such evidence as the parties may have to offer for the determination of the issues. ABDOOL KHYRAT *v.* JUMALOODDEEN HOSSEIN . 10 W. R., 244

116. ———— *Remand to Appellate Court—Power to take additional evidence.*—Where a case is remanded to a lower Appellate Court under s. 354 of the Civil Procedure Code, 1859, the Judge may, under s. 355, admit additional evidence, provided he records his reasons for doing so on the proceedings of the Court. KALIKRISTO TAGORE *v.* JUDOO LALL MULLICK . 24 W. R., 20

117. ———— *Taking evidence on remand—Power to take additional evidence on remand where order of remand does not so order—Civil Procedure Code, ss. 562, 566, and 568.*—Suit by the adoptive daughter of a temple dancing woman, deceased to compel the trustees of the temple to permit the performance of a certain ceremony, in view to her entering on the duties and emoluments attached to the office of her adoptive mother. On second appeal, the High Court directed the return of a finding on the issue (previously framed, but not tried) whether the plaintiff's adoption was valid. Fresh evidence was taken, and the finding was that the adoption was made with the intention that the girl should be prostituted while she was still a minor. *Held* that the lower Court had power to take additional evidence on the issue remanded, although not specially authorized to do so by the order of remand. KAMALAKSHI *v.* RAMASAMI CHETTI . . . I. L. R., 19 Mad., 127

118. ———— *Civil Procedure Code, s. 566—Remand for decision of particular issues.*—When a case is remanded, under s. 566 of the Code of Civil Procedure, to the lower Appellate Court for findings on certain issues, it is not competent to that Court to delegate the decision of those issues to a Court subordinate thereto. SABRI *v.* GANESHI [I. L. R., 14 All., 23

119. ———— Remand with fresh issues —*Fixing day for further evidence.*—When fresh issues are fixed by the Appellate Court, and remanded to the lower Court to be tried, the parties are entitled to have a day fixed for the reception of any further evidence which they may wish to adduce thereon. WATSON *v.* KUNHYE BAHADOOR [9 W. R., 294

120. ———— Examination of witnesses—*Fresh evidence.*—In a case remanded for a finding as to whether a confirmatory pottah had been really given or not, it was held that, as the order of remand did not restrict the Judge to the evidence on the record, he was at liberty to examine the witnesses who were in Court. RAM SUNKER SEIN *v.* NILKANT BISWAS . . . . 20 W. R., 392

121. ———— Hearing fresh evidence—*Hearing defendant who did not appear on original hearing.*—When a suit has been dismissed upon a preliminary point, and the decision on that point has been reversed by the Appellate Court, and the case goes down with a view to trial on its merits, evidence may properly be received even from defendants who had appeared, and *à fortiori* from a defendant who had not appeared. KOONJ BEHARY AWUSTEE *v.* TARINEE KANT LAHOREE [8 W. R., 285

122. ———— Objection taken at former hearing and disposed of—*Remand for re-hearing—Objection to chitta.*—Where a review had been granted for the purpose of seeing whether a chitta ought not to be used, and the case was remanded for re-hearing, the party was held to be concluded from objecting that the chitta was improperly made use of upon the re-hearing. MAKHUN KOOER *v.* TINCOWREE DUTT . . . . . . 14 W. R., 22

123. ———— Remand assuming possession—*Power of Judge to try question of possession.*—Where the High Court, proceeding on the assumption that appellants (plaintiffs) were in possession, remanded a case to a Zillah Court, with instructions to pass a declaratory decree, if that Court was satisfied that the act complained of was so recent and of such a nature as to entitle plaintiffs to a declaratory decree, it was held (by KEMP, *J.*, decreeing the appeal) that the Zillah Judge was wrong in re-opening the whole question of possession. *Held* (by JACKSON, *J.*) that the issue of possession being one which clearly arose on the statements of the parties, the Zillah Judge was not in error in trying it. PUREE JAN KHATOON *v.* BYKUNT CHUNDER CHUCKERBUTTY . . . . . 9 W. R., 380

Held on appeal under the Letters Patent that the lower Appellate Court was competent, under the terms of the order of remand, to inquire into the question of possession. BYKUNT CHUNDER CHUCKERBUTTY *v.* PUREE JAN KHATOON . 11 W. R., 77

124. ———— Full Bench ruling—*Alteration of law since remand.*—Where a Full Bench ruling is brought to the notice of a Judge re trying a case on remand, he is bound, whether the ruling has been published or not, either to ask the pleader to produce the decision relied on, or to take other means for satisfying himself as to the ruling of the High

REMAND—*continued*

4 PROCEDURE ON REMAND—*concluded*

Court, so as to apply the correct law to the case. TUMEEZOODDEEN KHONDKAR *v* MOHIMA CHUNDER MOOKERJEE . . . . 11 W. R., 227

125. ———— Trial on issue not stated in order of remand—*Effect of irregularity*—Where the High Court had been misled into making an order of remand upon an issue other than that on

[illegible] with the evi- [illegible] precise issue [illegible] o govern the [illegible] ndant MAHOMED HASHIM *v* KALEECHURN BANERJEE [13 W. R, 91

126. —— Reference of remanded case to arbitration—*Civil Procedure Code, 1859, s 354—Irregularity in remand order and trial—Objection on special appeal*—An Appellate Court, in referring a case under Act VIII of 1859, s 354,

[illegible]

sent to the matter being tried by arbitrators, they cannot afterwards on special appeal object to the proceedings. PUNA BIBEE *v* KHODA BUKSH BEPAREE [22 W. R, 396

127. ———— Effect of repeal—*Suit for rent instituted under Act X of 1859—Remand after Beng Act VIII of 1869 (s 108) came into operation*—A suit was instituted under Act X of 1859, and after Bengal Act VIII of 1869 came into operation it was remanded by the High Court and tried by the Munsif and District Judge *Held* that, under Bengal Act VIII of 1869, s 108 all proceedings should have been continued under the older Act and the remand should have been to the Collector, and that the proceedings before the Munsif and Judge were nullities. DEBEEN CHOWDHRY *v* JEYTOO KAJEE . . . . 24 W. R., 353

5. OBJECTIONS TO FINDINGS ON REMAND

128 ——— Time for filing objections—*Civil Procedure Code, 1859, s 354*—Sufficient time must be allowed to the parties under s 354, Act VIII of 1859 to file their objections to the revised finding of the lower Court RUKHTOOBEE *v* MEHTEN LALL [3 Agra, 96

129 *Civil Procedure Code, 1859, s 354—Objections taken after remand and not within time fixed*—Where the Appellate Court remanded a case to the lower Court, and under the provisions of s. 354, Act VIII of 1859, allowed the parties a week's time within which to file objections,—*Held* that the terms of the section were merely permissive, and that, though no objections had been taken within the time specified there was nothing in the law to the effect that an objection taken after the time fixed shall not be listened t MUSSAMUT [illegible] LALL *v* RAHEEM BUKSH . 4 N. W, 72

REMAND—*continued.*

5 OBJECTIONS TO FINDINGS ON REMAND—*continued.*

130 ———— Alteration of findings to which no objection is taken—*Civil Procedure Code, 1859, s 354—Objections taken after time*—When a case has been remanded under s. 354 Act VIII of 1859, and a time fixed within which objections to the findings on remand are to be taken the Appellate Court is not competent to alter such of the findings in respect of which no objection is preferred within the time fixed. NOORUN *v* KHODA BUKSH [1 Agra, 50

Nor will the parties be allowed to take objections filed after time SHEO GHOLAM *v* RAM [illegible] SINGH . . . . . . 5 N W, 114

131 Objections taken after time—*Civil Procedure Code, 1859, s 354—Memorandum of objections—Procedure*—Where an Appellate Court under s. 354 of Act VIII of 1859,

[illegible]

finding, orally or otherwise, after the expiry of the period so fixed without his having filed such memorandum RATAN SINGH *v* WAZIR [I. L. R, 1 All., 165

132 *Civil Procedure Code, 1882, s 567—Discretion of Court*—Where a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and where, on the return of findings on these issues, objections under s. 567 of the Civil Procedure Code have not been filed until after the expiration of the prescribed period, the Appellate Court though not bound to entertain the objections, should nevertheless, upon the hearing of the remand allow the party filing them to be heard with regard to them *Ratan Singh* v. *Wazir, I L R, 1 All., 165*, and *Akbari Begam* v. *Wilayat Ali, I L R., 2 All., 908*, referred to. An Appellate Court because it remands issues, does not therefore, in the absence of subsequent objection by either or both of the parties to the findings when returned, divest itself of its power to exercise its judicial mind as to the propriety of such findings, but, apart from any objection by the parties, it should examine and test them to see whether or not they ought to be accepted. *Akbari Begam* v. *Wilayat Ali, I L R, 2 All, 908*, followed *Umed Ali* v *Salima Bibi, I L R, 6 All., 853*, referred to. MUMTAZ BEGAM *v*. FATEH HUSAIN . . I. L. R., 6 All., 361

133. ———— *Reference of issue to lower Court—Memorandum of objections—Civil Procedure Code, 1859, s 354*—In a case in which an issue referred under s. 354 of Act VIII of 1859 to the lower Court was tried there, and the finding was returned with the evidence, as no memorandum of objections was filed within the time fixed

REMAND—*continued.*

5. OBJECTIONS TO FINDINGS ON REMAND —*concluded.*

by the Court, the Court declined to allow objections to be taken when the appeal came on for final determination. ASHRUFOONISSA BEGUM *v.* STEWART [9 W. R., 438

134. ———— Findings to which no objection is preferred—*Civil Procedure Code, 1877, s. 566 — Appellate Court, Powers of— Error or irregularity.*—*Held* that an Appellate Court is not bound to accept a finding returned to it by a Court of first instance, under s. 566 of Act X of 1877, merely because no objections to such finding are preferred, but is competent to examine the evidence on which such finding is founded, and to satisfy itself that it is correct and fit to be accepted. *Noorun* v. *Khoda Baksh, 1 Agra, 50,* dissented from. *Ratan Singh* v. *Wazir, I. L. R., 1 All., 165,* followed. *Held* also that, assuming that an Appellate Court, in deciding a case in a manner inconsistent with and opposed to the finding returned to it by the Court of first instance under that section, in the absence of objections, acted irregularly, its decree could not be reversed, or the case remanded on account of such irregularity, such irregularity not affecting the merits of the case or the jurisdiction of the Court. AKBARI BEGAM *v.* WILAYAT ALI . I. L. R., 2 All., 908

135. ———————— *Duty of Appellate Court—Civil Procedure Code, 1882, ss. 567, 574.*—Where a first Appellate Court has remanded a case to the Court of first instance for the trial of issues, and where, on the return of the findings on these issues, no objections have been preferred under s. 567 of the Civil Procedure Code, the Appellate Court, after the period fixed for presenting objections, may, at its discretion, receive or decline to receive any written objection, but is, in any case, bound to consider the findings of the lower Court on the merits, and is not precluded from hearing arguments for and against the findings at the hearing of the appeal. *Akbari Begam* v. *Wilayat Ali, I. L. R., 2 All., 908,* followed. The imperative provisions of s 574 of the Civil Procedure Code apply alike to cases remanded by the first Appellate Court for the trial of issues and to those in which no such remand has taken place. UMED ALI *v.* SALIMA BIBI . I. L. R, 6 All., 383

6. CASES OF APPEAL AFTER REMAND.

136. —— Remand for specific purpose—*Statement on merits of whole case.*—Where the Appellate Court remands a case for a specific inquiry, it will not receive any statement on the part of the Zillah Judge as to what he considers the merits of the whole case. DONZELLE *v.* RAMNARAIN SINGH [1 Ind. Jur., N. S., 51

137. ——— Appeal from order of remand—*Civil Procedure Code, 1877 s. 562 — What questions can be raised—Extent of appeal from order of remand.*—An appeal from an order on appeal remanding a suit for re-trial is not to be confined to the question whether the remand has been made contrary to the provisions of s. 562 of Act X of 1877

REMAND—*continued.*

6. CASES OF APPEAL AFTER REMAND —*continued.*

or not, but the question whether the decision of the Appellate Court on the preliminary point is correct or not may also be raised and determined in such an appeal. BADAM *v.* IMRAT [I. L. R., 2 All., 675

138. ———————— *Power of Appellate Court to deal with whole appeal after return of findings—Civil Procedure Code, ss. 561, 566.*—In a second appeal by the defendant, in which the plaintiff filed objections to the decree under s. 561 of the Civil Procedure Code, the High Court, without giving judgment on the appeal, stated (giving reasons) the opinion that the appellant would be entitled to succeed, and at the same time remitted an issue under s. 566 of the Code with reference to the plaintiff's objections. At that time the appeal was apparently not argued out, and the true meaning of the facts as found was obviously not present to the mind of the Court. *Held* that, upon the return of the findings on remand, the Court could not treat the appeal as already decided and the objections the sole matter for consideration, but must consider both appeal and objections and decide the whole case. *Held,* however, that where Judges have heard arguments on some of the issues and have expressed their views thereon and have remitted another issue or issues under s. 566, they are not bound, on the return of findings, to hear the case *de novo,* but may confine counsel to argument upon the findings. LACHMAN PRASAD *v.* JAMNA PRASAD [I. L. R., 10 All., 162

139. ———— *Civil Procedure Code (Act XIV of 1882), s. 562—Power of the High Court to go into the merits on appeal from a remand order.*—The Court of first instance dismissed a suit as barred by limitation. In appeal that decision was reversed, and the case was remanded under s. 562 of the Civil Procedure Code (Act XIV of 1882). Against the order of remand the defendant appealed to the High Court under cl. 28 of s. 588 of the Civil Procedure Code It was contended by the plaintiff that the High Court had no power to decide the point of limitation, but could only consider whether the order of remand satisfied the requirements of s. 562 of the Civil Procedure Code. *Held* by the Full Bench that in an appeal against such an order of remand the power of the High Court is not confined to the question whether that order satisfies the requirements of s. 562; but may also determine the correctness of the lower Appellate Court's decision on the preliminary point on which the Court of first instance disposed of the case. *Badam* v. *Imrat, I. L. R., 2 All., 675,* followed BHAU BALA *v.* BAPAJI BAPUJI . . . I. L. R., 14 Bom., 14

140. ———————— *Disposal of suit on preliminary point—Reversal by Appellate Court of decree on such point and irregular remand of case under s. 562, Civil Procedure Code, 1877, for trial of a certain issue - Power of succeeding Judge of Appellate Court to re-try such point.*—A Court of first instance dismissed a suit upon a preliminary

REMAND—*continued*

6. CASES OF APPEAL AFTER REMAND—*continued*

point. On appeal by the plaintiff against the decree of such Court, the then Judge of the Appellate Court, Mr *B*, reversed the decree upon such preliminary point and remanded the suit under s 562 of Act X of 1877 for the trial of a certain issue The Court of first instance tried such issue and made a decree in accordance with its finding thereon On appeal against the decree of the Court of first instance, the defendant again raised such preliminary point The then Judge of the Appellate Court, Mr *A*, dismissed the suit upon such preliminary point *Held* that, as, although Mr. *B* had irregularly remanded the suit under s 562 of Act X of 1877, his decision disposed of such preliminary point, and only left open for trial the issue which he had directed to be tried, Mr *A* was not competent to re-try and decide such preliminary point SURAJ DIN *v*. CHATTAR

[I. L. R., 3 All., 755

141 ——— *Practice—Civil Procedure Code, 1877, s 588*—Upon an appeal under s 588, cl (w), of the Civil Procedure Code, from an order of an Appellate Court under s 562, [illegible] nary point, and may, if it finds the order of the lower Appellate Court defective, allow the party who had the benefit of a decree in the first Court to retain that benefit LOKI MAHTO *v*. AGHOREE AJAIL LALL

[I. L. R, 5 Calc, 144 . 4 C. L. R., 465

142 ——— *Civil Procedure Code, 1882, ss 562 564, 566, 584, 588 (28), 590*—Where a lower Appellate Court, instead of remanding a suit under s 566 of the Civil Procedure Code, erroneously remands it under s. 562, and the party aggrieved by its order appeals to the High Court, under cl (28), s 588, the High Court cannot deal [illegible]

SOHAN LAL *v*. AZIZ UNNISSA BEGAM

[I. L. R, 7 All, 130

143. ——— *Power of successor of Judge to set aside order of remand*—An order of remand by a Subordinate Judge is final so far as the purpose of the remand goes, and cannot be set aside by his successor. LULEET PANDEY *v*. BYJNATH SINGH . . . 14 W. R., 285

144. ——— *Power of successor to alter order—Remand a second time on mistake of Judge on first remand*—An acting District Judge, having made a decree reversing the decree of the Munsif, who threw out plaintiff's claim, omitted to pass a decree himself in favour of the plaintiff, which his finding showed he intended to do. The case was remanded on special appeal by the High Court to the District Judge (who had meanwhile returned to his appointment) who re-opened the whole case, and passed a decree directly opposed to that of his predecessor, in which he confirmed the Munsif's decree *Held* that the decree of the Judge should be reversed, and the suit again remanded in order that he might pass a decree for the plaintiff in accordance with the view of the case expressed by the Acting Judge, with which the High Court saw no ground upon the special appeal before it, to interfere BABAJI BIN RAMJI *v*. KASIMBHAI VALAD AZAMBHAI

[3 Bom , A. C., 60

145. ——— *Procedure when case comes on appeal after remand—Erroneous order of remand*—A Subordinate Judge on appeal having framed an issue, remanded the case under s 351, Civil Procedure Code, 1859 to the first Court for trial thereof, but, instead of directing that the finding should be returned to his own Court, he directed the Munsif to give the plaintiff a decree in accordance with the finding at which he might arrive The Munsif having decided the case accordingly, it went [illegible] or not he had no power to go behind the order of the Subordinate Judge on the previous occasion. BODUN BUROOAH *v*. ABDOOL GUNNY

[10 W. R., 281

146. ——— *Civil Procedure Code, 1882, ss 588, 590—Objections to its validity taken in appeal against final decree—Omission to appeal from the order*—A party aggrieved by an interlocutory order of remand may object to its validity in his appeal against the final decree, though he might have appealed against the order under s 588 of the Civil Procedure Code (Act XIV of 1882) and has not done so. SAVITRI *v*. RAMJI

[I. L. R., 14 Bom., 232

147. ——— *Civil Procedure Code, ss 588 (28), 591—Remand illegal where in contravention of s 564—Omission to appeal from remand order—Objection to order allowed on appeal from final decree*—Where a Court of first instance decided a suit, not upon a preliminary point so as to exclude any evidence of facts, but upon the merits, and upon all the evidence tendered and issues framed,—*Held* by the Full Bench that with reference to ss. 562, 564 of the Civil Procedure Code, the lower Appellate Court had no jurisdiction to remand the case under the former section, and that both the remand order and all proceedings subsequent thereto were *ultra vires* and illegal *Held* further that the legality of the remand order and the subsequent proceedings could, under s. 591 of the Code, be questioned in second appeal from the decree in the suit, though no appeal had been preferred against the order itself under s. 588, cl. 28 RAMSAHUK SINGH *v*. SHEODIN SINGH I. L. R., 13 All., 510

REMAND—*continued.*

6. CASES OF APPEAL AFTER REMAND —*continued.*

148. ———— *Practice—Civil Procedure Code (Act XIV of 1882), ss. 562, 588, cl. 28.*—Upon an appeal under cl. 28 of s. 588 of the Civil Procedure Code, against an order of remand under s. 562, the High Court is not restricted to the consideration of the form of the order, but may examine it on its merits. Where an Appellate Court passed an order under s. 562, remanding a case which had been disposed of in the Court of first instance upon points which were not preliminary points, but points directed to the merits of the case, the High Court on appeal set aside the remand order, directing the lower Appellate Court to hear the appeal according to law. ABRAHIM KHAN *v.* FAIZUNNESSA BIBI. ABRAHIM KHAN *v.* KHAIRUNNESSA BIBI

[I. L. R., 17 Calc., 168

149. ———— *Civil Procedure Code, ss. 562, 591 Objection to previous order in the case—Such objection to be taken in memorandum of appeal.*—Unless such objection is taken in his memorandum of appeal, it is not open to an appellant at the hearing of an appeal from the decree to question the validity of an order of remand previously made in the case under s. 562 of the Code of Civil Procedure. TILAK RAJ SINGH *v.* CHAKARDHARI SINGH . . **I. L. R., 15 All., 119**

Nor of an order under s. 32 adding a defendant. BANSI LAL *v.* RAMJI LAL **I. L. R., 20 All., 370**

150. ———— *Civil Procedure Code, s. 562—Effect of findings of facts and findings of law.*—On an appeal from an order of remand under s. 562 of the Code of Civil Procedure, the High Court is bound to accept the findings of fact of the Court which made the remand, that Court being a Court of first appeal, provided that there is evidence to support them; but where the High Court has decided a question of law in an appeal from an order under s. 562 of the Code, that decision of the question of law will be final for all purposes in the suit and in any appeal which may subsequently be made to the High Court. *Deo Kishen* v. *Bansi, I. L. R., 8 All., 172,* referred to. GAURI SHANKAR *v.* KARIMA BIBI . . **I. L. R., 15 All., 413**

151. ———— *Civil Procedure Code (1882), s. 562—Appeal from order of an Appellate Court—Findings of fact of the Court below.*—In an appeal from an order of an Appellate Court the High Court is bound to accept, as in a second appeal from a decree, the findings of fact arrived at by the lower Appellate Court. *Gauri Shankar* v. *Karima Bibi, I. L. R., 15 All., 413,* approved. TIKA RAM *v.* SHAMA CHARAN

[I. L. R., 20 All., 42

152. ———— *Civil Procedure Code (1882), s. 562—Decree in appeal from order of remand dismissing appeal from decree in the suit —Civil Procedure Code, s. 13—Res judicata.*—It is competent to a High Court in an appeal from an order of remand under s. 562 of the Code of Civil Procedure to pass a decree dismissing the appeal preferred to the lower Court from the decree in the suit. *Bhau Bala* v. *Bapaji Bapuji, I. L. R., 14 Bom., 14,* and *Abrahim Khan* v. *Faiz-un-nessa, I. L. R., 17 Calc., 168,* referred to. HASAN ALI *v.* SIRAJ HUSAIN . . **I. L. R., 16 All., 252**

153. ———— *Civil Procedure Code, s. 566—Power of High Court in second appeal.*—A revenue-paying talukh was sold for arrears of dâk cess under the Public Demands Recovery Act. The sale was set aside on appeal by the Revenue Commissioner, but on an application for review made to his successor, the sale was confirmed, and the purchaser took possession. In a suit to recover possession of an 8 annas share of the talukh on the grounds, among others, that the order on review was passed without jurisdiction and without notice to the plaintiffs, and as such conferred no title on the purchaser, the District Judge, on appeal, held that the order on review, not having been set aside, remained in force, but he remanded the case under s. 566 for trial of the question of notice. On the case coming back to the Appellate Court before another Judge, he held the order on review to be *ultra vires*, and the trial of the question of notice to be unnecessary. The defendants preferred a second appeal against the last judgment. *Held* that on the hearing of the appeal. the entire case, including the order of remand, was open to consideration, and that the High Court had power to determine whether that order or the order subsequently passed was correct on the merits. LALA PRYAG LAL *v.* JAI NARAYAN SINGH

[I. L. R., 22 Calc., 419

154. ———— *Civil Procedure Code (1882), ss. 562, 590, and 591—Power of High Court in second appeal.*—On an appeal from a decree of a District Munsif, it appeared that he had decided all the issues framed in the suit, but in the opinion of the District Judge he had based his judgment upon evidence improperly taken. The District Judge remanded the case to be retried, and in the event a decree was passed dismissing the suit which was affirmed on appeal by the Subordinate Judge. *Held* on second appeal that the order of remand was illegal, and, although it had not been appealed against, the subsequent proceedings should be treated as non-existent, and the appeal to the District Court should be remanded to be disposed of in accordance with law. *Savitri* v. *Ramji, I. L. R., 14 Bom., 332,* and *Rameshar Singh* v. *Sheodin Singh, I. L. R., 12 All., 510,* referred to. SUBBA SASTRI *v.* BALACHANDRA SASTRI . **I. L. R., 18 Mad., 421**

155. ———— *Omission to appeal from remand order—Objection to order allowed in appeal from final decree.*—The contention that a map was admissible in evidence was held to be open to the appellant on second appeal, although he had not appealed against an order of remand made by the lower Appellate Court, rejecting the map as not being admissible. *Savitri* v. *Ramji, I. L. R., 14 Bom., 232,* and *Rameshar Singh* v. *Sheodin Singh,*

REMAND—*continued.*

6 CASES OF APPEAL AFTER REMAND —*concluded*

I. L R, 12 All., 510, followed. KANTO PRASHAD HAZARI *v.* JAGAT CHANDRA DUTTA

[I. L R., 23 Calc., 335

156. — — *Finding of fact—Civil Procedure Code (1882), ss. 584 and 588*—Where an appeal is preferred against an appellate order under s 588, Civil Procedure Code, the finding of fact by the lower Appellate Court is conclusive as between the parties on the proper construction of ss 584 and 588, Civil Procedure Code VENGANAYYAN *v* RAMASAMI AYYAN

[I L R., 19 Mad, 422

157. — — *Civil Procedure Code (1882), ss. 562, 588, and 591—Conditions under which an order passed in the course of a suit may be questioned in an appeal from the decree in such suit—Limitation*—An order made under the Code of Civil Procedure from which an appeal is given under s 588 of that Code may be questioned under s 591 in an appeal from the decree in the suit if the ground of objection is stated in the memorandum of appeal So *held* by the Full Bench, following *Rameshar Singh v Sheodin Singh, I L R, 12 All, 510* *Muzhar Hossein v Bodha Bibi, I L R, 17 All, 112,* distinguished. *Held* (by EDGE, C J, and AIKMAN, J) that s 591 of the Code of Civil Procedure does not enable an appellant to avoid limitation by coming up under s 591 when the only ground of appeal is an order made under [illegible] ing [illegible] hat [illegible] der [illegible] . 19

158 — *Civil Procedure Code (1882), s 591—Appeal from decree in suit,* [illegible] directed against an interlocutory order passed in the suit *Sheo Nath Singh v Ram Din Singh, I. L R, 18 All, 19,* followed SHER SINGH *v* DIWAN SINGH . I. L. R., 22 All, 366

See HEM KUNWAR *v.* AMBA PRASAD

[I. L. R, 22 All, 430

7 CRIMINAL CASES

159 — — Object of remand—*Criminal Procedure Code (Act VIII of 1869), s 422—Act X of 1872, s 282—Power of Appellate Court*—A remand of a case under s 422, Act VIII of 1869, could only be for the purpose of taking further evidence, and certifying the result thereof to the [illegible] enhance the punishment. ANONYMOUS

[3 B L. R., A. Cr., 62

REMAND—*concluded.*

7 CRIMINAL CASES—*concluded.*

160. — Ground for remand—*Improper admission of examination of accused—Criminal Procedure Code, 1861, s 205* When the exa[illegible] alone or with other evidence be sufficient for the conviction of the accused, the proper course was held to [illegible] case REG *v.* KALLA LAKHMAJI

[2 Bom, 419: 2nd Ed., 395

REG *v* PEVADI BIN BASAPPA

[3 Bom., 420: 2nd Ed., 397

REG *v* VITHOJI

[2 Bom, 421 2nd Ed, 398

REG *v* GANU BAPU

[2 Bom, 422: 2nd Ed., 399

161. Remand for further evidence—*Criminal Procedure Code, 1861, s 422, and ss 169 and 171—Jurisdiction of Magistrate*—When an Appellate Court directed further evidence to be taken by a subordinate Court under s. 422 of the Code of Criminal Procedure it was competent to the subordinate Court before which such evidence was given, if any offence against public justice, as de[illegible] MAIFARAZ

[6 B L R., F. B., 698: 15 W. R, Cr., 64

162. — Remand for further inquiry—*Power to remand—Criminal Procedure Code, 1861, s 422—Omitting to give information of* [illegible] THE MATTER OF THE PETITION OF UDAI CHAND MUKHOPADHYA . . 9 B. L. R., Ap., 31

S. C IN RE WOODOY CHAND MOOKHOPADHYA

[18 W. R., Cr., 31

163. Detention of prisoner in custody pending remand—*Power of Magistrate*—A remand properly made after taking sufficient evidence given on oath or a solemn affirmation is the only ground on which a Magistrate can retain an accused person in custody IN THE MATTER OF THE PETITION OF ZUHEERUDDIN HOSSEIN

[25 W. R., Cr, 8

See MUTHOORANATH CHUCKERBUTTY *v* HEERA LALL DOSS . . 17 W. R., Cr., 55

———— **Kattubadi**—*Charge on the land.*—Kattubadi is rent, and does not constitute a charge on the land. GAJAPATI RAJAH *v.* SURYANARAYANA **I. L. R., 22 Mad., 11**

See MUTTAPUDI BALAKRISHNAYYA *v.* VENKATANARASINHA APPA RAU . **I. L. R., 19 Mad., 329**

See LAKSHMINARAYANA PANTULU *v.* VENKATARAYANAM . . . **I. L. R., 21 Mad., 116**

RENT, SUIT FOR—*continued*

See CASES UNDER RES JUDICATA—ESTOPPEL BY JUDGMENTS.

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—RENT

— — under R100.

See CASES UNDER BENGAL RENT ACT, 1869, s 102

1. — — Nature of suits under Act X of 1859—*Regular suits*—Suits for rent under Act X of 1859 were not summary suits, but to all intents and purposes regular suits, only tried by Collectors NULO TARINEE DOSSEE *v* GRAY [11 W. R , 7

S C BHABATARINI DASI *v* GREY [2 B L. R., A. C , 152

2. ——— Suits cognizable under Rent Act—*Suit partly for rent in district where Act not in force*—*Held* that a suit brought to recover rent, partly due in respect of estates situate in a district in which the Act was not in force, could be brought under the Rent Act OOSMAN KHAN *v* CHOWDHRY SHEORAJ SINGH . 5 N.-W , 42

3 ——— *Basis of suit—Jurisdiction of Collector*—A suit for rent was cognizable only by the Collector under cl 4, s 23, Act X of 1859, whether it was based upon a kabuliat or agreement, or neither DHUNPUT SINGH *v* MILLS [7 W. R., 473

4 ——— *Suit for rent of lands held in excess*—The Revenue Courts had under Act X of 1859 jurisdiction in a suit for rent in respect of lands held in excess of the lands for which the defendant was paying rent, where there was no lease or express contract limiting the lands of the tenancy. SHAM JHA *v* DOORGA ROY [7 W. R., 122

5. ——— *Suit for rent payable under agreement—Variable rate*—A suit will lie under the Rent Act for rent payable under an agreement that land taken and occupied without an actual demise should be paid for at certain rates A variation in the rates of rent in accordance with the crops under a distinct agreement to that effect is not in the nature of enhancement of rent. JADOOBUR SINGH *v*. BEHAREE SINGH . . 3 N.-W , 437

6. ——— *Suit for rent in kind—Beng Act VIII of 1869*—A suit for rent in kind is cognizable under Bengal Act VIII of 1869 MULLICK AMANUT ALI *v* UKLOO PASEE [25 W. R., 140

KRISHTO BUNDHOO BHUTTACHARJEE *v* ROTISH SHAIKH . . . . 25 W. R., 307

See LACHMAN PRASAD *v*. HOLAS MAHTOON [3 B. L. R., Ap., 27 : 11 W. R., 151

and BAIKISORI DASI *v*. BONOMALI CHARAN MAITI [1 B. L. R., S. N , 14 : 10 W. R., 209

RENT, SUIT FOR—*continued*.

7. ——— *Suit for rent in kind*.—The Rent Act applies where rent is reserved in kind, just the same as in the case of suits for rent in money, but not where articles are to be delivered under a separate agreement unconnected with the question of rent HURRO SOONDUREE DEBIA *v* JYNUL ABDIN . 8 W. R , 393

8. —— *Suit for rent in kind Beng Act VIII of 1869—Jurisdiction*—The defendant took from the plaintiff's ancestor a small portion of endowed land for a garden, and in consideration thereof paid him a certain fixed amount of grain for his maintenance and support, and subsequently that payment was commuted into a monthly allowance of R3 8 which was regularly paid till 1 76, and then stopped. To a suit under Bengal Act VIII of 1869 to recover the amount the defence was that a suit for a claim of such a nature could not be tried under that Act, but the objection was overruled, and the plaintiff held entitled to recover the amount sued for JAIJALOODDEEN *v* BURNE [15 B L R., 261 note : 18 W R., 93

9. ——— *Suit for rent in kind—Damages*—*Held* that damages on account of the want on destruction of trees, though stipulated for in a kabuliat cannot be claimed as rent, but that a stipulation to supply a number of mangoes yearly is one to pay a part of the rent in kind and the value of the mangoes is realizable as rent in a Revenue Court NUBO TARINEE DOSSEE *v* GRAY [11 W. R., 7

S C BHABATARINI DASI *v* GREY [2 B L R., A C , 152

10 ——— *Suit to maintain money rent and prevent substitution of rent in kind*—*Held* that a suit for maintenance of money rent,

[illegible]

KHAN . . . . . . 2 Agra, 307

11. ——— *Suit to enhance julkur tenure* A suit for enhancement of a julkur tenure is cognizable under the Rent Act. PURAN BAUTRA *v* TAJOODDEEN . 5 W. R., Act X, 20

ALLUM CHUNDER SHAHA *v* BHUKUT BAROO [5 W. R., Act X, 93

And so is a suit for a kabuliat for payment of the rent of a fishery KOYLASH CHUNDER DEY *v* JOY NARAIN JALOOAH . . 7 W. R., 93

12. ——— *Suit for rent of land in a town—Beng Act VIII of 1869*—Bengal Act VIII of 1869 relates only to agricultural holdings and its provisions have no application to land forming part of a street in a town COLLECTOR OF MONGHYR *v* MADAR BUKSH . 25 W. R., 136

13. ——— *Suit for rent of house situated in town*—A suit for a kabuliat or surkhut will lie under Bengal Act VIII of 1869 in the case of a house situated in a town RAM LALL *v*. CHUMMON GHUTTUCK . . 24 W. R., 271

RENT, SUIT FOR—*continued.*

14. ——— *Enhancement of rent of a dwelling-house in village.*—A suit for enhancement of rent of a dwelling-house in a village is cognizable under the Rent Act. ABDOOL HAMID v. DONAGRAM DEY . 3 B. L. R., Ap., 133

15. ——— *Suit for rent of land covered with buildings.*—A suit for the rent of land is not altered by the fact of houses or buildings standing thereon, and therefore such a suit is one cognizable under the Rent Act (X of 1859). MATHURANATH KUNDU v. CAMPBELL
[9 B. L. R., 115 note: 15 W. R., 463

16. ——— *Suit for rent of land with buildings—Jurisdiction.*—The Revenue Courts had no jurisdiction to entertain a suit for rent of land with buildings upon it, when the rent included the rent of the buildings as well as of the land. DHIRAJ MAHATAB CHAND BAHADUR v. MAKUND BALLABH BOSE
[9 B. L. R., Ap., 13: 14 W. R., 246

17. ——— *Suit for house-rent including ground-rent.*—Where house-rent includes the rent of the ground upon which the house stands, and the ground-rent can be separated from the other items forming the aggregate of the house-rent, the claim to the extent of the ground-rent may be cognizable by the Revenue Court under Act X of 1859. RAM CHURN SINGH KETTREE v. MEADHUN DURJEE . . . . . 8 W. R., 90

18. ——— *Liquidated damages under agreement with respect to house.*—The defendant bought a house belonging to the plaintiff and standing on his own land, on the condition that, as long as the house was not removed, he would pay the plaintiff a certain sum per month. The house not having been removed, the plaintiff sued for the stipulated sum from date of purchase. *Held* that this was not an action for rent, but a suit for liquidated damages, and as such cognizable in the Civil Court. DEBNATH ROY CHOWDHRY v. KALLY KISTO ROY CHOWDHRY . . . . 1 W. R., 2

19. ——— *Jurisdiction under Beng. Act VIII of 1869—Suit for rent of houses.*—The rulings applicable to suits for rent of houses or of portions of land covered with houses or markets have no reference to suits in which rent is claimed in respect of a mouzah or of an entire estate, or the aliquot part of an estate. Hence a suit for rent of 8 annas of a mouzah which was part of the plaintiff's zamindari held in farm as a whole by the defendant may be properly brought in a Civil Court under the provisions of Bengal Act VIII of 1869. GANEEMUT HOSSEIN v. RUNGOO SAHOO
[3 C. L. R., 8

20. ——— *Suit for rent of lands covered by arhats, ghâts, and bazars.*—A suit for rent of land where the rent comes from arhats, ghâts, and bazars situated upon it, as well as from the land, was held not to lie under the Rent Act. HARI MOHAN SIRKAR v. MONCRIEFF
[9 B. L. R., Ap., 14: 15 W. R., 464 note

MADAN SING v. MADAN RAM DEB
[1 B. L. R., S. N., 11

RENT, SUIT FOR—*continued.*

21. ——— *Suit for ferry tolls.*—The rent law in Bengal does not apply to ferry tolls. *Hari Mohan Sirkar* v. *Moncrieff*, 9 *B. L. R., Ap., 14,* applied. RACHHEA SINGH v. UPENDRA CHANDRA SINGH I. L. R., 27 Calc., 239

22. ——— *Suit for rent of bastu lands.*—Where the rent for bastu lands was paid by the raiyats to their landlord separately from the rent paid for the cultivated lands, but the tenure of the bastu lands was a raiyatwari tenure, it was held that, as a matter of law, the distinction in the mode of paying the rent did not exclude those lands from the operation of Act X of 1859 or Bengal Act VIII of 1869. POGOSE v. RAJOO DHOPEE
[22 W. R., 511

23. ——— *Suit for rent of garden attached to a house.*—*Held* that a suit by a lessee against a sub lessee to obtain rent of a garden which was attached to a house, and was ancillary to the enjoyment of the house, was not cognizable by the Revenue Court, but by the Civil Court. SHYAM SINGH v. PUNCHUM MAJEE . . 2 Agra, 243

24. ——— *Suit for rent of lands appurtenant to dwelling-house.*—The defendant had been declared entitled, under s. 9, Bengal Regulation XIX of 1814, to hold certain lands as attached to his dwelling-house, at an equitable rent payable to the landlord. The landlord subsequently sued under the Rent Act for enhancement of rent of these lands. *Held* that a suit for the rent of such lands could not be maintained under that Act. KHAIRUDDIN AHMED v. ABDUL BAKI
[3 B. L. R., A. C., 65: 11 W. R., 410

25. ——— *Suit for house and ground.*—If a house and two parcels of ground were held and enjoyed together, forming, as it were, one compound or set of premises, the suit as to the whole was not cognizable under the Rent Act. If one of the parcels of land lies at a distance, or is wholly separate and distinct from the other, the suit as to the former was cognizable under that Act. BIPRODOSS DEY v. WOLLEN . . 1 W. R., 222

TAREENY PERSAUD GHOSE v. BENGAL INDIGO COMPANY . . . . 2 W. R., Act X, 9

26. ——— *Suit for rent of land let for purpose of factory and dwelling-house.*—A suit lies under Act X of 1859 for the rent of land let for the purposes of a factory including the dwelling-house of the proprietor of the factory, it being immaterial for what purposes the lands were demised. TAREENY PERSAUD GHOSE v. BENGAL INDIGO COMPANY . . . . 2 W. R., Act X, 9

27. ——— *Suit for rent of land on tenancy not strictly agriculturable.*—The class of cases cognizable under the Rent Act includes suits for rent in cases of tenancies not strictly agriculturable, provided the subject of the lease is land and the rent issues out of the land, and is due on account of, and for the use of, the land, whatever may be the purpose for which the surface of the land is used. WATSON v. GOBIND CHUNDER MOZOOMDAR
[W. R., 1864, Act X, 46

RENT, SUIT FOR—*continued*

28. ———— *Garden land where trees are removed, Suit to fix rent of—Act X of 1859, s. 23, cl. 1.*—Where land has been held as a

the payment of rent. If the landowner and himself cannot by agreement fix the rent, a suit for the determination of the rate was maintainable under cl. 1, s. 23 of Act X of 1859. But where the *occupant who brings the bagh under cultivation sets* up a right inconsistent with the existence of the relation of landlord and tenant, and there is a contest between the parties as to their respective rights and positions, the clause was inapplicable. SHEOPAL SINGH *v.* RAI SEETARAM . 3 N. W., 18

29. ———— *Suit for ground-rent of land on which golah is built.*—A suit for ground rent of the land on which a golah stands is not cognizable under the Rent Act. DELAWUR ALI *v.* DABEE PERSHAD 11 W. R., 203

30. ———— *Suit for tolls from persons coming to hat—Beng. Act VIII of*

31. ———— *Suit to enforce right to erect golahs at ghâts and to collect duties—Act X of 1859, s. 23.*—A suit for enforcing an alleged right to erect golahs at certain ghats, and to collect duties from persons using them, was not a suit "on account of any right of pasturage, forest right, fisheries, or the like" within s. 23 of Act X of 1859, and the Collector had no jurisdiction to entertain it. FURLONG *v.* JOHURREE LOLL [Marsh., 194: 1 Hay, 463

32. ———— *Suit for rent from a toll on river or canal—Act X of 1859, s. 23, cl. 4*

MOHUN HAZRAH ... 15

34. ———— *Beng. Act VIII of 1869—Suit for dustoorut—Objection on appeal.*—A suit for dustoorut is not a suit for rent, and is therefore not cognizable under Bengal Act VIII of 1869. The ground that, even supposing the suit was not a suit for rent, it was not liable to be dismissed in order that a fresh suit might be instituted under Act VIII of 1859, not having been taken in the Court below, nor in the grounds of special appeal, was overruled at the hearing of the special appeal. RAMCHURN BANERJEE *v.* TORITA CHURN PAUL [18 W. R., 343

RENT, SUIT FOR—*continued.*

35. ———— *Suit for rent of stone quarries—Act X of 1859, s. 23, cl. 4.*—In a suit for rent under a lease of 8 annas of a certain hill and of 14 bighas of land by which the lessee reserved a yearly rent of R200 for the land, and the right of levying a yearly tax on the parties who were employed in quarrying the stone,—*Held* that this was not a suit cognizable under Act X of 1859. *Khalut Chunder Ghose v. Minto, 1 Ind. Jur., N. S., 426*, considered and approved. SHALGRAM *v.* KURIBUN [3 B. L. R., A. C., 61: 11 W. R., 400

36. ———— *Suit to recover*

that the claim was of the nature of one for rent and governed by the law of limitation applicable to money claims of that kind. Where there are well known terms upon which the use of land for *stacking timber* is permitted by its owner, and a party with the knowledge of this custom or practice uses the land in this way, he is bound as by an implied agreement to pay accordingly for such use. JUMNA DOSS *v.* GAWSEE MEAH 21 W. R., 124

37. ———— *Usufructuary mortgage—Huqaj ri—Reserved rent.*—The plaintiff had borrowed money on security of a zur i peshgi lease of property which, after some years he sued to redeem by payment of an alleged balance, claiming credit for huqajuri of the hypothecated land owing to him for the intervening period. *Held* that huqajuri is not rent (see *Hyder Buksh v. Hossein Buksh, 1 W. R., 103*), and if it were, it was not claimed as such in this case; moreover, there being a rent reserved would not alter the essential character of the arrangement, which was one of usufructuary mortgage. *Held* that the words of s. 23, Act X of 1859, imply that a suit by a zemindar to recover a rent reserved on land which has been let out on a zur i peshgi lease should be brought in a Civil Court. *Held* also that the plaintiff was justified in bringing his suit in a Court where he could obtain substantial relief, although the remedy sought by him involved in its details different jurisdictions. SHEO GOLAM SINGH *v.* ROY DINKUR DYAL 12 W. R., 215

38. ———— *Deposit as security for rent—Huq-i-zamindari.*—The fact that a sum of money was deposited by the lessee with the lessor as security for the payment of the rent did not remove a suit for rent from the jurisdiction of the Revenue Courts. A claim for huq i zamindari was not cognizable under Act X of 1859. JOWAHUR LALL *v.* SULTAN ALI . . 12 W. R., 314

39. ———— *Suit for zemindari dâk charges.*—A suit by a zemindar against a patnidar for zemindari dák charges, under Bengal Act VIII of 1862, for which the latter is liable under his kabuliat, was not cognizable under Act X of 1859. HITTENMONEE DOSSEE *v.* JOTENDROMOHUN TAGORE [8 W. R., Act X, 31

40. ————*Act XIV of 1863, s. 1, cl. 4—Suit for sum in nature of rent-charge—*

RENT, SUIT FOR—*continued.*

Nuzzerana.—A certain sum was paid to Government as nuzzerana during the existence of the maafee grant through a lambardar. After the maafee was resumed and a Government jumma assessed upon it, the nuzzerana continued to be paid until the interest of the holder of the resumed maafee was confiscated for rebellion and sold at auction. After the confiscation, the Government allowed the amount to the lambardar by deducting it from the amount of Government revenue paid by him. *Held* that, under the circumstances, the payment of nuzzerana being a present in acknowledgment of proprietary title in the nature of a rent-charge, the suit was cognizable under cl. (4), s. 1, Act XIV of 1863. ZAHOOR HOSSEIN *v.* ASSUD ALI . . . . . 2 Agra, Pt. II, 178

41. ——— *Suit to recover cesses in excess of rent—Jurisdiction.*—Act X of 1859 gives no jurisdiction in suits to recover cesses over and above the rent. ORJOON SAHOO *v.* ANUND SINGH . . . . 10 W. R., 257

42. ——— *Suit for arrears of cess.*—A suit for arrears of a cess, which is not in the nature of rent, could not be brought under Act X of 1859. KASIM ALI *v.* SHADEE [3 N. W., 21

43. ——— *Suit to recover lambardari right—Act XIV of 1863.*—*Held* that a suit to recover lambardari right, or 10 per cent. allowance provided for in the administration paper, being other than a commission on actual collection, was not cognizable under Act XIV of 1863. KHOOBEE *v.* AKBAR . . . . . 2 Agra, 322

44. ——— *Suit for price of trees—Act X of 1859, s. 23, cl. 4.*—A suit for half the price of trees cut down by the tenant, and claimed by the landlord by right of usage, was not cognizable under cl. 4, s. 23, Act X of 1859. TOHUL ROY *v.* MAHADEO DUTT . W. R., 1864, 327

45. ——— *Suit for rent of zerait lands.*—A suit for rent from a party holding lands as zerait in his own possession was one for rent as between landlord and tenant, and cognizable under Act X of 1859. CROWDY *v.* SREE MISSER [12 W. R., 4

46. ——— *Suit for rent of land covered by buildings.*—*L* having claimed certain lands as lessee from the zamindar, and *A* having pleaded that he held them under a mirasi tenure from the same zamindar, the Court held that the two leases could co-exist, and that *L* was entitled to recover actual possession and to pay to *A*, as an intermediate holder, the rent due to the zamindar. In execution of the decree, *L* was put in possession of all the land except a portion covered by factory buildings in the possession of *A*, which buildings the Court held did not go with the land. Unable to get possession, *L* brought a suit to recover rent for the land covered by the building. *Held* that no suit for rent could lie, *A*'s representative being a trespasser, and his mere statement of willingness to pay rent being insufficient to constitute the relation of landlord and tenant. LYONS *v.* BETTS [13 W. R., 94

RENT, SUIT FOR—*continued.*

47. ——— *Payment by one co-sharer to others—Beng. Act VIII of 1869.*—A co-sharer in an estate who cultivates a portion belonging to himself and the other shareholders should *pro tanto* be considered their tenant, and payment by such co-sharer for land so cultivated, by whatever name it be called, is substantially rent, and a suit for such rent comes properly under the provisions of Bengal Act VIII of 1869. ALLADINEE DOSSEE *v.* SREENATH CHUNDER BOSE . . 20 W. R., 258

48. ——— *Suits for rent by goandahs against under-tenants.*—Suits for rent between "goandahs" and those cultivating under them were cognizable under the Rent Act. LIKHUN PATHUK *v.* ROOP LAL . . . 3 N. W., 48

49. ——— *Suit against co-sharer for share of rent—Act X of 1859, s. 23.*—S. 23, Act X of 1859, was not applicable to a suit in which the plaintiff claimed as entitled to a moiety of the rent of certain land in the possession of his co-sharer. MITTUNLAL SAHOO *v.* NADUE [1 W. R., 53

KALEE PERSHAD *v.* LUTAFUT HOSSEIN [12 W. R., 418

50. ——— *Suit for share of rent against tenant and co-lessors.*—A suit for a share of rent against a tenant and co-lessors was not cognizable as a suit for rent within the meaning of cl. 4, s. 23, Act X of 1859. LALLA ISREE PERSHAD *v.* STUART . . W. R., 1864, Act X, 28

51. ——— *Suit for rent and damages against co-sharers for sub-lease.*—Suit against co-sharers and dar-ijaradar for rent and damages in respect of a mehal of which a sub-lease was granted by the defendant co-sharers. As plaintiff did not get possession of his share until after the expiry of the sub-lease, and then only by the aid of the Civil Court, and as his title during the subsistence of the lease was merely nominal, and as he exercised no rights of a landlord during this period, and could not have sustained against the dar-ijaradar an action for rent under Act X of 1859,—*Held* that his suit was properly brought in the Civil Court. RADHAJEEBUN MUSTAFEE *v.* DENONATH BANERJEE [W. R., 1864, Act X, 49

52. ——— *Suit by patnidar for his share of rent.*—A suit by one of a body of patnidars against his co-patnidars for his share of the rents collected by them was cognizable under the Rent Act. SOOBHUL SINGH *v.* MEETO SINGH [W. R., 1864, Act X, 12

HYDER ALI *v.* OMRIT CHOWDHRY [W. R., 1864, Act X, 42

53. ——— *Shikmi talukhdars—Permanent settlement.*—Where shikmi talukhs at the time of the permanent settlement were comprised within the zamindar's estate, the talukhdars were subordinate to the zamindar, and the zamindar could therefore sue them for their rents in the Revenue Courts. CHUNDER KANT CHUCKERBUTTY *v.* DUKHEEANEA ODEA [1 Ind. Jur., N. S., 6 : 4 W. R., Act X, 41

RENT, SUIT FOR—*continued.*

CHUNDER KANT CHUCKERBUTTY *v.* MAHOMED HOSSEIN . 6 W. R., Act X, 1

54 ——— *Suit for money advanced to naib for works on salaries.*—Money advanced to a naib for the construction of a bund, or for the payment of the salaries of tahsildars and peadahs comes within the terms of s. 23, Act X of 1859, with regard to the management of land, and a suit by a manager of an estate to recover such advance was cognizable by the Revenue Courts. RAM DYAL BANERJEE *v.* COURT OF WARDS [12 W. R., 269

55 ——— *Suit for profits of misappropriated property.*—A suit for profits of property alleged to have been appropriated by a wrong-doer was cognizable by the Civil Court, and not by the Collector. ROOP MUNGUL SINGH *v.* ANUND ROY . . 3 W. R., 111

56 ——— *Suit on bonds secured by assignment of rent.*—*A* lent money to *B* on bonds, payment of which was secured by assignment of the rents of *B*'s estate. *A*, instead of liquidating the bonds from the collections of the estate assigned, brought a suit on the bonds, and obtained a decree. *B* then sued for a refund of the collections made and not appropriated to the payment of the bonds. *Held* that such a suit was not one for rent, and was not cognizable under the Rent Act. ALI MAHOMED *v.* KANARAM GHOSE [8 W. R., 123

57 ——— *Purchase of crops on condition that they were subject to claim for rent—Suit against purchaser to recover amount of rent.*—Where a party purchases crops belonging to a raiyat at auction sale with notice and assenting

[3 Agra, 73

58 ——— *Default of sezawul—Suit against sezawul to recover loss.*—A lease empowered the landlord on default of payment of any of the kists by the tenants, to appoint a kuruk sezawul, the tenants being responsible for any loss accruing. A default having occurred, and a kuruk sezawul having been appointed, the landlord sued to recover the loss sustained by him. *Held* that such a suit would not lie under the Rent Act. ANUND MOYEE DEBIA *v.* KHIRODHUR HALDAR [2 W. R., Act X, 46

59 ——— *Suit to settle future rate of rent.*—A suit to settle the rent of future years between owner and occupier of land will not lie. MUDHOO SOODUN ROY *v.* SHEEPUTTY BHUTTACHARJEE . . 25 W. R., 488

RENT, SUIT FOR—*continued.*

60 ——— *Suit to determine future rates of rent—Beng. Act VIII of 1869, ss. 28, 29, 35.*—A suit to determine not merely current, but prospective, rates of rent will lie under the rent law. A pottah is not necessarily mokurrari because it confers a contingent holding on the lessee and his posterity. ASGUR ALI *v.* WOOMA KANT MOOKERJEE [25 W. R., 318

61. ——— *Suit to collect rents as a sharer or representative sharer.*—The Civil Court had jurisdiction in a suit which involved the right to collect rents as a sharer or representative, or as deriving from a sharer, and the decision of which depended on proof of a certain alleged partition. HURROCHUNDER ROY *v.* OBHOY CHURN SIRCAR 2 W. R., Act X, 72

62. ——— *Suit raising question of extent of share as kutkeenadar.*—Where the kutkeenadar of an alleged share sued the kutkeenadar of the remaining portion for a proportion of rent, and defendant while admitting himself to be plaintiff's tenant, disputed the extent of the alleged share,—*Held* that the question of the extent of the shares of the parties as co-kutkeenadars could only be decided by a Civil Court which could give complete relief on the whole case with reference both to shares and rent. AFRASUT HOSSEIN *v.* JUGDHAREE SING 13 W. R., 59

63. ——— *Intervenor—Disputed title to rent.*—In a suit for rent paid in kind, in which defendant did not deny plaintiff's right as landlord, but in which intervenors appeared and objected that the Civil Court had no jurisdiction, and pleaded also that defendant was their tenant and paid rents to them,—*Held* (by LOCH, J.) that neither defendant's appropriation of the rent nor the fact of his disputing plaintiff's share, nor the act of the intervenors in raising a question of right altered the nature of the suit, or took it out of the cognizance of a Revenue Court. *Held* also (by PHEAR, J.) that whatever might have been the case before the intervention, as soon as the intervenor was made a defendant, and issues of right and title were raised by the Court between him and the plaintiff, there was matter which the Court had jurisdiction to decide. GOLAM MAHOMED AKBUR *v.* RADHA KISHEN MOHUNT [9 W. R., 297

64 ——— *Suit by assignee of right to recover rent.*—A claim to rent made by a person to whom the zamindar has assigned the right to recover the rent was cognizable under the Rent Act. SHAMASOONDEREE DOSSEE *v.* BINDABUN CHUNDER MOZOOMDAR [Marsh., 193 : 1 Hay, 574

65 ——— *Suit for rent after assignment of rent in consideration of loan.*—In a suit for rent where the original landlord had, in consideration of a loan from his tenant made to him an assignment of the rents to some extent, plaintiff alleged that that arrangement had been put an end to, and the assignment had dropped by reason of the defendants having recovered the money in another way. *Held* that the Deputy Collector had full

RENT, SUIT FOR—*continued.*

jurisdiction to enquire into the allegation, because plaintiff's cause of action was the original cause of action of the landlord, and the only effect of subsequent events was to deprive defendants of an answer to the claim. ISHAN CHUNDER SEIN *v.* KENARAM GHOSE . . . . . 12 W. R., 381

66. ———— *Suit for rent against benami and actual cultivator—Act X of 1859, s. 23, cl. 4.*—A suit for rent against two persons, one as the benami and the other as the actual farmer, was cognizable under cl. 4, s. 23, Act X of 1859. In such a suit the plaintiff could only obtain a decree against one or other, not both of the defendants. HEERALALL BUKSHEE *v.* RAJKISHORE MOZOOMDAR

[W. R., F. B., 58: 1 Ind. Jur., O. S., 81
1 Hay, 449

S. C. RAJKISHORE MOZOOMDAR *v.* HEERALOLL BUKSHEE . . . . . Marsh., 188

67. ———— *Suit to recover rent wrongfully collected by unauthorized person.*—A suit would not lie, under Act X of 1859, to recover rent wrongfully collected by a person not the agent of the landholder, and without his authority. SEETAL KISTO ROY *v.* GOSSEENATH SHAH

[Marsh., 465

68. ———— *Suit raising questions of payment by burrat.*—In a suit for rent, where payment by a burrat is pleaded by the tenant and execution of it is proved by the landlord, the Revenue Court had jurisdiction to try the question of burrat. POORNO CHUNDER ROY *v.* NUND LALL GHOSE . . . . . . 7 W. R., 25

and of payment. DARIMBA DEBIA *v.* NILMONEE SINGH DEO . . . . . 13 W. R., 266

69. ———— *Claim to deduction of rent—Bond.*—In an action for rent before the Collector, the tenant set up that, by a tamasook entered into between himself and his landlord after his lease, it was stipulated that in consideration of an advance of money by him to the landlord a part only of the rent should be paid and the residue applied in satisfaction of the debt and he claimed to be entitled to the benefit of that stipulation. *Held* that the Collector had jurisdiction to inquire into the validity of the alleged tamasook, and to allow the deduction, if satisfied that it was genuine. EDUN *v.* BEECHUN . . . . . Marsh., 409

70. ———— *Mode of payment of rent—Revenue.*—In a suit by the Court of Wards, on the part of the Durbhunga Rajah, for unpaid instalments of rent where the agreement under which the defendant held his zamindari was that he should pay his Government revenue into the Collectorate through the Rajah,—*Held* that the rule which prevailed in that part of the country amongst ordinary tenants of paying rent month by month was not applicable to defendant, and that the instalments of rent and interest thereon were to be calculated according to the Government rules for the payment of revenue. GRIDHAREE SINGH *v.* COURT OF WARDS

[10 W. R., 368

RENT, SUIT FOR—*continued.*

71. ———— *Apportionment of rent.*—Where a tenant held lands in six villages under a patnidar at an admitted rent, and the patnidar subsequently granted dar-patnis to two different parties of two and four of the said villages respectively, the tenant having admitted a certain sum to be the rent payable in respect of the lands situated in the two villages, the rent payable to the dar-patnidar of the four villages was properly estimated as the difference between the admitted rent of the land in all six villages and the admitted rent of the land situated in the two villages. BRAJA LAL ROY *v.* SAYAMA CHARAN BHUTT . 6 B. L. R., 523: 15 W. R., 20

72. ———— *Suit for arrears of rent—Suit for arrears of rent instituted before, but decided after, the abolishing of Revenue Courts.*—A suit for arrears of rent which had been instituted in the Civil Court before Bengal Act VIII of 1869 came into operation was decided by that Court after the jurisdiction of the Revenue Courts had ceased to exist. *Held* that the Civil Court had no jurisdiction in the case. KULLYANESSUREE DOSSEE *v.* NARAIN KYBURTO . . 15 W. R., 241

See DHIRAJ MAHATAB CHAND BAHADOOR *v.* MAKUND BULLABH BOSE

[9 B. L. R., Ap., 13: 14 W. R., 246

73. ———— *Suit for arrears of rent—Suit for arrears of phulkur—Jurisdiction of Civil Court.*—A suit for arrears of rent of the description known as phulkur, being of a nature cognizable by a revenue officer when Act X of 1859 was in force can now be brought before a Munsif: a Small Cause Court has no jurisdiction to try it. GOBIND SOOKOOL *v.* GOKOOL BHUKUT . . 23 W. R., 304

74. ———— *Suit for arrears of rent—Suit for rent of a hât—Act X of 1859, s. 23, cl. 4.*—A suit for arrears of rent of a hât was cognizable under cl. 4, s. 23, Act X of 1859. GALTERE DEBEA *v.* THAKOOR DOSS

[W. R., 1864, Act X, 78

75. ———— *Suit for arrears of rent—Suit for arrears of rent of indigo factory—Act X of 1859, s. 23, cl. 4.*—A suit for arrears of rent due on account of an indigo factory was not a suit for arrears of rent due on account of land within cl. 4, s. 23, Act X of 1859. ODDIT CHUNDER PAUL *v.* COMOLO KANTO PAUL

[Marsh., 401: 2 Hay, 529

76. ———— *Suit for arrears of rent—Suit for rent of land with indigo factories on it.*—A suit by a lessor for arrears of rent was triable under Act X of 1859, if the principal matter demised under the lease was land, and if indigo factories on such land were merely the adjuncts or appurtenances. SHARODA PERSHAD MOOKERJEE *v.* SREENATH MOOKERJEE . . 15 W. R., 520

77. ———— *Suit for arrears of rent—Suit on covenant in lease to recover arrears of rent of mine.*—*A* leased to *B* for 25 years, commencing from October 1855, certain aurungs, or pieces of ground, at certain rent payable monthly, *B*

RENT, SUIT FOR—*continued.*

entering into a covenant to pay the rent. The property leased was a loha mehal or iron mine, and the lessee used it as such and erected smelting furnaces *Held* that a suit by *A* against *B*, on the covenant in the lease to recover arrears of rent was properly not brought under the Rent Act, that "land," as understood in reference to Act X of 1859, had a limited [illegible]

[illegible]

78 ———— *Suit for arrears of rent—Suit for arrears of rent under assignment* —A suit for arrears due under an assignment of [illegible]

79. ———— *Suit for arrears of rent—Mortgagee executing lease to mortgagor* — A mortgagee who executes a lease in favour of a mortgagor, stipulating to pay him a certain amount annually as rent is, as far as the payment of that sum is concerned a tenant of the mortgagor, and must be sued under the Rent Act for any arrears of such rent BISSEROOP DUTT *v* BINODE RAM SEIN . W. R., 1864, Act X, 93

80. ———— *Suit for arrears of rent—Suit to recover money due for jumma between dates of resumption and settlement.*—A suit by Government to recover what the defendants have by a writing agreed to pay in respect of Government jumma between the date of resumption and settlement was not a suit for arrears of rent cognizable under Act X of 1859 GOVERNMENT *v* HUSHMUTOONISSA BIBEE . 2 W. R., Act X, 108

81 ———— *Suit for arrears of rent—Suit for damages* – Plaintiff, having paid arrears of rent to defendant as his landlord's authorized agent was afterwards sued for those arrears by [illegible]

the suit was an action for damages, and not one cognizable under the Rent Act BYKUNT NATH SANDYAL *v* KALEE CHURN PAUL 13 W. R., 350

82. ———— *Suit for arrears of rent—Suit for arrears of rent after kabuliat had been given up, and after default in payment* [illegible]

SUMPUT DOOBEY . . . . 5 N. W., 84

83 ———— *Suit against talukdar for arrears of rent* —A suit against a talukhdar for arrears of rent at an enhanced rate would be under Act X of 1859, even though it were not brought for determination of the rate at which defendant should be required to give a kabuliat ROWSHUN BIBEE *v* CHUNDERMADHUB KUR [10 W R., 177

84. ———— *Suit for arrears of rent—Enhanced rent.*—*A* took a farming lease from *B* by which he agreed to pay *B* a certain yearly rent, and stipulated further to pay to *B* half of any enhanced rent which he might succeed in realizing from the raiyats. *Held* that a suit by *B* to recover arrears of this moiety of enhanced rent would be under the Rent Act BHABATARINI DASI *v* GREY . . . 2 B. L. R., A C, 162

S C NUBO TARINEE DOSSEE *v* GRAY [11 W. R., 7

85 ———— *Suit for arrears of rent* —A Collector could give a decree for arrears of rent against the real lessees in possession, although no previous realization of rent directly from them was established, and no written agreement was shown to have been executed by them in their own names, another party being the ostensible holder of the lease, and not denying liability JUDOONATH PAUL *v* PROSUNNONATH DUTT . 9 W. R., 71

86 ———— *Suit for arrears of rent—Act X of 1859, s 23, cl 4—Suit against lessee and surety for rent* —A suit for arrears of rent [illegible]

[illegible] LAD SANDYAL *v* BHUBO SOONDEREE DEBIA CHOWDHRAIN . . . 8 W R., 452

87. ———— *Suit for arrears of rent—Suit against lessees and their sureties Decree against lessees* —There was no provision in [illegible]

rent the decree passed against the sureties [illegible] maintained, still the decree passed against the lessees themselves was good DOORGA PERSHAD *v* SHEORAJ SINGH . . . 5 N. W., 222

GUNESH KOOER *v* GOMUTOONISSA BEGUM [6 N. W., 77

88. ———— *Suit for arrears of rent—Act X of 1859, s. 23—Surety for payment of rent—Decree, Form of.*—In a suit for arrears of rent in a Revenue Court under Act X of 1859, the lessors joined as defendants the lessee and another person whom they alleged to be a surety for the payment of the rent An *ex parte* decree was made in [illegible]

chasers at the sale An application under Bengal Act VII of 1876 for the registration of their names as proprietors of the land purchased having been rejected, the decree holders brought the present suit to establish their title to, and to recover possession

REPORT—*concluded.*

——— of Indian Law Commissioners and Select Committee.

See STATUTES, CONSTRUCTION OF.
[I. L. R., 17 Calc., 852
I. L. R., 14 All., 145
I. L. R., 16 Mad., 207
I. L. R., 21 Calc., 732
I. L. R., 22 Calc., 788
L. R., 22 I. A., 107

——— of Magistrate on inquiry into cause of death.

See CRIMINAL PROCEDURE CODES, s. 176 (1872, s. 135) . I. L. R., 3 Calc., 742

——— of Police.

See UNDER POLICE REPORT.

REPRESENTATIVE.

See CASES UNDER CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUITS.

See CASES UNDER EXECUTION OF DECREE —EXECUTION BY AND AGAINST REPRESENTATIVES.

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.

REPRESENTATIVE OF DECEASED PERSON.

See CASES UNDER APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

See CASES UNDER PARTIES—SUBSTITUTION OF PARTIES.

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See SALE IN EXECUTION OF DECREE — INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.
[I. L. R., 6 All., 255
I. L. R., 12 All., 440
I. L. R., 19 Bom., 276
I. L. R., 23 Calc., 686
I. L. R., 21 Bom., 424
I. L. R., 22 Mad., 119

——— Suit against—

See CASES UNDER HINDU LAW—DEBTS.

See LIMITATION ACT, 1877, s. 17 (1871, s. 18) . . 3 B. L. R., A. C., 233
[I. L. R., 7 Calc., 627

See CASES UNDER MAHOMEDAN LAW — DEBTS.

See SALE IN EXECUTION OF DECREE — DECREES AGAINST REPRESENTATIVES.

REPRESENTATIVE OF DECEASED PERSON—*continued.*

——— Suit by—

See CASES UNDER CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

1. ——— "Representative," Meaning of—*Civil Procedure Code, 1859, s. 203.* - A person may be a representative within the meaning of s. 203 of Act VIII of 1859 (corresponding with s. 252 of Act X of 1877) so as to make the decree effectual for the purpose therein stated, although that person is not the heir. ASSAMATHEM NESSA BIBEE *v.* LUTCHMEEPUT SINGH
[I. L. R., 4 Calc., 142: 2 C. L. R., 223

2. ——— "Legal representative"—*Civil Procedure Code (1882), s. 234—A stranger to a decree against a deceased person in possession of his property.*—The words "legal representative" in s. 234 of the Code of Civil Procedure do not include any person who does not in law represent the estate of the deceased person. Consequently, a stranger in possession of property of a deceased person who was not a party to a decree against such person cannot be proceeded against in execution otherwise than by a regular suit. CHATHAKELAN *v.* GOVINDA KARUMIAR . . I. L. R., 17 Mad., 186

3. ——— Liability of representative for papers of deceased.—The heirs of a deceased person are liable for papers in their custody for which a claim is established against the estate of the deceased, as well as for debts due therefrom to the extent of assets taken by them. LUCHMEEPUT SINGH *v.* NUND COOMAR GOOPTO . 22 W. R., 388

4. ——— *Civil Procedure Code (1882), s. 252—Suit against the heir and possessor of the assets of a deceased person.*—Where a party is sued for money as the heir and possessor of the assets of a deceased debtor, and it is proved that he has received sufficient assets to meet the debt, a personal decree therefor can be passed against him. NATHURAM SIVIJI SETT *v.* KUTTI HAJI
[I. L. R., 20 Mad., 446

5. ——— Hindu estate, Person taking possession of—*Liability for debt—Executor de son tort.*—Where a Hindu died leaving a widow and brother, and the brother took possession of the deceased's estate during the widow's lifetime, *Held* that the brother was liable to pay a debt of the deceased out of the estate come into his hands. *Held* also that he was liable as legal representative of deceased, the widow having relinquished her rights as heiress. *Quære*—Is any stranger who takes a deceased's estate liable, under Hindu law, to pay his debts as executor *de son tort*? JOGENDER NARAIN DEB ROYKUT *v.* TEMPLE
[2 Ind. Jur., N. S., 234

6. ——— *Subsequent proof of will by executor—Liability of estate in hands of executor—Creditor's right to execute decree or bring suit against executor.*—The person taking possession of the estate of a deceased Hindu (who has left a will, of which, however, no probate has been

REPRESENTATIVE OF DECEASED PERSON—*continued.*

granted) must, in the present state of the law, be treated for some purposes as his representative until some other claimant comes forward. A judgment obtained against such a person, even if it cannot be executed against the estate in the hands of an executor when he has taken out probate, is at any rate sufficient to enable a plaintiff to bring a suit against the executor in order to have the decree satisfied. PROSUNNO CHUNDER BHUTTACHARJEE *v.* KRISTO CHYTUNNO PAL

[I. L. R., 4 Calc., 342: 3 C. L. R., 154

7. ——————— *Suit by creditor*

the suit is bad unless the estate is represented. MATANGINI DASSEE *v.* CHOONEYMONEY DASSEE

[I. L. R., 22 Calc., 903

8. ——————— *Administrator appointed under Bom. Reg VIII of 1827, s 10—Act XIX of 1841, s. 9—Administrator General's Act (II of 1874), s 18—Civil Procedure Code (1882), ss. 365 and 582—Death of appellant—Abatement of appeal.*—An administrator appointed under s 10 of Bombay Regulation VIII of 1827 does not, by such appointment, become the legal representative of the deceased, or entitled to continue an appeal filed by him. MALAPA SIDAPA DESAI *v.* DEBI NAIK . I. L. R., 21 Bom., 102

9. ——————— *Heir of deceased Hindu allowing stranger to enter into possession of deceased's property—Effect of decree against party*

10. ——————— Liability of representatives

11. ——————— Widow of deceased Hindu—*Creditor's right on decree against widow as representative.*—Where a Hindu died leaving a childless widow and a separated brother, it was held that, until a legal representative was appointed to the deceased's estate, his widow was the only person who could defend a suit as his representative; and that, while a decree obtained against the widow would enable a creditor to attach and sell, not only the widow's life-estate in the immoveable property, but also the reversionary estate of the remainderman, yet a decree obtained against the remainderman would not enable the creditor to touch the estate in the hands of the widow. NATHA HARI *v.* JAMNI

[8 Bom., A. C., 37

12. ——————— *Sale in execution of decree against estate of deceased—Suit against representatives of deceased husband's estate.*—In 1862 a suit for mesne profits was brought against certain persons as being the heirs of one *R I*, deceased, among whom were his widow and two infant sons. During the pendency of this suit the two infant sons died, and the widow was made a defendant as representing the estate of her deceased sons. The suit was decreed in favour of the plaintiffs in 1875, and on the plaintiffs applying for execution, the widow objected that five-sixteenths of the properties against which execution was sought, was the property of her adopted son, whom she alleged to have adopted in 1874. The adopted son was not made a party to the suit. This objection was overruled, but the same objection was taken by the adopted son through his

due to have the order set aside. The Court, whilst refusing to interfere with the order, inasmuch as there appeared to be no material irregularity therein, pointed out to the lower Court that the decree of 1875 having been obtained on account of a debt of *R L's*, and being against the widow as representing her husband's (*R I's*) estate, the estate would be answerable for the debt, whether the widow or the adopted son represented the estate supposing the decree to have been properly obtained. The principle in *Ishan Chunder Mitter* v *Buksh Ali Soudagur, Marsh., 614,* followed. SOTISH CHUNDER LAHIRY *v.* NILCOMUL LAHIRY

[I. L. R., 11 Calc., 45

13. ——— Sale in execution of decree against deceased Mahomedan's estate—Representation of deceased by some only of his-next-of-kin—*Civil Procedure Code, s 234—Sale held to be valid.*—*P*, a Mahomedan woman, died leaving her husband and several minor children as her representatives. In execution of a money-decree obtained against *P*, the creditor attached certain land which belonged to *P* and made her husband and two

aside the sale on the ground, *inter alia*, that some of them were no parties to the proceedings in execution,

14. ——————— Representation of estate by mother—*Decree against mother when adopted son in existence, null.*—Plaintiff obtained a decree on a bond executed by *S* against the mother of *S*, whom he believed to be the heiress of *S*. In attempting to

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REPRESENTATIVE OF DECEASED PERSON—*continued.*

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REPRESENTATIVE OF DECEASED PERSON—*continued.*

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9. ———— *Heir of deceased*

10. ———— Liability of representatives —*Money debts—Damages for breach of contract*—

[illegible]

11. ———— Widow of deceased Hindu—

widow's life-estate in the immoveable property, but also the reversionary estate of the remainderman, yet a decree obtained against the remainderman would not enable the creditor to touch the estate in the hands of the widow. NATHA HARI v. JAMNI

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12. ———— *Sale in execution of decree against estate of deceased—Suit against representatives of deceased husband's estate*—In 1862 a suit for mesne profits was brought against certain persons as being the heirs of one *R L*, deceased, among whom were his widow and two infant sons. During the pendency of this suit the two infant sons died, and the widow was made a defendant as representing the estate of her deceased sons. The suit was decreed in favour of the plaintiffs in 1875,

the suit. This objection was overruled, but the same objection was taken by the adopted son through his natural father as his guardian and next friend, and the Court released the five sixteenth share from attachment, and allowed the objection. Against this order some of the plaintiffs appealed but pending the appeal another of the plaintiffs applied to the High Court under s. 622 of the Code of Civil Procedure to have the order set aside. The Court, whilst refusing to interfere with the order, inasmuch as there appeared to be no material irregularity therein, pointed out to the lower Court that the decree of 1875 having been obtained on account of a debt of *R L's*, and being against the widow as representing her husband's (*R L's*) estate, the estate would be answerable for the debt whether the widow

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14. ———— Representation of estate by mother—*Decree against mother when adopted son in existence, null.*—Plaintiff obtained a decree on a bond executed by *S* against the mother of *S*, whom he believed to be the heiress of *S*. In attempting to

REPRESENTATIVE OF DECEASED PERSON—*continued.*

execute this decree against the estate of *S*, plaintiff was obstructed by the defendant, who was the adopted son of *S*. Plaintiff sued the defendant for a declaration that he was entitled to execute his decree against the estate of *S* in the hands of the defendant. *Held* that the suit must fail, inasmuch as the estate of *S* was not properly represented in the former suit. *Sotish Chunder Lahiry* v. *Nil Comul Lahiry, I. L. R., 11 Calc., 45,* distinguised. SUBBANNA *v.* VENKATAKRISHNAN [I. L. R., 11 Mad., 408

15. ———— Son as representative of father—*Suit against son—Assets.*—Where a suit is brought against a Hindu son, personally and as representative of his father, to recover a debt due by the father, a decree ought to be given against his son, whether he has inherited any property or not, the result of such a decree in the case of non-inheritance being that it cannot be executed against the non-inheriting son. BAPUJI AUDITRAM *v.* UMEDBHAI HATHE SING . . . 8 Bom., A. C., 245

16. ———— *Son's liability for father's debts—Decree against legal representatives of a deceased debtor—Assets.*—Where a suit is brought against the son and legal representatives of a deceased Hindu for debts contracted by the latter, the Court ought to pass a decree, although the deceased debtor may have left no assets. *Bapuji* v. *Umedbhai, 8 Bom., A. C., 245,* followed. LALLU BHAGVAN *v.* TRIBHUVAN MOTIRAM [I. L. R., 13 Bom., 653

17. ———— Suit against legal representative—*Assets—Decree—Execution—Civil Procedure Code (Act XIV of 1882), s. 252.*—A plaintiff is entitled to sue the legal representative of his deceased debtor, and to obtain a decree against him, without proving that assets have come into his hands. It is sufficient if there are assets of which he may become possessed. The decree should mention that it is against the defendant in that character, and should be executed as directed by s. 252 of the Civil Procedure Code, Act XIV of 1882. *Rayappa Chetti* v. *Ali Sahib, 2 Mad., 336,* followed. GIRDHARLAL *v.* BAI SHIV . I. L. R., 8 Bom., 309

18. ———— Suit against heir for debts of ancestor—*Onus probandi.*—In a suit against an heir for debts of his ancestor, in the absence of special circumstances, it lies upon the plaintiff in the first instance to give such evidence as would *primâ facie* afford reasonable ground for an inference that assets had or ought to have come to the hands of the defendant. Plaintiff having laid his foundation for his case, it then lies upon the defendant to show that the amount of such assets is not sufficient to satisfy the plaintiff's claim, or that he was entitled to be satisfied out of them, or that there were no assets, or that they had been disposed of in satisfaction of other claims. KOTTALA UPPI *v.* SHANGARA VARMA [3 Mad., 161

19. ———— Liability of representative with assets to account—*Mesne profits.*—When a party is proceeded against as the representative of a deceased judgment-debtor, and it is proved that property which belonged to the deceased judgment-debtor has come into his hands, it lies upon him to account for such property and to include in his accounts mesne profits, whether accruing in the shape of rents or of interest. ASEEMOONNISSA *v.* AMEERONNISSA . . . . . 15 W. R., 285

20. ———— Denial of assets—*Decree against estate—Costs.*—In a suit brought against the representatives of a deceased Mahomedan, alleged to be in possession of his estate for recovery of the amounts of a bond-debt due by the deceased, the plaintiff should first be allowed to establish his right of suit against the estate, although the defendants plead that they possess no property belonging to the *deceased to satisfy the claim.* Such a plea, if established, is one to be regarded in framing the decree. The decree in such a case should be for payment out of the property of the deceased. And ordinarily the Court should not direct payment of the costs by the defendants personally, but out of the estate. MADHO RAM *v.* DILBUR MAHUL . . 2 N. W., 449

21. ———— *Person in possession of estate without assets—Act VIII of 1859, s. 203.*—The plaintiff sued the defendants on the ground that they were in possession of his deceased debtor's property. It being found that the defendants received no assets from the deceased,—*Held* the suit was rightly dismissed. If the suit had simply been against the defendants as heirs or personal representatives of the deceased, and if they had alleged that no assets had come to their hands, the plaintiff would have been entitled to a decree against them as representatives of the deceased (if he had prayed for such a decree), without going to a trial on the question whether or not the defendants had assets; and in that case he might have proceeded, in enforcement of his decree, under the provisions of s. 203, Act VIII of 1859. IN THE MATTER OF THE PETITION OF HIRALAL MOOKERJEE [6 B. L. R., Ap., 100

S. C. HEERA LAL MOOKERJEE *v.* DIGUMBUREE KULOONEE . . . . . 14 W. R., 431

22. ———— Representatives of debtor—*Right to decree to extent of assets against heirs.*—A decree was obtained against *A*, and on his death execution was taken out against his widows. *B* came in, and, alleging that *A* was merely a benami holder for *B*, applied to be substituted for the widows as defendant. *Held* that the Court was not right in exempting from liability *A*'s heirs to the extent of any assets which might have come into their hands. DOORGA SOONDUREE DEBIA *v.* SOORJOMONEE DEBIA [8 W. R., 101

23. ———— *Civil Procedure Code, 1859, s. 203—Right to have decree executed out of property coming to hands of representative.*—Plaintiff sought to recover the amount of a bond executed by the father of the defendant, and prayed for a judgment against certain land which belonged to the defendant's father and the right to which passed by succession to the defendants. *Held* that the plaintiff

REPRESENTATIVE OF DECEASED PERSON—*continued*

was entitled to a decree for payment by the defendants of the amount of the bond out of any property [illegible]

left, or if it should prove insufficient when sold to satisfy the decree. I AYAPPA CHETTI *v.* ALI SAHIB [2 Mad., 336

24 ——— *Execution of decree against son—Civil Procedure Code, 1859, s 203—Issues*—Where the defendant in a suit for the payment of money died before decree, his sons were made parties and a decree for the debt due by the deceased was given against them In execution of this decree, the decree holder attached certain property in the hands of one of the sons, who objected on the ground that it was his self acquired property *Held* that the proper issues to be determined were (1) whether the property attached by the decree holder had formed a part of the estate of the deceased debtor, and if not (2) whether if it was separate property of the son, that son had misapplied any property received by him from his father, and if so to what extent MOORABEE SINGH *v* PURYAG SINGH [2 C. L. R., 189

25 ——— *Responsibility of representative—Rights of creditors*—When a defendant against whom a decree was passed in his representative capacity has made payments in satisfaction of the decree to the full value of the property of the deceased which has come, or but for the default of the defendant might have come, to his hands the decree can no longer be executed, even although the decree-holder may be able to prove that the defendant still has in his possession property which originally belonged to the deceased If the heir of a deceased Hindu or Mahomedan has sold to a *bond fide* purchaser property which he has inherited, he is responsible for the assets received but the property cannot be followed in the hands of the purchaser RAM GOLAM DOBEY *v* AYMA BEGUM [12 W. R., 177

26 ——— *Liability of representatives—Onus probandi—Mode of accounting*—Before judgment debtors can claim exemption [illegible]

and file an inventory of the whole estate descended to them, and prove how it has been applied. In a claim of this kind, the onus of proof is on the judgment debtors, and, on their failure to sustain it a presumption arises in favour of the decree-holder JOOGUL KISHORE SINGH *v* KALEE CHURN SINGH [25 W. R., 224

27 ——— *Payment of debt to representative—Refusal to pay uncertificated representative*—The defendant gave a bond on unstamped paper to the plaintiff's eldest brother On the obligee's death, the succession was disputed, and

REPRESENTATIVE OF DECEASED PERSON—*continued*

the obligor refused to pay the subsequent interest to the plaintiff *Held* that, as the plaintiff had failed to take out a certificate of succession to the obligee, the obligor was justified in such refusal *Held* also that the plaintiff [illegible]

28 ——— *Payment of debts to heir of deceased without certificate Certificate subsequently granted—Liability of debtor—Bom Reg VIII of 1827*—A defendant who is sued by the holder of a certificate of heirship to a deceased Hindu for a debt due from the defendant to the deceased [illegible]

bond fide believed to be such heir PURSHOTAM MANSUKH *v* RAMCHHOD PURSHOTAM [8 Bom , A. C., 152

29 ——— *Succession Act (X of 1865), s 187—Hindu Wills Act (XXI of 1870) s 2—Estate of deceased Hindu—Legal representative—Right of suit*—A Hindu who was of one of the defendants in a suit, died leaving a will. The executors appointed by the will did not take out probate, and the property of the deceased came into the possession of his divided brothers who were thereupon brought on to the record of the suit as the representatives of the deceased defendant A decree was passed for the plaintiff by consent The mother of the deceased, who would apart from the will have been his legal representative, then sued to set aside the above decree, having previously obtained a declaration that she was entitled to the property of the deceased in the suit against his brothers above referred to *Held* that the plaintiff was not entitled to maintain the suit JANAKI *v* DHANU LALL I. L. R., 14 Mad , 454

30. ——— *Certificate under Act XXVII of 1860—Suit to set aside certificate granted by the Resident at Cochin—Jurisdiction of Foreign Court—Right of suit*—Defendant 1, who was domiciled in the Native State of Cochin, obtained from the Resident a certificate to collect the debts of the deceased karnavan of the plaintiff's tarwad. The plaintiff, whose domicile was the same as that of defendant 1, then sued in British Cochin for a declaration of his right to receive the interest accrued due on certain Government promissory notes being the property of the deceased karnavan *Held* that the suit did not lie, and that the appellant should either have established his representative right by suit in the Court of Native Cochin and then applied to the Resident for a certificate or have brought his action against the Government of India joining defendant 1 as a party to such action AMMUNNI *v.* KRISHNA [I. L. R., 10 Mad., 405

REPRESENTATIVE OF DECEASED PERSON—*continued.*

31. ——— *Decree for maintenance obtained by wife against her husband—Appeal by husband against decree—Death of wife pending appeal—Legal representative of the deceased for the purpose of the appeal.*—A Hindu wife obtained a decree against her husband for maintenance. He appealed, and while the appeal was pending, the wife died leaving two daughters. The question then arose whether her husband or his daughters should represent the deceased in the appeal. *Held* that the daughters of the deceased were the legal representatives for the purposes of the appeal. MANILAL REWADAT *v.* BAI REWA

[I. L. R., 17 Bom., 758

32. ——— *Representative of insolvent debtor—Civil Procedure Code (1882), s. 252—Suit against widow of insolvent as his legal representative.*—The husband of the defendant was adjudicated an insolvent in 1891, and the usual order was made vesting his estate in the Official Assignee. He subsequently died without having filed his schedule, and no schedule had ever been filed. After his death, a suit was brought by a creditor against the defendant as the "widow, heiress, and legal representative" of the deceased insolvent, in which suit a decree was made against her, "the amount to be levied out of the assets of the deceased in her hands." In an application by the defendant to have the decree set aside on the grounds that the Official Assignee was a necessary party to the suit, and that the decree should have been against him as her husband's representative, as his estate was in his lifetime, and since had continued to be, vested in the Official Assignee,—*Held that on the death of the insolvent his widow,* the defendant, became his legal representative within the meaning of s. 252 of the Civil Procedure Code, and that the existence of the vesting order in no way affected her position as such representative. *Greender Chunder Ghose* v. *Mackintosh, I. L. R., 4 Calc., 897; Girdharlal* v. *Bai Shiv, I. L. R., 8 Bom., 309;* and *Kashi Prasad* v *Miller, I. L. R., 7 All., 752,* referred to. CHANDMULL *v.* RANEESOONDERY DOSSEE . . . I. L. R., 22 Calc., 259

33. ——— *Death of plaintiff subsequent to decree—Right of survivorship vested in defendant—Effect on vested right of plaintiff's representative.*—A decree for partition operates as a severance of the joint ownership. Where therefore *M*, a minor and only son, by his next friend sued his father and certain alienees of the family property for partition and obtained a decree, and subsequent to decree and pending appeal the plaintiff died, and *M*'s mother was brought on the record as deceased plaintiff's legal representative,—*Held* that any right of survivorship which the defendant might have had, if the plaintiff had died before decree, was extinguished, and did not affect the rights of his mother, who properly represented him. *SUBBARAYA MUDALI v.* MANIKA MUDALI . . I. L. R., 19 Mad., 345

34. ——— *Death of the judgment-debtor leaving minor sons—Widow in possession—Sons not parties to execution proceedings—Sale in execution after judgment-debtor's*

REPRESENTATIVE OF DECEASED PERSON—*concluded.*

death—Minor sons represented by their mother and guardian on record—Purchase of judgment-debtor's interest by decree-holder—Subsequent suit by sons to recover the property—Civil Procedure Code (1859), s. 210—Civil Procedure Code (1882), s. 234.—Under s. 210 of the Civil Procedure Code (Act VIII of 1859), an execution sale of the property of a deceased judgment-debtor was binding, if the estate of the deceased was sufficiently represented *quoad* such property. A Hindu judgment-debtor died, leaving a widow and two sons, who were minors. His widow was placed on the record as his heir, and not his sons. Certain property of the deceased was sold in execution. The sale certificate issued to the purchaser stated that he had purchased the right, title, and interest of the judgment-debtor in the property. In a suit subsequently brought by the sons,—*Held* that they were bound by the sale. The widow of the deceased judgment-debtor, who as natural guardian of the minor sons was in possession of the property, was upon the record, and it was clear that it was the interest of the judgment-debtor, and not that of the widow, that was intended to be sold. ACHUT RAMCHANDRA PAL *v.* MANJUNATH VENKATNARNAPPA . . . I. L. R., 21 Bom., 539

RE-SALE.

See CONTRACT—BREACH OF CONTRACT.
[I. L. R., 24 Calc., 124, 177
I. L. R., 19 All., 535
I. L. R., 25 Calc., 505
I. L. R., 23 Mad., 18

See CASES UNDER SALE IN EXECUTION OF DECREE—RE-SALES.

——— of goods, Notice of—

See CONTRACT ACT, s. 73.
[15 B. L. R., 276

RESCUE.

See ESCAPE FROM CUSTODY.
[21 W. R., Cr., 22
13 W. R., Cr., 75
I. L. R., 11 Mad., 441

RESERVOIR.

See PENAL CODE, s. 277.
[I. L. R., 2 Calc., 383

RESIDENCE.

See CASES UNDER INSOLVENT ACT, s. 5.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION—DWELLING OR CARRYING ON BUSINESS OR WORKING FOR GAIN.

See LUNATIC . 2 B. L. R., A.C., 246
[I. L. R., 24 Calc., 133

RESIDENCE—*concluded*

See RECOGNIZANCE TO KEEP PEACE.
[I. L. R., 24 Calc., 344
I. L. R., 6 All., 26
I. L. R., 11 Calc., 737
I. L. R., 12 Calc., 133
I. L. R., 14 All., 49
I. L. R., 23 Bom., 32

See SECURITY FOR COSTS—SUITS
[I. L. R., 3 Bom., 227
I. L. R., 9 Bom., 244

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DWELLING OR CARRYING ON BUSINESS

——— Condition for—

See WILL—CONSTRUCTION 12 B. L. R., 1
[14 B. L. R., 60
I. L. R., 20 Calc., 15

——— Constructive—

See FOREIGN COURT, JUDGMENT OF
[I. L. R. 20 Mad., 112

——— Proximity of—

See CERTIFICATE OF ADMINISTRATION—ISSUE OF AND RIGHT TO CERTIFICATE
[I. L. R., 4 Calc., 411

——— Right of—

See CASES UNDER HINDU LAW—FAMILY DWELLING HOUSE.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW
[12 B. L. R., 238
L. R., I. A., Sup. Vol., 203
W. R., 1864, 3
I. L. R., 3 Bom., 44, 372, 415
L. R., 6 I. A., 114
I. L. R., 4 Bom., 261
I. L. R., 13 Bom., 218
I. L. R., 14 Bom., 490
I. L. R., 15 Bom., 236
I. L. R., 23 Bom., 52

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS AND REMOTENESS
[I. L. R., 15 Bom., 543

——— Stipulation as to—

See RESTITUTION OF CONJUGAL RIGHTS
[I. L. R., 17 Calc., 670

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See APPEAL—ORDERS
[I. L. R., 21 Bom., 393
I. L. R., 23 Calc., 830
3 B. L. R., A. C., 303 note
W. R., 1864, Mis., 34
1 W. R., 140
5 Mad., 163
13 W. R., 264
21 W. R., 39
I. L. R., 16 Mad., 127

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued*

See LIMITATION ACT 1877, ART. 11
[I. L. R., 5 Bom., 440
I. L. R., 8 Mad., 82

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION I. L. R., 18 Bom., 37

See LIMITATION ACT 1877, ART. 167
[I. L. R., 5 Calc., 331
I. L. R., 5 Mad., 113
I. L. R., 11 Bom., 473
I. L. R. 13 Mad., 504

See LIMITATION ACT 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS
[I. L. R., 16 Bom., 294
I. L. R., 20 Bom., 175
I. L. R., 21 Bom., 345

See MAMLATDARS COURTS ACT, s. 17
[I. L. R., 14 Bom., 157

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE
[I. L. R., 10 Calc., 50
I. L. R., 23 Bom., 967

See PENAL CODE, s. 183
[I. L. R., 15 Bom., 564
I. L. R., 25 Calc., 274
I. L. R., 21 Mad., 78

See SALE IN EXECUTION OF DECREE—OBJECTION TO SALE
[I. L. R., 3 Calc., 729

1. ——— Application by decree holder on obstruction being made—*Month—English calendar—Civil Procedure Code, 1859, s. 226*—The word 'month' in s. 226 of the Code of Civil Procedure means a month according to the English calendar. An applicant under that section had a clear calendar month exclusive of the day of dispossession within which to prefer his application. DADU VALAD ANSAR *v.* BALGOUDA BIN SHANKAR APPA . 5 Bom., A. C., 39

2. ——— *Civil Procedure Code, 1859, s. 226—Procedure*—The Court could not be put in motion under s. 226 of the Code of Civil Procedure without an application from the decree-holder under that section. IN THE MATTER OF MAHTAB KOOMAREE 19 W. R., 62

3. ——— Remedies of decree-holder—*Obstruction in execution of decree—Decree holder, Option of, to proceed under s. 328 or by a separate suit*—S. 328 of the Civil Procedure Code (Act XIV of 1882) does not make it obligatory on a decree-holder, who is obstructed in execution of the decree to pursue his remedies under that section. Consequently his failure to do so does not prevent him from proceeding against the defendant by a regular suit. BALVANT SANTARAM *v.* BABAJI
[I. L. R., 8 Bom., 602

This was the case under s. 224 of Act VIII of 1859. JUGMOHUN TEWAREE *v.* BULEEO NAIK
[3 Agra, 163

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued.*

4. ——— **Proof of obstruction**—*Civil Procedure Code, 1859, ss. 226, 227.*—In order to bring a case under ss. 226 and 227 of the Civil Procedure Code, 1859, it was necessary to show that obstruction had been offered arising from the circumstance that lands had been taken which were not included in the decree. PRANNATH ROY CHOWDHRY *v.* PREONATH ROY CHOWDHRY . **8 W. R., 398**

5. ——— **Procedure**—*Civil Procedure Code, 1859, ss. 226, 227—Obstruction in execution of decree for immoveable property.*—Procedure to be observed where, while execution of a decree was going on against immoveable property, the decree-holder alleged that he was obstructed in getting possession of certain lands included in the decree. BROJO MOHUN SUTPUTTY *v.* SHOODA MONEE DABEE **[8 W. R., 79**

6. ——— *Objection to investigation by Ameen under order of remand—Civil Procedure Code, 1859, ss. 226, 227.*—Where the order of remand directed the lower Court to ascertain from the settlement chittahs the situation of the lands in dispute, and the chittahs were found not to give the expected information,—*Held* that the Judge should, when the Ameen's investigation was objected to, have proceeded under ss. 226 and 227 of Act VIII of 1859 and allowed both parties to adduce proofs of their claims. SHADHOO SURAN *v.* BHUGGOO LALL . . . . . . **12 W. R., 98**

7. ——— **Power of Courts**—*Civil Procedure Code, 1877, s. 329.*—The power given by s. 329 of the Civil Procedure Code to make such order as the Court shall see fit must be construed with regard to the circumstances in respect of which the power is to be exercised. An order under s. 329 should be the result of the fact that the defendant in the suit, who is precluded by the decree from disputing plaintiff's right, unjustly instigates a third party, who has no real interest in the property, to prevent the plaintiff from getting the benefit of his execution. A Court has no power under this section to determine, as between the judgment-creditor and a third party obstructing the execution of the decree, important questions on the merits which are wholly unconnected with, and cannot be affected by, the fact that the obstruction is made at the instigation of the defendant. GOVINDA NAIR *v.* KESAVA **[I. L. R., 3 Mad., 81**

8. ——— *Civil Procedure Code, 1882, ss. 331 and 647—Civil Courts Act, Madras, 1873, s. 12—Jurisdiction—Claim below ordinary pecuniary limit.*—A Court executing a decree obtains, by virtue of s. 331 of the Code of Civil Procedure, a special jurisdiction which enables it to try a claim of which the value of the subject-matter falls below the pecuniary limit of its ordinary jurisdiction. By virtue of s. 647 of the Code of Civil Procedure, a superior Court may, for sufficient cause, transfer a claim, registered under s. 331, to a subordinate Court for trial. SITHALAKSHI *v.* VYTHILINGA **[I. L. R., 8 Mad., 548**

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued.*

9. ——— **Person put into formal possession**—*Civil Procedure Code, 1859, s. 229 and s. 224—Execution of decree for possession.*—The provisions of s. 229 of the Code of Civil Procedure, 1859, are not applicable to the case of a person put in possession of land under a decree in the manner prescribed by s. 224 of the same Code. GUNESH PERSHAD *v.* JYKISHUN

[1 N. W., 134 : Ed. 1873, 218

10. ——— **Bonâ fide claimant other than debtor**—*Civil Procedure Code, 1859, s. 229.*—Under s. 229, a *bonâ fide* claimant other than the defendant, obstructing the execution of the decree, instead of being looked upon as an intervenor, must be regarded as one of the substantial parties to the suit. DHIRAJ MAHTABCHAND *v.* NADUROONNISSA BEBEE . . . . . **4 W. R., 82**

11. ——— **Obstruction otherwise than to officer of Court**—*Civil Procedure Code, 1859, s. 229—Resisting execution of decree—Jurisdiction.*—*A* and *B* obtained a decree for possession of land against *C*. On their proceeding to execute their decree, *D*, who was in possession, presented a petition to the Munsif, complaining that they were thereby attempting unlawfully to interfere with his possession. The case was tried, on remand from the Judge, as a suit under the provisions of s. 229 of Act VIII of 1859. *Held per* JACKSON, *J.*, that as the decree-holder had not complained that the officer of the Court had been obstructed or resisted by the claimant, the case did not fall within s. 229 of Act VIII of 1859; and therefore the Court had not jurisdiction to take summary cognizance of the case. BUHAL SING CHOWDHRY *v.* BEHARILAL

[1 B. L. R., A. C., 206 : 10 W. R., 318

12. ——— **Right to question legality of decree**—*"Claimants" under Civil Procedure Code, 1859, s. 229.*—In claims arising under s. 229 of Act VIII of 1859, there was nothing to prevent the "claimants" from questioning the legality of the decree obtained by the decree-holder against the judgment-debtor. MAHOMED ALI KHAN *v.* KALUNDER ALI KHAN . . . . . **4 N. W., 81**

13. ——— **Question for trial**—*Title—Possession—Civil Procedure Code, 1859, ss. 229, 230—Procedure.*—In suits framed under the provisions of ss. 229 and 230 of Act VIII of 1859, the question of title is to be tried, and not the mere question of *bonâ fide* possession. The matter in dispute is to be investigated in the same manner and with the like powers, as if a suit for the property had been instituted by the appellant against the decree-holder. RUGHA RAE *v.* PERMESHUR DYAL . . . . . . **2 N. W., 252**

14. ——— *Civil Procedure Code, 1859, ss. 229, 230—Question of title.*—*Held* that the principle of the Full Bench ruling in *Radha Pyari Debi* v. *Nabin Chandra Chowdhry*, 5 *B. L. R.*, 708 : 13 *W. R.*, *F. B.*, 80,—that a suit under s. 230 of the Code of Civil Procedure must be treated as an ordinary suit for the recovery of property, and that the whole question of

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued.*

title between the parties ought to be gone into,—is equally applicable to a case under s 229 ABDOOS SOBHAN *v.* BRAHMA DEO NARAIN [14 W. R., 140

Contra, TALEB HOSSEIN KHAN *v.* GOORCO PERSHAD ROY . . . 20 W. R., 57

15. ——— *Purchaser of under-tenure—Plea of limitation*—Where a decree-holder sought to execute his decree against an under-tenure which had been sold for arrears of rent, and the purchaser objected on the plea of limitation,—*Held* that the purchaser, being no party to the suit, was not entitled to contend that execution was barred he could only be heard under s. 229 or s 230, Act VIII of 1859, and if under the former, a very wide discretion could be exercised by the Court. MOHESH CHUNDER BANERJEE *v.* CHUNDRA MONEE DEBIA . . 9 W. R., 486

16. ——— Order on application made after time limited—*Civil Procedure Code, 1859, ss 229, 231*—*Right to bring fresh suit*—The holder of a decree for land, having been resisted in obtaining possession thereof by a person other than the defendant claiming to be in possession of such land on his own account, complained under Act VIII of 1859 of such resistance to the Court executing the decree. The Court rejected such application on the ground that it had been made after the time limited by law *Held* that the order rejecting such application could not be regarded as one under s 229 of Act VIII of 1859, which would under s 231 preclude such decree-holder from instituting a suit against such person for such land BENI PRASAD *v.* LACHMAN PRASAD I. L. R., 4 All., 131

17. ——— Nature of investigation—*Civil Procedure Code, 1859, s 229*—*Subject-matter of suit*—*Execution*—*Appeal*—*District Judge, Jurisdiction of*—The plaintiff obtained a decree against *T*, *A*, and *J* in a suit the subject matter of which exceeded Rs 5,000, and in part execution thereof attached property worth less than that amount *D* having resisted the execution of the decree, the plaintiff's claim was numbered and registered as a suit under s 229 of Act VIII of 1859 Upon [illegible] ginal suit, out of which [illegible] exceeded Rs 5,000 The plaintiff appealed against this decision to the High Court *Held* that the investigation of a claim under s. 229 of Act VIII of 1859 was not to be regarded as a fresh suit, but was merely a continuation of the original suit, and that there was therefore no appeal against the order in question to the District Judge. RAVLOJI TAMAJI *v.* DHOLYA RAGHU . I. L. R., 4 Bom., 123

Contra, MUTTAMMAL *v.* CHINNANA GOUNDEN [I. L. R., 4 Mad., 220

in which it was held that such a claim was a fresh suit, and not a continuation of the suit in which the claim had been made.

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued*

18. ——— Question of possession—*Civil Procedure Code (Act XIV of 1882) s 331*—*Investigation under that section*—*Question of title.*—The investigation of claims under s. 331 of the Code of Civil Procedure (Act XIV of 1882) is not limited to the fact of possession Any question of title arising between the contending parties in connection with their right of possession may be finally determined in such investigation as in an ordinary action of ejectment MOTIAKHAN *v.* GOBIKHAN . I. L. R., 14 Bom., 627

19 ——— *Civil Procedure Code, ss. 13, 278, 331*—*Munsif, Jurisdiction of*—The plaintiff, having obtained a decree for possession of certain land, applied for execution by delivery of possession, whereupon a third party filed an objection in the Court of the Munsif that he held a prior decree for possession of the same land, and therefore the plaintiff's decree was incapable of execution This objection was allowed and the plaintiff then sued for establishment of his right to possession of the land jointly with the objector, making the former judgment debtor and the objector defendants to the suit The Subordinate Judge in first appeal held that the Munsif had acted under [illegible] plying [illegible] a suit [illegible] ircum- [illegible] diction [illegible] taken [illegible] e been made, under s 278 *Bukal Singh Chowdhry v Behari Lal, 1 B L R, A C, 206* referred to The scope and application of s 331 of the Civil Procedure Code commented upon MAHABIR PRASAD *v.* PARMA . . . I. L. R., 14 All., 417

20. ——— *Civil Procedure Code, ss 328, 331*—*Obstruction offered by a tenant*—*Decree for partition*—*Possession Decree for*—Obstruction was offered to the execution of a decree [illegible] not numbered and registered as a suit. *Held* that the decree for partition was a decree for possession of property within the meaning of the Civil Procedure Code, s 328, and that that section was not rendered inapplicable by the fact that the obstructor claimed to be a mulgeni tenant GOPALA *v.* FERNANDES . . . I. L. R., 16 Mad., 127

21. ——— Decree in possessory suit—*Civil Procedure Code, 1859, s. 230*—*Decree in suit under Act XIV of 1859, s 15* *A* had been dispossessed of certain land in execution of a decree which *B* had obtained in a suit against *C* under s. 15 Act XIV of 1859 *A* applied under s 230, Act VIII of 1859, to recover the land. *Held* the decree obtained by *B* was a decree within the meaning of s. 230 of Act VIII of 1859, and therefore *A*

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued.*

had rightly applied under that section. BRAHMA MAYI DEBI *v.* BARKAT SIRDAR [4 B. L. R., F. B., 94

S. C. BROHMO MOYEE DABEE *v.* BURKUT SIRDAR [12 W. R., F. B., 25

Contra, GOBIND CHUNDER BAGDEE *v.* GOBIND GHOSE MUNDUL . . . . 7 W. R., 171

22. ——— **Defendants dispossessed in execution, Objection by** —*Civil Procedure Code, 1859, s. 230.*—S. 230, Act VIII of 1859, does not authorize the registry as a suit of objections by defendants or purchasers from defendants dispossessed of immoveable property in execution of a decree, and disputing the right of the decree-holder to be put into possession of such property. HURO PERSHAD ROY *v.* RAM LOCHUN MUNDUL [6 W. R., 148

23. ——— **Claimant to right of way over land taken in execution**—*Civil Procedure Code, 1859, s. 230.*—A plaintiff claiming a right of way over land taken possession of in execution of a decree could not intervene under s. 230, Act VIII of 1859, but had to bring a regular suit to establish his right. NOBIN CHUNDER MOZOOMDAR *v.* JUTADHAREE HOLDAR . . 2 W. R., 289

24. ——— **Person other than defendant as to particular portion of land in dispute**—*Civil Procedure Code, 1859, s. 230—Suit on dispossession by Ameen—Cause of action, period from which it accrues.*—S. 230, Act VIII of 1859, was applicable to the case of a person who, though personally the defendant in the original suit, was legally other than the defendant as regards the particular portion of land in dispute in execution. Where an Ameen was appointed to measure and give possession of land in execution of a decree, the one month allowed for preferring a claim under that section must be calculated from the date when the Ameen gave over possession, and not from the date of his final report KASHEENATH DOSS *v.* BHOWANEE DOSSEE . W. R., 1864, Mis., 18

25. ——— **Intervenor**—*Party to suit—Right to apply under Civil Procedure Code, 1859, s. 230.*—*D* having sued to recover possession of certain lands, *P* intervened, and *D*'s claim was decreed without prejudice to *P*'s rights. In execution of that decree, *D* took possession, and thereupon *P* applied to be heard under the provisions of s. 230, Act VIII of 1859. *Held* that, having been a party to the decree, *P* had no remedy under that law. RAMGOPAL CHUCKERBUTTY *v.* POORNACHUNDER BANERJEE . . . . 12 W. R., 475

26. ——— **Possession by receipt of rent** — *Personal occupation — Civil Procedure Code, 1859, s. 230.*—Possession by receipt and enjoyment of rent is as good in law as actual occupation, and s. 230, Act VIII of 1859, was not restricted to cases of personal occupation. BHYRUB SIRCAR *v.* SHAM MANJEE . . . . 15 W. R., 70

27. ——— **Objector with bonâ fide title**—*Right to apply under Civil Procedure Code,*

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued.*

1859, s. 230.—An objector who did not claim to be in possession "on his own account, or on account of some person other than the defendant," but whose sole ground of intervention was that he held a *bonâ fide* title derived from the defendant, was not entitled to be heard under s. 230. EUSUF ALI KHAN *v.* SHIB SHUNKUR SHUHAYE. KURIM BUKSH *v.* SHIB SHUNKUR SHUHAYE . W. R., 1864, 384

28. ——— **Claimant to possession through mortgagee**—*Right to apply under Civil Procedure Code, 1859, s. 230.*—Possession through a mortgagee is sufficient to bring a claim under this section. ASGUR ALI *v.* ASGUR ALI [20 W. R., 373

29. ——— **Party not in actual occupation of land**—*Right to benefit of s. 230, Civil Procedure Code, 1859.*—A party who has parted with the actual occupation of land to another, wa not thereby, as an absolute rule without restrictior barred from taking advantage of Act VIII of 1859, s. 230. BANEE MADHUB DUTT *v.* NUND LALL MOJOOMDAR . . . . 22 W. R., 123

30. ——— **Mortgagee in possession**—*Civil Procedure Code, 1877, s. 332—Execution of decree—Act VIII of 1859, s. 230—Repeal.*—A mortgagee who is in possession of the mortgaged property under the mortgage is in possession "on his own account" within the meaning of s. 230, Act VIII of 1859, and s. 332 of Act X of 1877. Where, in pursuance of an order made in the execution of a decre while Act VIII of 1859 was in force, certain persons were dispossessed of certain property after that Act was repealed and Act X of 1877 came into force, and such persons applied under s. 332 of Act X of 1877 to be restored to the possession of such property on certain of the grounds specified in that section,—*Held* that such persons were entitled to the benefit of that section. A person claiming under s. 332 of Act X of 1877 need not prove his title, but only th fact of possession. SHAFI-UDDIN *v.* LOCHAN SING [I. L. R., 2 All., 9

31. ——— **Nature of evidence requ site**—*Possession and dispossession, Proof of Civil Procedure Code, 1859, s. 230.*—To entitle party to come in under s. 230, Act VIII of 1859, a petition, and have his case tried in like manner a he had paid full stamp duty on a regular plaint must prove that he was in possession of the lan suit, and was dispossessed by another party, alle the land to form part of land decreed to him. MADHUB DUTT *v.* RADHA MOHUN . 3 W. R.,

32. ——— **Failure to show dispo sion**—*Civil Procedure Code, 1859, s. 230—confirm possession.*—Where, in an applicatio fessedly, under the provisions of s. 230, Act 1859, plaintiff affirmed that he was in possess sued to have his rights affirmed,—*Held* that, tiff was not dispossessed, he had no cause o and that he was not entitled to be heard ; the Court jurisdiction to hear and determine

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued*

under the extraordinary provisions of that section. KALEE NARAIN SINGH *v* PROTAPCHUNDER BUROOAH [12 W R., 231

33 ——— Dispossession, Evidence of —*Sufficiency of proof—Planting bamboo and making proclamation—Civil Procedure Code, 1859, s 230*—Planting a bamboo and making proclamation to the occupants of an estate that it has been adjudged to some other is sufficient dispossession of a landlord to warrant him in applying to the Court under s 230 COLLECTOR OF BOGRA *v* KRISHNA INDRA ROY . . . 2 B. L. R., A. C, 301 [11 W. R., 191

34 ——— Procedure on application—*Civil Procedure Code, 1859 s 230—Examination of applicant*—When an application is made by a party on the ground that he was in possession and that he has been dispossessed in execution of a decree in a suit in which he was not a party, the proper order to be made under s 230, Act VIII of 1859 is in the first instance to examine the applicant OBHOY CHURN DEY *v* RAJENDRO COOMAR GHOSE [16 W R., 288

35 — *Dispossession under decree of person not a party to it—Civil Procedure Code, 1859, s 230*—A party dispossessed of land under colour of a decree to which he was not a party, applying to a Judge under the provisions of s 230, Act VIII of 1859 is entitled to an investigation and if his title is established, to a decree HASSUN ALY *v* NAIB AHMED . 11 W R., 148

36 ——— *Trial as regular suit—Civil Procedure Code 1859 s 230*—Where a party complains under s 230, Civil Procedure Code,

[illegible]

[illegible]

RANEE MADHUB DUTT *v* NUND LALL MOZOOMDAR [22 W. R., 123

YUSAN KHATUN *v*. RAMNATH SEN [7 B L. R., Ap., 28

S. C ESHAN KHATOON *v*. RAMNATH SEIN LUSHKUR [15 W. R., 327

AJOO KHAN *v*. KISTO PERSHAD LAHOORY [8 W. R., 477

SAHOO GOKUL PERSHAD *v* ZYNUB [1 N W., 176: Ed 1873, 255

The express provisions of the later Acts of 1877 and 1882 s. 332, are in accordance with these cases

37. ——— Question of title *Question of possession—Civil Procedure Code, 1859 s 230*—Where an objection takes the form of a suit under s. 230 of the Code of Civil Procedure, the real question to be tried is, whether the objector has a better right to the property in dispute than the decree-holder SHEEBO COOMAREE DABEE *v* KASHUB CHUNDER BOSE [1 Ind. Jur, N. S, 188: 5 W. R., 224

Under Act VIII of 1859, s 230, it was held that the title might be gone into, as well as the question of possession YUSAN KHATUN *v* RAMNATH SEN . 7 B L. R., Ap., 28

S C ESHAN KHATOON *v* RAMNATH SEIN LUSHKUR . . . . 15 W R., 327

RADHA PYARI DEBI *v* NABIN CHANDRA CHOWDHRY 5 B L. R, 708. 13 W. R, F B., 80

NUGENDER CHUNDER GHOSE *v* RAM COMUL MUNDUL . 3 W R., 213

JADUNATH SING *v* KALIPRASAD [6 B L. R., Ap, 55. 14 W. R., 358

AJOO KHAN *v* KISTO PERSHAD LAHOORY [8 W R., 477

38 ——— *Civil Procedure Code, 1859 s 230—Claim—Possession*—When a person making a claim to certain property under s 230 of Act VIII of 1859 had been allowed to bring a suit under that section to try his right to the property, it was held to be sufficient in the first instance, for him to prove his possession without proof of title, but if he took this course it was open to the defendant to show that, although possession might be in the plaintiff yet he had no good title to the property, and that he (the defendant) had a better title DILBASSEE KOONWAREE MOTHEE *v* GUNGA PERSHAD I. L. R., 5 Calc., 278

39 *Possession—Limitation—Civil Procedure Code 1859 s 230*—The defendant purchased in 1851 from the Official Assignee certain property belonging to one *D* In 1867 he brought a suit against the heirs of *D* for possession of the property purchased, he obtained a decree in May 1869 under which he obtained possession in May 1870 In June 1870 the plaintiff filed a petition under s 230 Act VIII of 1859 alleging that he had purchased the property claimed from the heirs of *D* in 1844 and had been in possession until he was ousted by the defendant and that he was not a party to the suit brought by the defendant in 1867 *Held* that the title of the defendant was barred, more than twelve years having elapsed from the date of his purchase; and that the plaintiff was entitled on mere proof of *bonâ fide* possession and that he was not a party to the suit by the defendant in 1867 to put the defendant to proof of his own title and on the defendant's failing to prove his title, to be restored to possession BRINDABUN CHUNDER ROY *v* TARACHAND BANDOPADHAY [11 B. L. R., 237: 20 W. R., 114

40 ——— Separate adverse claims—*Dispossession—Procedure—Civil Procedure Code, 1859, s 230*—Four persons made separate applications to the Court under s 230 Act VIII of 1859 alleging that the defendant, having obtained a decree against Government for possession of Cabriite

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued.*

in a suit to which they were no parties, had in execution dispossessed them of fisheries of which they were severally in possession. On inquiry it appeared that each and several of the four applicants claimed possession of the same portions of the fisheries. The lower Court, holding that it was impossible for each of several parties setting up adverse claims to the same property to show that it had been *bona fide* in his possession, and that he had been dispossessed from it, referred all parties to a regular suit. *Held* that the Judge should have tried each case by itself as between the applicant and the decree-holder. SARADAMAYI CHOWDHRAIN *v.* NABIN CHANDRA ROY CHOWDHRY . 2 B. L. R., A. C., 333 : 11 W. R., 255

41. ——— Dispute between mokuraridar and dar-patnidar—*Civil Procedure Code, 1859, s. 230.*—In a dispute between a mokuraridar and dar-patnidar, it was held that the khas possession of the dar-patnidar, having been established by a decree under s. 230, Act VIII of 1859, could not be disturbed, except by a regular suit by the mokuraridar for confirmation of his title as mokuraridar and for direct possession. SHERO COOMAREE DEBEE *v.* KESHUB CHUNDER BOSE . . 8 W. R., 131

42. ——— Transfer of land in dispute from one jurisdiction to another—*Intervenor—Civil Procedure Code, 1859, s. 230.*—In a suit brought by an intervenor under s. 230, Code of Civil Procedure, if during the pendency of the execution case the land in dispute is passed by transfer from one district to another, and thereby the Court is deprived of jurisdiction, it is the duty of the Court to transfer the record to the Court of the district to which the land has been transferred. KALEE DOSS NEOGY *v.* HURONATH ROY CHOWDHRY 3 W. R., 4

43. ——— Purchaser at execution sale—*Civil Procedure Code, 1859, ss. 269, 268.*—A person coming in under s. 269, Act VIII of 1859, more than a month after dispossession, had no *locus standi* under that section. S. 268 of Act VIII of 1859 was solely for the benefit of purchasers at a sale in execution, and no person had any ground to come in under the application of a purchaser except the party who was complained of as resisting or obstructing the purchaser in obtaining possession. HEERA LALL BANERJEE *v.* BURODA KANT ROY. ONOOKOOL CHUNDER MOOKERJEE *v.* BURODA KANT ROY . . . . . . 13 W. R., 467

44. ——— *Civil Procedure Code, 1859, s. 269—Objection to khas possession made before attempt to deliver possession in execution of decree—Construction of decree for possession.*—*M* obtained a decree against *J*, and in execution attached and sold his lands, which were bought by the decree-holder. The sale was confirmed and a writ of possession directed. After the decree, but prior to attachment, the original judgment-debtor had executed and registered a patni pottah for a three annas share of one of the zamindaris in dispute, and granted it to *D*, who having objected under s. 246, Civil Procedure Code, 1859, to the above sale, an order was made at the time of the auction sale that it should be proclaimed that *D* claimed a patni right, and this was accordingly done. Before *M* was put into actual possession, she was required to find security. Delaying to do this, the lands were attached and sold under a judgment obtained by others who purchased and entered into possession. *M*, having furnished security, petitioned to be put into possession, but her petition was rejected. She then brought a suit to cancel the order refusing her possession. In her plaint she claimed khas possession, but did not refer to the patni claimed by *D*. Her plaint was decreed, the decree was appealed, and it was finally upheld by the Privy Council; but throughout the litigation no issue was raised as to the patni. In the proceeding to execute the decree *M* claimed actual possession. Before process had been issued, *D* objected to khas possession being given of his patni mouzah. The Judge ruled that the objection fell within the spirit of s. 269, Act VIII of 1859, and that he had therefore jurisdiction to entertain it. *Held* that s. 269 did not apply, inasmuch as no attempt had been made to deliver possession. *Held* also that the only intention of the decree was to confirm the plaintiff in the position which she occupied when the property was sold in execution of her original decree, after proclamation of *D*'s claim, and that she was not entitled to khas possession. SHARODA PERSHAD MULLICK *v.* DHUNPUT SINGH . 19 W. R., 219

45. ——— *Civil Procedure Code, 1859, ss. 269 and 264 (1882, s. 334)—Delivery of possession—Resistance or obstruction to giving possession.*—Delivery of possession under s. 264, Code of Civil Procedure, was complete as soon as the steps prescribed by that section had been taken; and any subsequent act of resistance on the part of the claimant to the land was not the resistance or obstruction referred to in s. 236, and could in no way give the Court a right to interfere in the summary way provided by that section. WAJED HOSSEIN *v.* ABDOOL KADIR . . 13 W. R., 418

46. ——— *Civil Procedure Code, 1859, s. 269—Suit by auction-purchaser for possession.*—An auction-purchaser of the right, title, and interest of his judgment-debtor, plaintiff, got an award under s. 269, Code of Civil Procedure, but in attempting to get actual possession was successfully resisted by defendant, who claimed to have purchased the property previous to plaintiff's purchase. Upon this the plaintiff sued to obtain possession. *Held* that, as there was no dispossession, the terms of s. 269 would not apply. SUDARAM MAJEE *v.* MIRTUNJOY DEY . . . 12 W. R., 509

47. ——— *Civil Procedure Code, 1859, s. 269—Dispossession in execution of decree against another party.*—A person dispossessed of property in execution of a decree against another person, and claiming to be entitled to possession, was not bound to proceed under s. 269 of Act VIII of 1859. PROTAB CHUNDER CHOWDHRY *v.* BROJOLAD SHAHA B. L. R., Sup. Vol., 638 : 7 W. R., 253

JADOONATH CHOWDHRY *v.* RADHAMONEE DOSSEE [B. L. R., Sup. Vol., 643 : 7 W. R., 256

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued*

48 ———————— *Person dispossessed in execution of decree—His remedy by suit or application under s 332 of the Code of Civil Procedure (Act XIV of 1882)*—A person, dispossessed of his land in execution of a decree of a Civil Court against a third party, should proceed for the alleged obstruction of his possession, not by a suit in the Mamlatdar's Court, but by an application under s 332 of the Code of Civil Procedure (Act XIV of 1882) or by a regular suit GULABBHAI GOPALJI *v* JINABHAI RATANJI I. L. R, 13 Bom, 213

49 ———————— *Civil Procedure ... 1859 s 269—Suit by auction purchaser to ...* — upon an ... resistance ... property was ... purchased to proceed under s 269 of the Civil Procedure Code It was open to him to proceed at once by regular suit against the person in possession of the property purchased by him MADAREE *v* BULLOO KOOERBE 2 N W, 450

50 ———————— *Inquiry as to right to possession—Civil Procedure Code, 1859, s 269*—Where a Subordinate Judge proceeding under Act VIII of 1859, s 269 looked into the circumstances of a case with reference to the relative rights of the parties and came to the conclusion that he could not refuse possession to the execution purchaser, he was held to have made the kind of inquiry contemplated by the section HURO PERSHAD ROY CHOWDHRY *v* RAMESSUR MISSRY MALIA 24 W. R., 461

———————— *Civil Procedure* ...

... the plaintiff could only su... own title KALLAPA *v* VENKATESH VINAYAK [I L. R. 2 Bom., 676

52 ———————— *Civil Procedure Code, 1859, ss 269 and 216—Order as to right to possession*—An application under s 216 Act VIII of 1859, having been disallowed on the ground of unnecessary and improper delay, the attached property was sold, but on the attempt to take possession the purchaser was obstructed by the applicant, who alleged himself to be in possession The Court ... investigation under s 269, and determined ... allowed under ... *Held* ... IN THE ... Roy ... R., 431

53 ———————— *Civil Procedure Code, 1859 s 269—Limitation—"Suit to establish his right"—Right contradictory to summary order or consistent with it*—The words "suit to establish his right" in s 269 of the Civil Procedure Code meant a suit to establish his right to present possession; but where there was a subsisting right which was contradicted by the summary order under that section, and which was to be properly asserted by such a suit, the suit, by the person dispossessed or refused possession to establish his right had to be brought within one year from the date of the order, failing which he could not sue afterwards on any portion of such right It was otherwise where his right was consistent with the order and the possession given under it RANGO VITHAL *v* RIKHIVADAS BIN RAYACHAND 11 Bom., 174

54 ———————— *Order not made against parties to proceedings—Civil Procedure Code, 1859, ss 268, 269*—A purchaser of immoveable property at a Court sale, having been obstructed by the defendant made an application to the Court under s 268 of Act VIII of 1859 for the removal of the obstruction but subsequently withdrew his application The Court thereupon made an endorsement on the application to the effect that as the applicant did not wish to proceed further no investigation was made *Held* that no such order had been made as was contemplated by s 269, that section contemplating at least an order against one party or the other BHIKA *v* SAKARLAL [I L. R., 5 Bom., 440

In HABASATOOLLAH *v* BROJONATH GHOSE [I. L. R, 3 Calc., 729 1 C. L. R., 517

a case governed by the Civil Procedure Code 1877 it was held that there being no provision in that Code similar to that contained in s 269 of Act VIII of 1859 enabling the Court to do so the Court could not enquire into a complaint made by a person other than ... in the ... 9 and under ... person other than the defendant may make an application for an inquiry

55 ———————— *Application against a claimant resisting execution how treated—Order under Civil Procedure Code, s 331, Nature of*—An application in furtherance of execution of a decree for possession against a person who resists execution claiming the property as his own is an application within s. 331 of the Civil Procedure Code and should be treated as a plaint FOMINDRO DEB RAIKUT *v* JUGODISHWARI DABI [I. L. R., 14 Calc., 234

56 ———————— *Civil Procedure Code, 1882, s 335—Effect of order unappealed from*—An order rejecting a claim petition under s. 335 of the Civil Procedure Code, not being appealed against within one year acquires the force of a decree *I L R, 8 Mad., 506 Velayuthan v Lakshmana* followed. ACHUTA *v* MAMMAVU [I L. R., 10 Mad, 357

57 ———————— *Civil Procedure Code (Act XIV of 1882), ss 331, 335—Order under s 335—Decree—Dispossession*—An order under s. 335 Civil Procedure Code, is not a decree

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*continued*.

a person in whose favour such an order is made is not entitled to claim the benefit of s. 331, Civil Procedure Code. If a purchaser of immoveable property, at an execution sale, who has obtained delivery of the same from Court, is subsequently dispossessed, he is not entitled to claim the benefit of s. 335 as such purchaser. SRINATH GHOSH *v.* ANNODA PROSAD ROY . . . 1 C. W. N., 192

58. ———— *Civil Procedure Code (1882), ss. 319, 335 – Land in the occupancy of raiyat—Symbolical possession under s. 319—Dispossession of a third party.*—Where a person is found to be in possession of any land by receipt of rent from tenants, delivery of possession thereof under s. 319 of the Civil Procedure Code to a third party being a purchaser at an execution sale does not cause dispossession of the original possessor, within the meaning of s. 335, Civil Procedure Code, so as to entitle him to complain within the meaning of that section. KISORI LAL GOSWAMI *v.* LALA SHIB LAL [1 C. W. N., 343

59. ———— *Civil Procedure Code, ss. 318, 335 – Suit to recover possession of property sold in execution of decree.*—*S* attached certain land and a house in execution of a decree against *R*. *M* put in a claim, under s. 278 of the Code of Civil Procedure, alleging that he was in possession as purchaser from *R*. The claim was rejected. No suit was brought by *M* to contest this order. *S* purchased the said land and house in execution and obtained a sale-certificate. In 1884 *S* sued *M* to recover possession of the land and house, alleging that in execution proceedings in 1882 he had been put into possession of the land, but not of the house, which was found locked up by the Court Ameen, and that *M* prevented him from enjoying both the land and house. *M* pleaded that *S* had never been put into possession, and again set up his title as purchaser from *R* and possession under such title. The Munsif found that *S* had been put into formal or constructive possession of the land, but not of the house, and decreed the claim. On appeal, the District Judge held that *S* was bound to proceed according to the provisions of s. 335 of the Code of Civil Procedure to recover possession, and could not bring a separate suit. *Held* that, whether there had been legal delivery or not, the suit was not barred. SEVU *v.* MUTTUSAMI . . . I. L. R., 10 Mad., 53

60. ———— *Civil Procedure Code, ss. 234, 332, 588—Death of judgment-debtor between order for possession in execution of decree and delivery of possession—Appeal against appellate order reversing an order under s. 332.*—A decree-holder in a District Munsif's Court obtained an order for possession of land in execution of his decree on 20th August, on which day the judgment-debtor died. Possession was delivered on 28th August. The person dispossessed presented a petition under s. 332 of the Code of Civil Procedure disputing his right to be put into possession, on the ground, *inter aliâ*, that the judgment-debtor was not represented on the record. On appeal against the appellate order of the District Judge,—*Held*, assuming that the order for possession was made prior to the death of the judgment-debtor, there was no necessity for the decree-holder to bring any other person on to the record between the date of that order and the date on which the order was executed. *Ramasami* v. *Bagirathi, I. L. R., 6 Mad., 180*, distinguished. BIYAKKA *v.* FAKIRA . . I. L. R., 12 Mad., 211

61. ———— *Civil Procedure Code (1882), s. 335—Joint managers—Mortgage by one of such managers—Sale by mortgagee in execution of decree on mortgage and dispossession of the other manager—Application for restoration of possession by other joint manager.*—*K*, the owner of certain property, gave the management of it to his three nephews, *G*, *A*, and *N*. *A* mortgaged the property, and the mortgagee sued on the mortgage and got a decree. In execution of the decree, the property was sold and purchased by *L*, who was put in possession by the Court. *G*, one of the managers, then applied for possession under s. 335 of the Civil Procedure Code (Act XIV of 1882), alleging that he had been wrongfully dispossessed. *Held* that the mortgagee got no title to the property by his mortgage from *A* against the real owner *K*; and *G*, who was in actual possession as his manager (whether or not there were others equally entitled to share in the management), was entitled to prevent the purchaser *L* taking possession, and having been dispossessed had a claim to be restored to possession under s. 335 of the Civil Procedure Code. GOBIND BALVANT SHIVNEKAR *v.* LAKSHMAN BIN NANA TELI [I. L. R., 18 Bom., 522

62. ———— *Civil Procedure Code (1882), ss. 334 and 335—Application by usufructuary mortgagee ejected by auction-purchaser to be restored to possession—Representative of party to suit—Auction-purchaser who was also assignee of decree—Judgment-debtor.*—In a suit for sale upon a mortgage the plaintiff, having obtained a decree, assigned the same, and the assignee brought the property decreed to be sold to sale, and purchased it himself and obtained possession. A usufructuary mortgagee of the property who had been a party to the suit, and in whose favour the decree was, in so far that it declared his right to continue in possession, applied to be restored to possession, and obtained an order in his favour. Thereupon the assignee, auction-purchaser, applied in revision to have the order restoring the usufructuary mortgagee to possession set aside. *Held* that the order in question was an order which could properly be made under s. 335 of the Code of Civil Procedure, and, being unappealable, an application for revision thereof might lie. The auction-purchaser, though he happened also to be the assignee of the decree, was not a representative of a party to the suit within the meaning of s. 244, nor was the usufructuary mortgagee a judgment-debtor within the meaning of s. 334 or s. 335, but he was a person other than a judgment-debtor within the meaning of s. 335. SABHAJIT *v.* SRI GOPAL [I. L. R., 17 All., 222

63. ———— *Resistance or obstruction to execution—Limitation—Renewal of*

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*concluded*

resistance or obstruction—Fresh cause of action—The period of limitation provided for in s 328 of the Code of Civil Procedure is a limitation which governs a cause of action arising out of a particular resistance or obstruction So far as that resistance or obstruction is concerned, the decree holder if he wishes to take proceedings under s 328, must do so within one month from the time of such resistance or obstruction But the bar created by the limitation imposed by this section does not extend to and hold good so as to bar complaints against acts of resistance or obstruction made upon fresh proceedings taken by the decree holder *Ramasekara* v *Dharmaraya I L R 5 Mad, 113,* followed *Balvant Santaram* v *Babaji, I L R, 8 Bom, 602,* and *Vinayak Rao Amrit* v *Devrao Govind, I L R, 11 Bom, 473,* distinguished NARAIN DAS *v* HAZARI LAL

[I. L R., 18 All., 233

RES JUDICATA

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—RES JUDICATA.

[I. L. R., 4 All., 60
Marsh., 278 : 2 Hay, 154
3 W. R., Act X, 146

See CASES UNDER ESTOPPEL—ESTOPPEL BY JUDGMENT

See FOREST ACT, s 45

[I. L. R., 24 Calc., 504
L. R., 24 I. A., 33

RES JUDICATA—*continued*

1 GENERAL CASES

1. ———— Requisites for plea of res judicata—*Civil Procedure Code 1859, s 2—Parties—Subject matter of suit and cause of action identical*—To plead *res judicata* under s 2, Act VIII of 1859 it is necessary that the parties should be the same or their representatives that the subject-matter of the suit should be the same and the cause of action the same MAHARAJ SINGH *v* BEELA KOOER W. R., 1864, 320

MUNNA JHUNNA KOONWUR *v* LALJEE ROY [1 W R., 12

UDHAR SINGH *v* RANEE KOONWUR [1 Agra, 234

SHUMBOO CHUNDER SINGH *v* RAM NARAIN DOSS [6 W R., 217

RAJ DOOLLUB SIRCAR *v* OOMA CHURN BISWAS [21 W R, 100

2 ———— ———— *Final decision granting or withholding relief*—To conclude a plaintiff by a plea of *res judicata* it is not sufficient to show that there was a former suit between the same parties for the same matter upon the same cause of action, it is necessary also to show that there was a decision finally granting or withholding the relief sought SAIKAPPA CHETTI *v* KULANDA PERI NACHIYAR *alias* KATTAMA NACHIYAR

[3 Mad, 61

3 ———— ———— *Final decision in* [illegible]

[illegible] YAR 2 Mad, 131

Affirmed in RAGHOONADDA PERYA OODYA TAVER *v* KATTAMA NACHEAR . 10 W R., P C., 1

S C VIJAYA RAGANADHA BODHA GOORUO SAWMY PERIYA ODAYA TAVER *v* KATAMA NATCHIAR [11 Moore's I. A., 50

2 ESTOPPEL BY JUDGMENT

[illegible]

BUX KHAN [7 B L. R., 673 : 15 W. R., P. C., 30

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

5. ——— Judgment not inter partes —*Evidence Act (I of 1872), ss. 11, 13, 40, 41, 43—Admissibility in evidence of judgments not "inter partes."*—Per GARTH, C.J., JACKSON, PONTIFEX, and MORRIS, JJ. (MITTER, J., dissenting).—A former judgment, which is not a judgment *in rem*, nor one relating to matters of a public nature, is not admissible in evidence in a subsequent suit, either as a *res judicata*, or as proof of the particular point which it decides, unless between the same parties or those claiming under them. In a suit between *A* and *B* the question was whether *C* or *D* was the heir of *H*. If *C* was the heir of *H*, then *A* was entitled to succeed; otherwise not. The same question had been raised in a former suit brought by *X* against *A* and decided against *A*: and this former judgment was admitted in evidence in the suit between *A* and *B*, and dealt with by the Courts below as conclusive evidence against *A* upon the point so decided. *Held* (MITTER, J., dissenting) that the former judgment was not admissible as evidence in the suit between *A* and *B* either as "a transaction" under s. 13, or as "a fact" under s. 11, or under any other section of the Evidence Act. GUJJU LALL *v.* FATTEH LALL

[I. L. R., 6 Calc., 171: 6 C. L. R., 430

6. ——— *Evidence Act (I of 1872), ss. 11, 13, 40, 41, 42, and 43—Onus probandi.*—Judgments and decrees recognizing rights between parties to a suit or between persons whom they represent, although they are not conclusive under the Evidence Act (I of 1872), as they were before that Act came into operation, are yet admissible in evidence under s. 13 of the Act, even if the parties in the former suit be entire strangers. Where the parties are the same, or representatives of those in the former suit, such judgments and decrees may be evidence so nearly conclusive as, when produced by the party in whose favour they are, to shift the burden of proof from him to his opponent. *Semble*—Under s. 13 of the Civil Procedure Code (Act X of 1877), the law is now the same as it was under Act VIII of 1859, prior to the passing of the Evidence Act. NARANJI BHIKABHAI *v.* DIPA UMED

[I. L. R., 3 Bom., 3

7. ——— *Evidence Act (I of 1872), ss. 11 and 13—Admissibility in evidence of judgment in former case—The subject-matter of the former suit not being identical with that of the latter suit.*—The rule laid down in the cases of *Gujju Lall* v. *Fatteh Lall, I. L. R., 6 Calc., 171,* and of *Surender Nath Paul Chowdhry* v. *Brojo Nath Paul Chowdhry, I. L. R., 13 Calc., 352,* has been materially qualified by the decisions of the Privy Council in the cases of *Ram Ranjan Chakerbutty* v. *Ram Narain Singh, I. L. R., 22 Calc., 533: L. R., 22 I. A., 60,* and *Bitto Kunwar* v. *Kasho Pershad, L. R., 24 I. A., 10.* Under certain circumstances, in certain cases, the judgment in a previous suit to which one of the parties in the subsequent suit was not a party may be admissible in evidence for certain purposes and with certain objects in the subsequent suit. In a case where the previous suit was to recover a two-thirds share of the property in question, and the subsequent suit was by a different plaintiff to recover the remaining one-third share of the same property.—*Held,* in the subsequent suit, the judgment in the previous suit was not admissible in evidence, the subject-matter in the two suits not being identical. TEPU KHAN *v.* RAJANI MOHUN DAS . . . . I. L. R., 25 Calc., 522

[2 C. W. N., 501

8. ——— Ex-parte decree—*Finality of, with regard to its subject-matter—Civil Procedure Code (Act X of 1877), s. 13, expl. 4.*—A decree obtained *ex-parte* is not final within the meaning of expl. 4, s. 13 of Act X of 1877. NILMONEY SINGH *v.* HEERA LALL DASS

[I. L. R., 7 Calc., 23: 8 C. L. R., 257

9. ——— *Suit for arrears of rent—Onus probandi.*—In a suit for arrears of rent of a half-share of land, the plaintiffs relied upon an *ex-parte* decree for rent at a certain rate, which they had obtained in 1869 against the tenants of this share. The defendants relied upon a subsequent decree in a contested suit by the plaintiffs against the tenants of the other half share, in which a lower rate of rent had been given. No other evidence than the decrees was produced on either side. It did not appear whether the *ex-parte* decree had ever been executed. *Held* that it was open to the defendants to dispute the rate of rent claimed, and that the plaintiffs were bound to prove that they were entitled to recover it. *Nilmoney Singh* v. *Heera Lall Dass, I. L. R., 7 Calc., 23,* followed. BHUGIRATH PATONI *v.* RAM LOCHUN DEB

[I. L. R., 8 Calc., 275 : 10 C. L. R., 159

See BIRCHUNDER MANICKYA *v.* HURRISH CHUNDER DOSS . I. L. R., 3 Calc., 383 : 1 C. L. R., 585

10. ——— *Suit for rent.*—A decree obtained *ex-parte* is, in the absence of fraud or irregularity, as binding for all purposes as a decree in a contested suit. BIRCHUNDER MANICKYA *v.* HURRISH CHUNDER DOSS

[I. L. R., 3 Calc., 383 : 1 C. L. R., 585

11. ——— Decrees in rent suits—*Suit for arrears of rent—Subsequent suit for enhancement.*—The plaintiff sued the defendant in the year 1873 for arrears of rent at a certain rate per bigha. The defendant pleaded that the land had been held by him at an uniform rent for more than twenty years, and this contention was supported by the Court. The plaintiff then gave the defendant notice of enhancement, and sued to recover rent for two years at the rate stated by the defendant, and for one year at an increased rate. To this suit the defendant raised substantially the same defence. *Held* that the decision in the previous suit was not a bar to the present suit, there being two questions for consideration: one, whether there had been an uniform payment of rent for twenty years; and if so, whether the presumptions which the law directs to be drawn from an uniform payment of rent for twenty years had been rebutted by the plaintiff; neither of which

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

questions were concluded by the previous decision. GOPEE MOHUN MOZOOMDAR *v.* HILLS

[I. L. R., 3 Calc., 789

12. ——— *Decision as to amount of land held as tenant*—In an action for rent defendant pleaded, by way of estoppel to part of the plaintiff's claim, that, in a prior action for rent previously due, brought by the plaintiff against the defendant, it had been found that the defendant was tenant to the plaintiff of a less quantity of land only than that in respect of which the plaintiff claimed rent in his suit. *Held* that there was no estoppel, and that the plaintiff might show, notwithstanding such previous judgment, that the defendant was in occupation of the larger quantity. OJOODHYA PERSAD *v.* BHUGWANTAJAH . . . Marsh., 12

S. C. BHUGWANTAJAH *v.* OJOODHYA PERSAD

[1 Hay, 31

13. ——— *Decision as to amount of land held as tenant—Suit for arrears of rent.*—*A* brought a suit against *B* for arrears of rent. *B* admitted the sum claimed, but contended that the rent was due for a larger area of land than [illegible]

14. ——— *Decision as to measurement of land held.*—In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease, and the defendant claimed in that suit to have the rent reduced in accordance with the term of the lease, and a measurement was thereupon made, which showed that the quantity of land held by the defendant was in excess of that named in the lease; that suit was decided in favour of the plaintiff for the rent claimed. *Held* that the measurement adopted by the Court in the former suit was not, as regards the amount of the excess, binding upon the defendant. EKRAM MUNDUL *v.* HOLODHUR PAL

[I. L. R., 3 Calc., 271

LUCHMUN PERSHAD GORGO *v.* LUKHUN CHUNDER KUR . . . 3 C. L. R., 74

15. ——— *Suit for refund of excess of rent after suit for arrears of rent.*— [illegible]

time to time in the ... having drawn out these amounts, sued for arrears of rent, alleging that the money paid into Court covered only the principal and interest for a certain period, and obtained an *ex-parte* decree. In a suit brought for a refund of the money paid into Court, which had without the plaintiff's consent been irregularly carried to the account of interest,—*Held* that the claim was barred as *res judicata*. GOBINDNAUTH SENDYAL *v.* ROMANAUTH THAKOOR . . . 1 Hay, 501

16. ——— *Decision as to right to rent—Dismissal of former suit for rent.*—*Held* that, the plaintiff having failed in a regular suit in 1853 to establish his right to rent, a subsequent suit for rent was not admissible, unless since that date rent was paid or his title recognized in some way. SOOKHNUND *v.* NUNDCO SINGH

[3 Agra, 231

17. ——— *Decision as to amount of rent—Subsequent suit for abatement of rent.*—The plaintiff obtained a patni lease of certain villages from the defendant in 1861 at an annual rent, and in 1865 was evicted from a portion of the property. She took no steps to obtain an abatement; but inasmuch as she did not pay any rent for the year 1871, the defendant brought a suit against her for the rent of that year. The plaintiff set up the defence that she was entitled to an abatement of R155 from her rent, the R155 representing the annual value of the property which she had lost in consequence of the eviction. In that suit it was decided that the amount of abatement she was entitled to was R12. No appeal was made against that decision. In a suit brought by the plaintiff for the purpose of obtaining a permanent abatement of her rent she claimed the precise measure of abatement, *viz.*, R155, which she had claimed in the suit brought against her by the defendant. *Held* that the question was *res judicata*, it having been raised and decided in the former suit. NOLO DOORGA DEBEE *v.* FOYZBUX CHOWDHRY

[I. L. R., 1 Calc., 200: 24 W. R., 40

18. ——— *Decision as to amount of rent.*—Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for the previous year in a suit which he had brought against the same defendant for rent of the same property, and relied upon the ... which had been obtained *ex-parte*, as [illegible] the decree was properly admissible as evidence, though the plaintiff had not taken out execution upon that decree and his right to take out execution was barred by limitation. HURCHUNDER MANICKYA *v.* HURRISH CHUNDER DASS

[I. L. R., 3 Calc., 383: 1 C. L. R., 585

19. ——— *Decree as to amount of rent payable in former years. Decree on admission.*—The plaintiff in a suit for rent having failed to prove the amount of rent claimed by him, the Court in trying the issue "What is the proper amount of rent payable to the plaintiff?" gave the plaintiff a decree for the amount admitted by the defendant, that amount being less than that claimed

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

5. —— Judgment not inter partes—*Evidence Act (I of 1872), ss. 11, 13, 40, 41, 43—Admissibility in evidence of judgments not "inter partes."*—*Per* GARTH, C.J., JACKSON, PONTIFEX, and MORRIS, JJ. (MITTER, J., dissenting).—A former judgment, which is not a judgment *in rem*, nor one relating to matters of a public nature, is not admissible in evidence in a subsequent suit, either as a *res judicata*, or as proof of the particular point which it decides, unless between the same parties or those claiming under them. In a suit between *A* and *B* the question was whether *C* or *D* was the heir of *H*. If *C* was the heir of *H*, then *A* was entitled to succeed; otherwise not. The same question had been raised in a former suit brought by *X* against *A* and decided against *A*: and this former judgment was admitted in evidence in the suit between *A* and *B*, and dealt with by the Courts below as conclusive evidence against *A* upon the point so decided. *Held* (MITTER, J., dissenting) that the former judgment was not admissible as evidence in the suit between *A* and *B* either as "a transaction" under s. 13, or as "a fact" under s. 11, or under any other section of the Evidence Act. GUJJU LALL *v.* FATTEH LALL

[I. L. R., 6 Calc., 171: 6 C. L. R., 439

6. —————— *Evidence Act (I of 1872), ss. 11, 13, 40, 41, 42, and 43—Onus probandi.*—Judgments and decrees recognizing rights between parties to a suit or between persons whom they represent, although they are not conclusive under the Evidence Act (I of 1872), as they were before that Act came into operation, are yet admissible in evidence under s. 13 of the Act, even if the parties in the former suit be entire strangers. Where the parties are the same, or representatives of those in the former suit, such judgments and decrees may be evidence so nearly conclusive as, when produced by the party in whose favour they are, to shift the burden of proof from him to his opponent. *Semble*—Under s. 13 of the Civil Procedure Code (Act X of 1877), the law is now the same as it was under Act VIII of 1859, prior to the passing of the Evidence Act. NARANJI BHIKABHAI *v.* DIPA UMED

[I. L. R., 3 Bom., 3

7. —————— *Evidence Act (I of 1872), ss. 11 and 13—Admissibility in evidence of judgment in former case—The subject-matter of the former suit not being identical with that of the latter suit.*—The rule laid down in the cases of *Gujju Lall* v. *Fatteh Lall, I. L. R., 6 Calc., 171,* and of *Surender Nath Paul Chowdhry* v. *Brojo Nath Paul Chowdhry, I. L. R., 13 Calc., 352,* has been materially qualified by the decisions of the Privy Council in the cases of *Ram Ranjan Chakerbutty* v. *Ram Narain Singh, I. L. R., 22 Calc., 533: L. R., 22 I. A., 60,* and *Bitto Kunwar* v. *Kasho Pershad, L. R., 24 I. A., 10.* Under certain circumstances, in certain cases, the judgment in a previous suit to which one of the parties in the subsequent suit was not a party may be admissible in evidence for certain purposes and with certain objects in the subsequent suit. In a case where the previous suit was to recover a two thirds share of the property in question, and the subsequent suit was by a different plaintiff to recover the remaining one-third share of the same property.—*Held,* in the subsequent suit, the judgment in the previous suit was not admissible in evidence, the subject-matter in the two suits not being identical. TEPU KHAN *v.* RAJANI MOHUN DAS . . . . I. L. R., 25 Calc., 522

[2 C. W. N., 501

8. —————— Ex-parte decree—*Finality of, with regard to its subject-matter—Civil Procedure Code (Act X of 1877), s. 13, expl. 4.*—A decree obtained *ex-parte* is not final within the meaning of expl. 4, s. 13 of Act X of 1877. NILMONEY SINGH *v.* HEERA LALL DASS

[I. L. R., 7 Calc., 23: 8 C. L. R., 257

9. —————— *Suit for arrears of rent—Onus probandi.*—In a suit for arrears of rent of a half-share of land, the plaintiffs relied upon an *ex-parte* decree for rent at a certain rate, which they had obtained in 1869 against the tenants of this share. The defendants relied upon a subsequent decree in a contested suit by the plaintiffs against the tenants of the other half share, in which a lower rate of rent had been given. No other evidence than the decrees was produced on either side. It did not appear whether the *ex-parte* decree had ever been executed. *Held* that it was open to the defendants to dispute the rate of rent claimed, and that the plaintiffs were bound to prove that they were entitled to recover it. *Nilmoney Singh* v. *Heera Lall Dass, I. L. R., 7 Calc., 23,* followed. BHUGIRATH PATONI *v.* RAM LOCHUN DEB

[I. L. R., 8 Calc., 275: 10 C. L. R., 159

See BIRCHUNDER MANICKYA *v.* HURRISH CHUNDER DOSS . I. L. R., 3 Calc., 383: 1 C. L. R., 585

10. —————— *Suit for rent.*—A decree obtained *ex-parte* is, in the absence of fraud or irregularity, as binding for all purposes as a decree in a contested suit. BIRCHUNDER MANICKYA *v.* HURRISH CHUNDER DOSS

[I. L. R., 3 Calc., 383: 1 C. L. R., 585

11. —————— Decrees in rent suits—*Suit for arrears of rent—Subsequent suit for enhancement.*—The plaintiff sued the defendant in the year 1873 for arrears of rent at a certain rate per bigha. The defendant pleaded that the land had been held by him at an uniform rent for more than twenty years, and this contention was supported by the Court. The plaintiff then gave the defendant notice of enhancement, and sued to recover rent for two years at the rate stated by the defendant, and for one year at an increased rate. To this suit the defendant raised substantially the same defence. *Held* that the decision in the previous suit was not a bar to the present suit, there being two questions for consideration: one, whether there had been an uniform payment of rent for twenty years; and if so, whether the presumptions which the law directs to be drawn from an uniform payment of rent for twenty years had been rebutted by the plaintiff; neither of which

RES JUDICATA—*continued*

2 ESTOPPEL BY JUDGMENT—*continued*

questions were concluded by the previous decision GOPEE MOHUN MOZOOMDAR *v* HILLS

[I L R, 3 Calc, 789

12 ———— *Decision as to amount of land held as tenant*—In an action for rent defendant pleaded by way of estoppel to part of the plaintiff's claim that in a prior action for rent previously due brought by the plaintiff against the defendant it had been found that the defendant was tenant to the plaintiff of a less quantity of land only than that in respect of which the plaintiff claimed rent in his suit *Held* that there was no estoppel and that the plaintiff might show notwithstanding such previous judgment that the defendant was in occupation of the larger quantity OJOODHYA PERSAD *v* BHUGWANTAJAH Marsh, 12

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[1 Hay, 31

13 ———— *Decision as to amount of land held as tenant—Suit for arrears of rent*—*A* brought a suit against *B* for arrears of rent *B* admitted the sum claimed but contended that the rent was due for a larger area of land than that specified in the plaint An issue was framed on such contention and decided against *B* In a subsequent suit by *B* to have it declared that a sum of

14 ———— *Decision as to measurement of land held*—In a previous suit the present plaintiff had sued the defendant for the amount of rent originally fixed in the lease and the defendant claimed in that suit to have the rent

decided in favour of the plaintiff for the rent claimed *Held* that the measurement adopted by the Court in the former suit was not as regards the amount of the excess binding upon the defendant EKRAM MUNDUL *v* HOLODHUR PAL

[I L R, 3 Calc, 271

LUCHMUN PERSHAD GORGO *v* LUKHUN CHUNDER KUR 3 C L R, 74

15 ———— *Suit for refund of excess of rent after suit for arrears of rent*—

having drawn out these amounts sued for arrears of rent alleging that the money paid into Court covered only the principal and interest for a certain period and obtained an *ex parte* decree In a suit brought for a refund of the money paid into Court which had without the plaintiffs' consent been irregularly carried to the account of interest—*Held* that the claim was barred as *res judicata* GOBINDNAUTH SUNDYAL *v* ROMANAUTH THAKOOR 1 Hay, 501

16 ———— *Decision as to right to rent—Dismissal of former suit for rent*—*Held* that, the plaintiff having failed in a regular suit in 1853 to establish his right to rent a subsequent suit for rent was not admissible unless since that date rent was paid or his title recognized in some way SOOKHNUND *v* NUNDOO SINGH

[2 Agra, 221

17 ———— *Decision as to amount of rent—Subsequent suit for abatement of rent*—The plaintiff obtained a patni lease of certain villages from the defendant in 1861 at an annual rent and in 1865 was evicted from a portion of the property She took no steps to obtain an abatement, but inasmuch as she did not pay any rent for the

R155 from her rent the R155 representing the annual value of the property which she had lost in consequence of the eviction In that suit it was decided that the amount of abatement she was entitled to was R42 No appeal was made against that decision In a suit brought by the plaintiff for the purpose of obtaining a permanent abatement of her rent she claimed the precise measure of abatement *viz* R155 which she had claimed in the suit brought against her by the defendant *Held* that the question was *res judicata* it having been raised and decided in the former suit NOBO DOORGA DOSSEE *v* FOYZBUX CHOWDHRY

[I L R, 1 Calc, 200 24 W R, 40

18 ———— *Decision as to amount of rent* Where the plaintiff sued the defendant for a year's rent at the same rate which had been decreed to him for the previous year in a suit which he had brought against the same defendant for rent of the same property and relied upon the

the first suit determined the amount of rent due from the defendant to the plaintiff *Held* further that

CHUNDER DASS

[I L R, 3 Calc, 383 1 C L R, 585

19 ———— *Decree as to amount of rent payable in former years—Decree on admission*—The plaintiff in a suit for rent having failed to prove the amount of rent claimed by him the Court in trying the issue "What is the proper amount of rent payable to the plaintiff?" gave the plaintiff a decree for the amount admitted by the defendant, that amount being less than that claimed

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

by the plaintiff. In a later suit the plaintiff sued the defendant in respect of the same holding for the rent of a subsequent year, and he claimed at the same rate as he had claimed in the previous suit. *Held* (MITTER, *J.*, dissenting) that the decree in the former suit was *res judicata* as to the proper rent payable by the defendant. *Punnoo Singh* v. *Nirghan Singh, I. L. R., 7 Calc., 298 : 8 C. L. R., 310,* explained and distinguished. JEO LAL SINGH v. SURTUN

[11 C. L. R., 483

20. ———— *Decision as to possession as tenants—Admissibility in evidence of decree in former suit.*—The plaintiffs, as purchasers of a share of an estate, sued to recover their share of the rent of certain tenures held in that estate by the defendants. The defendants denied being in possession as alleged. Another co-sharer in the same estate had previously brought a suit against the same defendants for the rent of the same tenures, and in that suit the present plaintiffs and other co-sharers of the estate were made co-defendants, and the decision in that suit was that the present defendants were in possession and were liable to pay to the then plaintiff his share of the rent. *Held* (MITTER, *J.*, dissenting) that the decree in the former suit was not a *res judicata* or even admissible as evidence in the present suit. SURENDER NATH PAL CHOWDHRY v. BROJO NATH PAL CHOWDHRY . I. L. R., 13 Calc., 352

21. ———— Decision in former suit—*Decision as to right to property—Subsequent suit for rent.*—It having been decided in a former suit, wherein the present plaintiff and appellant was defendant and the present defendant was plaintiff, that the latter could not claim from the former a share of certain property set apart for the maintenance of a samsthan,—*Held* that, after that decision, it was not competent to the present defendant to collect the rents of the property. He was accordingly ordered to make them over to the present plaintiff. DADO RAVJI v. DINANATH RAVJI

[2 Bom., 77 : 2nd Ed., 72

22. ———— *Decision as to title to drain—Suit for trespass—Proceedings between same parties in another suit.*—*B* had instituted a suit in the Court of the Munsif of the 24-Parganas against *A* on account of an alleged trespass to a certain drain, which *B* then alleged to be his property: that suit was dismissed on the ground that *B* had not proved his title to the drain in question. In a suit arising out of an alleged trespass to the same drain brought by *A* against *B*, in which *A* stated it was his property, the judgment of the Munsif in the former suit was tendered in evidence on behalf of the plaintiff, and it was contended it was an estoppel. The Court admitted it in evidence, but doubted whether it would be an estoppel. MAHOMED SHAHABOODEEN v. WEDGEBERRY

[10 B. L. R., Ap., 31

23. ———— Decision on title in proceedings under Land Acquisition Act, 1870.—In proceedings under the Land Acquisition Act, 1870, to apportion the compensation payable, a decision by the Judge on a question of title does not operate as *res judicata* between the parties to those proceedings. MAHADEVI v. NEELAMANI

[I. L. R., 20 Mad., 269

24. ———— Judgment of foreign Court—*Civil Procedure Code, 1877, s. 14—International law.*—An *ex-parte* judgment of a French Court against a native of British India not residing in French territory upon a cause of action which arose in British India imposes no duty on the defendant to pay the amount decreed so as to bar a suit in British India. HINDE & CO. v. PONNATH BRAYAN

[I. L. R., 4 Mad., 359

25. ———— Judgment on award—*Finality of arbitrator's award when judgment is passed thereon—Question dealt with by such award raised in a subsequent suit.*—Where a case was referred to arbitration, and the award was subsequently filed and judgment passed in accordance therewith and subsequently, in another suit between the same parties, a question dealt with in the award was raised,—*Held* that such question was *res judicata* between the parties, the judgment on the award having the same effect as an ordinary judgment of a Court, and being conclusive on the point. WAZEER MAHTON v. CHUNI SINGH I. L. R., 7 Calc., 727 : 9 C. L. R., 377

26. ———— *Judgment and decree upon an award—Civil Procedure Code (1882), ss. 13 and 522.*—A judgment and decree passed in terms of an award under s 522 of the Civil Procedure Code (Act XIV of 1882) constitute a *res judicata.* *Wazeer Mahton* v. *Chuni Singh, I. L. R., 7 Calc., 727,* followed. VYANKATESH CHIMAJI JOSHI v. SAKHARAM DAJI

[I. L. R., 21 Bom., 465

27. ———— Decision as to status of endowment—*Suit for possession.*—In 1801 *A*, the shebait and proprietor of the gaddee of a debsheba at K, alienated part of the land by deed of gift to *B*, for the purpose of founding a sheba at C, which was accordingly done. In 1823 the then shebait of the debshaba of K instituted a suit for the recovery of the alienated lands against the then shebait of the sheba at C, and in that suit it was declared that the sheba was independent of the debsheba, and thus the plaintiff was referred to a regular suit. In 1861 the then shebait of debsheba brought a suit for recovery of the lands against the then shebait of the sheba. *Held* that the decree in the former suit operated as an estoppel against the plaintiff. KISSNONUND ASHROM DUNDY v. NURSING DOSS BYRAGEE Marsh., 485

28. ———— Order dismissing claim for maintenance—*Subsequent suit for maintenance—Agreement as to amount of maintenance—Decree limited to agreed amount.*—An allowance for the maintenance of a younger member of a family was charged upon the inheritance to which the eldest male member alone succeeded. In a suit for such an allowance brought by a younger brother against the elder who had succeeded their deceased father in the possession of the estate,—*Held* that an order made

RES JUDICATA—*continued*

2 ESTOPPEL BY JUDGMENT—*continued*

also that the brothers having made an agreement fixing the allowance for maintenance at a certain sum the younger brother agreeing to receive a less sum for a defined period he could only obtain a decree for the allowance so reduced AHMAD HOSSEIN KHAN v NIHAL UD DIN KHAN I L R, 9 Calc, 945 [L R, 10 I A, 45

S C MAHOMED HOSSEIN KHAN v MAHOMED NEHLUDDIN KHAN 13 C L R, 330

29 ——— **Order as to payment of maintenance**—*Subsequent suit for maintenance charged on estate of Sovereign Prince—Former*

tried in British India in respect of the same claim the Court had ordered the amount of the maintenance for which he gave a decree to be paid by the defendant Maharajah from his estate in R which was in British India *Held* that the decree in the former suit was not *res judicata* to show that the maintenance claimed in the present suit was a charge on the zamindari of R80 as to give the Court jurisdiction BIR CHUNDER MANIKHYA v ISHAN CHUNDER TAGORE . 12 C L R, 473

30 ——— **Decree awarding fixed money allowance in lieu of maintenance**—*Subsequent suit for partition*—A former decree decided that the plaintiff (a widow) always received a certain fixed amount and was not entitled to recover more in the shape of profits in respect of the share claimed *Held* that it was not a decision that such fixed payment represented a mere claim to maintenance and not a substantial right or interest in the property itself, so that on partition she must be regarded as having no claim to share in the land It should be inquired into (the decree being so construed) whether the *acceptance of a fixed payment* was on forfeiture of all rights to the property, and

31 ——— **Decision on question of fact**—*Subsequent suit between other parties*—On a question of fact the decision of one Court cannot bind another in a suit between other parties ASSAN OOLLAH v KALEE MOHUN MOOKERJEE [13 W R, 469

32 ——— **Attempt to control the descent of property**—Two brothers having divided their family estate each took a share consisting of villages which they held separately agreeing in the instrument of partition that "the villages of the shares of both of us should in future descend only to the sons and grandsons and sons of us both but must not go to any others" On the death of one brother leaving a widow and daughters the widow obtained possession of the villages which formed her

judicata VENKATADRI APPA RAU v PEDA VENKAYAMMA . . I L R, 10 Mad, 15

33 ——— **Benami transaction for purpose of defrauding creditors**—*Deed of conveyance not in real purchaser's name—Collusive*

when held binding and when set aside—In 1874 the plaintiff *P* bought a house from *G* but caused the conveyance to be executed by *G* in the defendant *C*'s name This was done with the object of protecting the property against the claims of the plaintiff's creditors The plaintiff occupied the house ostensibly as tenant to the defendant for a nominal rent In 1880 the defendant brought a suit against the plaintiff to recover possession of the house and obtaine
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suit for a declaration of his title to the house in question, and of his right to retain possession alleging that the defendant was a mere benamidar that the sale deed and the *ex parte* decree were sham and collusive transactions in fraud of the plaintiff's creditors and that the defendant was merely a trustee for him *Held* that the plaintiff was bound by the decree passed in 1880 in the defendant's favour, though it was a collusive decree The plaintiff could not get the judgment set aside which the defendant had obtained against him by his own contrivance The plaintiff alleged that the defendant held in trust for him the object of that trust being to protect the plaintiff's property in fraud of his creditors Even if such a trust enforceable by the Courts could arise

defendant has suffered a judgment to pass against him, the matter is then placed beyond his control

34. ——— **Civil Procedure Code, 1882, s 13**—*Matter adjudged in a former suit—Purchase pendente lite*—A zamindar having granted a

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

by the plaintiff. In a later suit the plaintiff sued the defendant in respect of the same holding for the rent of a subsequent year, and he claimed at the same rate as he had claimed in the previous suit. *Held* (MITTER, *J.*, dissenting) that the decree in the former suit was *res judicata* as to the proper rent payable by the defendant. *Punnoo Singh* v. *Nirghan Singh*, *I. L. R., 7 Calc., 298 : 8 C. L. R., 310*, explained and distinguished. JEO LAL SINGH *v.* SURTUN [11 C.L.R., 483

20. ———— *Decision as to possession as tenants—Admissibility in evidence of decree in former suit.*—The plaintiffs, as purchasers of a share of an estate, sued to recover their share of the rent of certain tenures held in that estate by the defendants. The defendants denied being in possession as alleged. Another co-sharer in the same estate had previously brought a suit against the same defendants for the rent of the same tenures, and in that suit the present plaintiffs and other co-sharers of the estate were made co-defendants, and the decision in that suit was that the present defendants were in possession and were liable to pay to the then plaintiff his share of the rent. *Held* (MITTER, *J.*, dissenting) that the decree in the former suit was not a *res judicata* or even admissible as evidence in the present suit. SURENDER NATH PAL CHOWDHRY *v.* BROJO NATH PAL CHOWDHRY . I. L. R., 13 Calc., 352

21. ———— Decision in former suit—*Decision as to right to property—Subsequent suit for rent.*—It having been decided in a former suit, wherein the present plaintiff and appellant was defendant and the present defendant was plaintiff, that the latter could not claim from the former a share of certain property set apart for the maintenance of a samsthan,—*Held* that, after that decision, it was not competent to the present defendant to collect the rents of the property. He was accordingly ordered to make them over to the present plaintiff. DADO RAVJI *v.* DINANATH RAVJI [2 Bom., 77 : 2nd Ed., 72

22. ———— *Decision as to title to drain—Suit for trespass—Proceedings between same parties in another suit.*—*B* had instituted a suit in the Court of the Munsif of the 24-Parganas against *A* on account of an alleged trespass to a certain drain, which *B* then alleged to be his property: that suit was dismissed on the ground that *B* had not proved his title to the drain in question. In a suit arising out of an alleged trespass to the same drain brought by *A* against *B*, in which *A* stated it was his property, the judgment of the Munsif in the former suit was tendered in evidence on behalf of the plaintiff, and it was contended it was an estoppel. The Court admitted it in evidence, but doubted whether it would be an estoppel. MAHOMED SHAHABOODEEN *v.* WEDGEBERRY [10 B. L. R., Ap., 31

23. ———— Decision on title in proceedings under Land Acquisition Act, 1870.—In proceedings under the Land Acquisition Act, 1870, to apportion the compensation payable, a decision by the Judge on a question of title does not operate as *res judicata* between the parties to those proceedings. MAHADEVI *v.* NEELAMANI [I. L. R., 20 Mad., 269

24. ———— Judgment of foreign Court—*Civil Procedure Code, 1877, s. 14—International law.*—An *ex-parte* judgment of a French Court against a native of British India not residing in French territory upon a cause of action which arose in British India imposes no duty on the defendant to pay the amount decreed so as to bar a suit in British India. HINDE & CO. *v.* PONNATH BRAYAN [I. L. R., 4 Mad., 359

25. ———— Judgment on award—*Finality of arbitrator's award when judgment is passed thereon—Question dealt with by such award raised in a subsequent suit.*—Where a case was referred to arbitration, and the award was subsequently filed and judgment passed in accordance therewith and subsequently, in another suit between the same parties, a question dealt with in the award was raised,—*Held* that such question was *res judicata* between the parties, the judgment on the award having the same effect as an ordinary judgment of a Court, and being conclusive on the point. WAZEER MAHTON *v.* CHUNI SINGH I. L. R., 7 Calc., 727 : 9 C. L. R., 377

26. ———— *Judgment and decree upon an award—Civil Procedure Code (1882), ss. 13 and 522.*—A judgment and decree passed in terms of an award under s. 522 of the Civil Procedure Code (Act XIV of 1882) constitute a *res judicata*. *Wazeer Mahton* v. *Chuni Singh*, *I. L. R., 7 Calc., 727*, followed. VYANKATESH CHIMAJI JOSHI *v.* SAKHARAM DAJI [I. L. R., 21 Bom., 465

27. ———— Decision as to status of endowment—*Suit for possession.*—In 1801 *A*, the shebait and proprietor of the gaddee of a debsheba at K, alienated part of the land by deed of gift to *B*, for the purpose of founding a sheba at C, which was accordingly done. In 1823 the then shebait of the debshaba of K instituted a suit for the recovery of the alienated lands against the then shebait of the sheba at C, and in that suit it was declared that the sheba was independent of the debsheba, and thus the plaintiff was referred to a regular suit. In 1861 the then shebait of debsheba brought a suit for recovery of the lands against the then shebait of the sheba. *Held* that the decree in the former suit operated as an estoppel against the plaintiff. KISSNONUND ASHROM DUNDY *v.* NURSING DOSS BYRAGEE Marsh., 485

28. ———— Order dismissing claim for maintenance—*Subsequent suit for maintenance—Agreement as to amount of maintenance—Decree limited to agreed amount.*—An allowance for the maintenance of a younger member of a family was charged upon the inheritance to which the eldest male member alone succeeded. In a suit for such an allowance brought by a younger brother against the elder who had succeeded their deceased father in the possession of the estate,—*Held* that an order made

RES JUDICATA—*continued.*

2 ESTOPPEL BY JUDGMENT—*continued*

dismissing a claim for maintenance preferred by such younger brother against their father in his lifetime, founded on an ikrarnama did not afford a defence under s 13 of the Code of Civil Procedure *Held* also that the brothers having made an agreement

S C. MAHOMED HOSSEIN KHAN v. MAHOMED NEBLUDDIN KHAN . 13 C. L. R., 330

29 ——— Order as to payment of maintenance—*Subsequent suit for maintenance charged on estate of Sovereign Prince—Former suit making ... territory —*
Tipperah, w
for mainten
tried in British India in respect of the same claim the Court had ordered the amount of the maintenance for which he gave a decree to be paid by the defendant Maharajah from his estate in R, which was in British India *Held* that the decree in the former suit was not *res judicata* to show that the maintenance claimed in the present suit was a charge on the zamindari of R80 as to give the Court jurisdiction BIR CHUNDER MANIKHYA v ISHAN CHUNDER TAGORE . . . 12 C L R., 473

30 ——— Decree awarding fixed money allowance in lieu of maintenance—*Subsequent suit for partition*—A former decree decided that the plaintiff (a widow) always received a certain fixed amount, and was not entitled to recover more in the shape of profits in respect of the share claimed *Held* that it was not a decision that such fixed payment represented a mere claim to maintenance, and not a substantial right or interest in the property itself, so that on partition she must be regarded as having no claim to share in the land It should be inquired into (the decree being so construed) whether the acceptance of a fixed payment was on forfeiture of all rights to the property, and whether it extended only so far as the widow's right is concerned, or whether it affected the son's right likewise MAN KOONWER v DILAWUR HOSSEIN KHAN . . . 1 Agra, Rev, 36

31. ——— Decision on question of fact —*Subsequent suit between other parties*—On a question of fact the decision of one Court cannot bind another in a suit between other parties ASSANOOLLAH v KALEE MOHUN MOOKERJEE [18 W. R, 469

32 ——— *Attempt to control the descent of property*—Two brothers having divided their family estate, each took a share consisting of

RES JUDICATA—*continued.*

2 ESTOPPEL BY JUDGMENT—*continued*

brother leaving a widow and daughters, the widow obtained possession of the villages which formed her

judicata. VENKATADRI APPA RAU v PEDA VENKAYAMMA . . I. L R., 10 Mad., 15

33. ——— Benami transaction for purpose of defrauding creditors—*Deed of conveyance not in real purchaser's name—Collusive suit by nominee against real owner—Decree obtained by fraud—Subsequent suit by real owner against nominee for possession—Right of party to fraud to set fraudulent decree aside—Collusive transaction when held binding and when set aside*—In 1874 the plaintiff *P* bought a house from *G* but caused the conveyance to be executed by *G* in the defendant *C's* name This was done with the object of protecting the property against the claims of the plaintiff's creditors The plaintiff occupied the house, ostensibly as tenant to the defendant for a nominal rent. In 1880 the defendant brought a suit against the plaintiff to recover possession of the house and

question, and of his right to retain possession alleging that the defendant was a mere benamidar that the sale deed and the *ex-parte* decree were sham and

... *judicata* ... arising the ... he might ... litigation

CHENNIBAPPA BIN VIRBHADRAPPA v PUTTAPPA BIN SHIVBASAPPA . . I. L. R., 11 Bom., 708

34. ——— Civil Procedure Code, 1882, s 13—*Matter adjudged in a former suit—Purchase pendente lite*—A zamindar, having granted a

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

patni lease, mortgaged the zamindari to the patnidar, who having afterwards obtained a decree against the zamindar upon the mortgage, attached and purchased, at the sale in execution, the zamindari interest subject to the mortgage. Before that purchase, though after the attachment, another holder of a decree against the zamindar brought the right, title, and interest in the zamindari to sale in execution of his decree, and himself became the purchaser. He then, claiming to have obtained the zamindari estate, sued the patnidar for rent due under the lease. This suit was dismissed, save as to rent due for the time intervening between the two sales in execution, on the ground that the relation of zamindar to lessee had ceased on the purchase by the latter. The present suit was brought by the purchaser from the zamindar stating his title, acquired at the prior of the two sales, and claiming to redeem the mortgage. *Held* that the dismissal of the rent-suit, which involved the title, barred the present one; and the opinion was expressed that the plaintiff had been rightly adjudged in the rent-suit to be bound by the proceedings taken by the mortgagee, pending which the purchase relied upon had been made. RADHAMADHUB HOLDAR *v.* MONOHUR MUKERJI

[I. L. R., 15 Calc., 756
L. R., 15 I. A., 97

KASISWAR MUKHOPADHYA *v.* MOHENDRA NATH PHANDARI . . . I. L. R., 25 Calc., 136

35. ——————— *Identity of cause of action with that of prior suit, to which the plaintiff in a subsequent suit had been a party—Effect of judgment, that a will had been revoked to bar, between the parties, any claim founded solely on the will.*—The widow of a talukhdar, acting under his supposed will, appointed the present appellant to succeed to the talukh and other estate which had belonged to the deceased. The heir of the deceased, under the Oudh Estates' Act I of 1869, obtained the judgment of the Judicial Committee, declaring that he was entitled to the talukhs as against the present appellant whose title was under the will, which had been revoked, as the Committee found. Another suit brought by the present appellant for a decree declaring that, in virtue of his appointment by the widow under the will, he was entitled to the whole of the estate of the deceased, talukhdari and non-talukhdari, was dismissed by the Judicial Committee on the ground that he had no such title to the whole or any part of the estate. *Held* that this prior judgment was conclusive to bar the present suit, which, being founded entirely upon the appellant's appointment in pursuance of the will, was brought for possession of all the estate of the deceased as well as a declaration of right thereto. Although the heir was not entitled to possession of the estate of the deceased other than talukhdari, inasmuch as the widow took her estate therein, nevertheless, the claim of the present appellant being only founded upon her appointment under the will, as if unrevoked, and not being a claim for property as descending to the widow upon her husband's intestacy, the prior judgment was binding in the present suit. TRILOKI NATH SINGH *v.* PERTAB NARAIN SINGH

[I. L. R., 15 Calc., 808
L. R., 15 I. A., 113

36. ——————— and s. 43—*Act XII of 1879, s. 6.*—The present suit was preceded by others in which the plaintiff sought to establish a right in the same part of the talukhdari estate that he now claimed to redeem from mortgage. The first suit, in which he with another claimed as under-proprietors, was dismissed in 1866 on the ground that they had not shown themselves to have held such right under the talukhdars within the period since 1844. Proceedings not to be regarded as judicial, subsequently taken under Circular 4 of 1867, resulted in a finding that the dismissal was right upon the merits, the property having been transferred to the talukhdar by a conditional sale which had become absolute. Another suit was then brought to recover the talukhdari right under the terms of Circular 106 of 1869, it being alleged that arrears of revenue paid by the talukhdar had been paid on the plaintiff's account. That suit was also dismissed. *Held* that the present suit to redeem the same property under a mortgage was not barred under s. 13 of Act X of 1877, as amended by s. 6 of Act XII of 1879. AMANAT BIBI *v.* IMDAD HOSAIN . . . I. L. R., 15 Calc., 800
L. R., 15 I. A., 106

37. ——————— *Clause of conditional sale in mortgage—Suit by mortgagee for declaration of title—Decree ordering delivery of property to mortgagee in default of payment of mortgage-debt by mortgagors within one month—Default of payment by mortgagors—Effect of such default—Mortgaged property taken by mortgagee in execution of such decree not as mortgagee, but absolutely—Subsequent suit for redemption.*—In 1863 *B* and *C* mortgaged certain land to one *G* under a mortgage-deed, which provided that, if the mortgage-debt was not paid at the stipulated time, the land should become the absolute property of *G*, the mortgagee. In 1871 *G* filed an ejectment suit against *B* and *C* and one *H* alleging that he had become owner of the land by operation of the above clause, and that he had subsequently let it to *H*, who now, in collusion with the other two defendants (the mortgagors), denied his title. The ejectment suit was subsequently converted into one for a declaration of *G*'s title as owner as against the mortgagors, *B* and *C*, who claimed a right to redeem. A decree was passed in 1872 ordering *B* and *C* to pay R100 to *G* within one month, or, in default, to deliver up to him possession of the land. The money was not paid, and *V*, as purchaser from *G*, got possession in execution of the above decree in August 1873. In September 1885 the plaintiff, as *B*'s heir and legal representative filed a suit against *G* and *V* to redeem the property. The Court of first instance dismissed the suit, holding that the plaintiff's claim was *res judicata* by virtue of the decree passed in 1872, and that the right to redeem was lost. On appeal,

RES JUDICATA—*continued*

2. ESTOPPEL BY JUDGMENT—*continued.*

he Court reversed this decision and passed a decree for redemption on payment of R10 by the plaintiff within six months The defendant *V* then applied to the High Court under its extraordinary jurisdiction *Held* that the plaintiff's claim was *res judicata* In the suit brought by *G* (the mortgagee) in 1871, he had claimed the land as owner through the forfeiture clause in the mortgage deed and the mortgagors insisting in that suit on a right still to redeem, the decree plainly meant to give them, by way of indulgence, one month within which to regain the land by payment of R100 to *G* It renewed the mortgage, but with a condition, which was a material part of the decree They having failed to ... After the lapse ... overed the R100 ... y, he would have been met by the ... decree He was entitled to the land, and nothing else So, too was *V* as his vendee As, then, there was no debt that could be recovered, there was and could be no subsisting mortgage that could be redeemed VISHNU CHINTAMAN *v* BALAJI BIN RAGHUJI

[I. L R, 12 Bom., 352

38 ———— *Partition suit—Declaratory decree* —A suit for partition of certain land was withdrawn as against one of the defendants who was entitled to part of the land The plaintiff and the remaining defendants entered into a compromise in the terms of which the Court passed a decree for delivery of a share of the land to the plaintiff The decree-holder having died without executing the decree, his heir now sued for partition of the land and delivery of the above share, joining as defendants the various persons entitled to shares *Held* that the decree in the former suit could only operate as a declaratory decree, and did not preclude the plaintiff from bringing the present suit. BEEMABAI *v* YAMUNABAI

[I. L. R., 13 Mad., 313

39 ———— *Landlord and tenant—Service tenure with rent—Enhancement of rent—Resumption* —In a suit brought in 1886 by a zamindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure, a small money rent being also reserved, it appeared that *in 1864 the right* of the plaintiff's predecessor to rent had been ... but there was no evidence that ... but in 1885 it ... ie service was ... was given to ... t an enhanced ... he same time ... l by the Civil ... MAHADEVI *v* VIKRAMA ... I. L. R., 14 Mad., 365

40. ———— The dismissal of a suit to have set aside an order made in one district, for the sale of the plaintiff's interest in property therein, is not a bar under ss 13 and 43 of the Civil Procedure Code to another suit to obtain relief against an order in another district for the sale of property therein belonging to the same plaintiff or of other property not included in the order for sale against which the dismissed suit was directed RADHA PRASAD SINGH *v* LAL SAHAB RAI

[I L R, 13 All, 53
L R, 17 I. A., 150

41. ———— Judgment in rem—*Decision of Court as to construction of will and ordering grant of letters of administration—Probate and Administration Act (V of 1881), ss 19 and 59—Evidence Act (I of 1872), s 41* —The High Court of the North Western Provinces on the 2nd February 1890, in determining under s 19 of Act V of 1881 the question whether certain persons were entitled to letters of administration with the will annexed construed the testator's will and, finding that the applicants were residuary legatees under the will held that they were entitled to such letters of administration The widow of the ... the grant ... incidental and for the purpose of ... question of the representative title of the applicants, could not be regarded as concluding the plaintiff by *res judicata* from obtaining a construction of the will in the suit brought by her. ARUNMOYI DASI *v.* MOHENDRA NATH WADADAR

[I. L. R, 20 Calc., 888

42. ———— *Application by executors for probate—Order refusing probate—Subsequent suit by executors as persons entitled under will to property of deceased—Probate and ... Act (V of 1881), s 12, Ch. V,* ... Court ... the execution of the will was not proved The plaintiffs thereupon filed the present suit, as the persons beneficially entitled under the will, for a declaration that the property of the deceased belonged to them, and for an injunction to restrain the defendant from obstructing them in the enjoyment of it The defendant contended that the suit was barred as *res judicata.* *Held* that the suit was not barred by the order refusing probate of the will. The refusal to grant probate does not conclusive show that the will propounded is not the will of the testator. GANESH JAGANNATH *v* RAMCHANDRA GANESH DEV

[I. L. R., 21 B

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

43. ——— *Suit by reversioners—Former suit by widow—Suit for construction of will.*—A suit by reversioners after the death of the widow of a testator for the construction of his will and codicil and for a declaration of the plaintiff's rights was held under the circumstances of the case not to be barred, as being *res judicata*, by the dismissal of a former suit which had been brought by the widow claiming the estate on the ground that the will and codicil were forgeries, and in which they were found to be genuine. CHUKKUN LAL ROY *v.* LOHIT MOHAN ROY

[I. L. R., 20 Calc., 906

44. ——— *Suit to set aside sale for arrears of rent accrued due against female heir after death of last full owner—Subsequent suit by reversioner to recover immoveable property sold.*—A previous suit brought by a female heir to set aside a sale in execution of a decree for arrears of rent accrued due against her after the death of the last full owner was dismissed. In a subsequent suit by the reversioner for recovery of possession of the immoveable property so sold, the defence was that the suit was barred as *res judicata*. *Held* that the dismissal of the previous suit, which was for recovery only of the limited estate of female heir, would not be a bar to the subsequent suit which was for the recovery of the absolute estate, which vested in the reversioner. BRAJA LAL SEN *v.* JIBAN KRISHNA ROY

[I. L. R., 26 Calc., 288

45. ——— ——— *Evidence Act (I of 1872), s. 41—Judgment in rem—Judgment in personam—Guardians and Wards Act (VIII of 1890), s. 48—Probate and Administration Act (V of 1881), s. 62.*—On an application for probate of a will under the Probate and Administration Act, 1881, which was opposed by the widow of the alleged testator and her father, it appeared that an application had previously been made under the Guardians and Wards Act, 1890, on behalf of the widow for a declaration that she was the guardian of the person and the property of the infant son of the alleged testator, and that that application had been opposed by the present petitioners who claimed to be testamentary guardians of the property appointed by the will now propounded, and that the will had then been found to be a forgery. *Held* that the question of the genuineness of the will was not *res judicata* for the purpose of the proceedings under the Probate and Administration Act. CHINNASAMI *v.* HARIHARABADRA

[I. L. R., 16 Mad., 380

46. ——— *Agreement not to execute regarded as satisfaction of decree.*—*M* and *A* were partners, and as such were indebted to *H*. *A* died, and subsequently the debt was settled between *H* on one side and *M* and *A*'s widow, as guardian of her minor sons, on the other. For a moiety of the debt a bond was passed by *M* to *H* and for the other moiety by the widow of *A*. *H* filed a suit against *M* and got a decree, which was satisfied. *H* then sued the widow on her bond. The Court allowed her objection that she was not competent to give a bond binding her sons personally, and of its own accord made *M* a defendant, and passed a decree against *M* and *A*'s estate. *H* assigned this decree to *R*, who applied for execution against *M*. *M* thereupon filed this suit against *H* and *R* praying for an injunction against the execution of the said decree and for damages against *H*. He alleged that during the pendency of the suit in which the said decree had been passed, *H* had agreed that he would not obtain a decree against him, and that, if such a decree were passed, he would not execute it. The lower Appeal Court rejected the plaint, holding (1) that, as between the plaintiff *M* and the defendant *R*, the question in issue was *res judicata*, and (2) that there was no cause of action against the defendant *H*. On appeal to the High Court,—*Held* that, as between *M* and *R*, the suit was not *res judicata*. The alleged agreement by its very terms provided for the event of the decree being passed, and was only intended to prevent its being executed. *Chenrirappa v. Puttappa, I. L. R., 11 Bom., 708,* distinguished. MUKUND HARSHET *v.* HARIDAS KHEMJI . I. L. R., 17 Bom., 23

47. ——— **Mesne profits, Ascertainment of**—*Execution of decree—Deductions claimed.*—The Court having awarded a particular sum as annual mesne profits without setting forth in the judgment the details thereof, and it having therefore become impossible to say that the right to a particular deduction therefrom claimed by the defendant was adjudicated on by the Court,—*Held* that the rule of *res judicata* did not apply to the question as to the payment by the defendant. KACHAR ALA CHELA *v.* OGHADBHAI THAKARSHI. OGHADBHAI THAKARSHI *v.* KACHAR ALI CHELA

[I. L. R., 17 Bom., 35

48. ——— **Soundness in law of previous decision immaterial.**—Where a judicial decision, pleaded as constituting *res judicata*, in all other respects fulfils the requirements of s. 13 of the Code of Civil Procedure, and no appeal has been preferred against it within limitation, it is immaterial whether such decision is or is not sound law. *Parthasaradi Ayyangar v. Chinnakrishna Ayyangar, I. L. R., 5 Mad., 304,* dissented from. PHUNDO *v.* JANGI NATH

[I. L. R., 15 All., 327

49. ——— *Erroneous decision in point of law in previous case.*—An erroneous decision on a pure question of law in a previous suit may operate as *res judicata*. *Goursi Koer v. Audh Koer, I. L. R., 10 Calc., 1087,* and *Phundo v. Jangi Nath, I. L. R., 15 All., 327,* followed. *Parthasaradi v. Chinnakrishna, I. L. R., 5 Mad., 304,* dissented from. RAI CHURN GHOSE *v.* KUMUD MOHON DATTA CHAUDHURI . 1 C. W. N., 687

Same case on review . I. L. R., 25 Calc., 571

[2 C. W. N., 297

RES JUDICATA—*continued*

2 ESTOPPEL BY JUDGMENT—*continued*

50. ———— Bengal Municipal Act (Beng Act III of 1884), s 10—*Public high ways—Roads vesting in Commissioners—Sub soil of roads, Right to* —A suit brought by the plaintiffs' predecessor in title to recover certain land from a Municipality (which had been taken up as a public road and vested in the Municipality subsequently under Bengal Act III of 1864 s 10), on the ground that the plaintiffs had been ousted therefrom by reason of the Municipality stacking stones on a portion thereof, having been dismissed,—*Held* that the decision in such suit was not operative as *res judicata* in another suit brought by the plaintiffs for ejectment and declaration of title to such land against a purchaser of the land from the Municipality MODHU SUDAN KUNDU *v* PROMODA NATH ROY . I L R., 20 Calc., 732

51. ——— Rent suit—*Evidence—Estoppel—Ex parte decree, Effect of—Rate of Rent*—A mere statement of an alleged rate of rent in a plaint in a rent suit in which an *ex parte* decree had been obtained is not a statement as to which it must be held that an issue within the meaning of s 13 of the Code of Civil Procedure was raised between the parties, so that the defendant is concluded upon it by such decree Neither a recital in the decree of the rate of rent alleged by the plaintiff, nor a declaration in it as to the rate of rent which the Court considers to have been proved, would operate in such a case so as to make that matter a *res judicata*, assuming that no such declaration were asked for in the plaint as part of the substantive relief claimed the defendant having a proper opportunity of meeting the case MODHUSUDUN SHAHA MUNDUL *v* BRAE

[I L R, 16 Calc, 300

52 ———— Rent, Suit for—*Decree as to rent payable for former year—Rate of rent payable—Decree on admission of defen* [illegible] was con[illegible] was pay[illegible] in trying [illegible] na," after considering [illegible] d the circumstances of the case, held that the plaintiff had entirely failed to prove his allegation of the jama, and gave him a decree for the amount admitted by the defendant, which was less than that claimed by the plaintiff In a later suit the plaintiff sued the defendant, in respect of the same holding, for rent for a subsequent year and he claimed at the same [illegible] It was [illegible] whether the previous decision was that the plaintiff should recover from the defendant the sum admitted by him *to be due* or that the *sum so admitted to* be due was the proper amount of rent payable for the period in question. *Held* that in this case the previous decision was to the latter effect, and that the question of the rate at which the rent was payable by the defendant was *res judicata* *Punnoo Singh v Nirghin Singh, I L R 7 Calc, 298* and *Jeo Lal Singh v Surfun, 11 C L R 433*, referred to HURRY BEHARI BHAGAT *v* PARGUN AHIR . I L R, 19 Calc, 656

53 ———— Rent, Suit for—*Decree as to rent payable for former years—Evidence of rent payable*—The plaintiffs sued the defendants for rent of a certain jote claiming a higher rent than the defendants admitted The High Court in second appeal gave a decree at the lesser rate admitted by the defendants Subsequently the plaintiffs again sued the defendants in regard to the same jote for arrears of rent for subsequent years at the rate claimed in the former suit The defendants contended that the rate of the rent as regards this jote was by virtue of the judgment of the High Court in the previous suit, *res judicata* as between themselves and the plaintiff *Held* that where in a rent suit a Judge tries the question and gives judgment on the question "what is the yearly rent" and makes that the foundation of his judgment, that decision is *res judicata* between the parties The previous judgment of the High Court therefore operated as *res judicata* *Hurry Behari Bhagat v Pargun Ahir, I L R, 19 Calc, 656*, followed. *Per* NORRIS *J*—Even if the judgment of the High Court did not operate as *res judicata*, still it was some evidence of the rate of the rent of the previous year BUKSHI *v* NIZAMUDDI

[I L R., 20 Calc., 505

Dictum of NORRIS, *J*, in above case followed in MADHU MUNJARI CHOWDHURANI *v* JHUMAI BIBI

[1 C. W. N, 120

54 ———— Rent, Suit for—*Decree as to amount of land—Rent payable for former years—Rate of rent payable*—The plaintiff sued the defendant for rent of certain lands The defendant contended that he was not liable for the entire rent, as part of the land was in the plaintiff's possession The defendant failed to prove his contention, and a decree was given for the full amount claimed Subsequently the plaintiff again sued the defendant in regard to the same property for arrears of rent for subsequent years at the rate claimed in the former suit The defendant had the land measured, adduced evidence, and endeavoured to raise the same defence as he had in the previous suit No allegation was made to the effect that the rent had been altered in consequence of anything that had happened since the previous decision The Lower Courts, without considering the evidence adduced by the defendant held that the defendant could not again raise the same contention, as the question had already been considered and determined

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

in the previous suit, and was *res judicata* between the parties. *Held* that the previous decision did not operate as *res judicata,* and that the lower Courts ought to have determined on the evidence adduced what the amount of rent in question was. NIL MADHUB SARKAR *v.* BROJO NATH SINGHA [I. L. R., 21 Calc., 236

55. ———————— *Rent, decision as to amount claimed in a previous suit, if res judicata in a subsequent suit—Fresh evidence and defence in a subsequent rent suit, Admissibility of.*—The previous decision in a suit for rent does not operate as *res judicata* in a subsequent suit where the amount of rent subsequently accrued due is in issue. It is open to the defendant to raise fresh defence and adduce fresh evidence, and the Court must determine upon the evidence adduced as to whether the rent claimed in the particular suit is or is not due. *Hurry Behari Bhagat* v. *Pargun Ahir, I. L. R., 19 Calc., 656,* and *Nil Madhab Sarkar* v. *Brojo Nath Singha, I. L. R., 21 Calc., 236,* followed. JOTINDRA MOHAN TAGORE *v.* SHUMBHU CHUNDER BHUTTACHARJEE . 4 C. W. N., 43

56. ———————— *Decree by ijardar whether evidence when the superior landlord sues for rent—Ex-parte decree not deciding rate of rent.*—A decree obtained in a previous suit for rent by an ijaradar does not operate against the tenant as *res judicata* on the question whether the relation of landlord and tenant exists in a subsequent suit for rent brought by the superior landlord. The decision in that suit where the rate of rent was not in issue does not operate as *res judicata,* in the subsequent suit against the tenant, as regards the rate of rent. *Hurry Behari Bhagat* v. *Pargun Ahir, I. L. R., 19 Calc., 656,* and *Bakshi* v. *Nizamuddi, I. L. R., 20 Calc., 505,* followed. BALARAM MONDUL *v.* KARTICK CHANDRA ROY . . 4 C. W. N., 161

57. ———— Different subject-matters claimed—*Malikana—Recurring liability—Judgment in first suit going to root of plaintiff's title—"Final" judgment—Judgment liable to appeal or under appeal—Effect of final decree in first suit pronounced subsequent to decision in second suit of lower Appellate Court, but before hearing of second appeal in second suit.* —For the purposes of the rule of *res judicata* it is not essential that the subject-matters of the present and the former litigations should be identical. Where a recurring liability is the subject of claim, a previous judgment dismissing a suit between the same parties upon findings which do not go to the root of the title on which the claim rests, but relate merely to a particular item or instalment, cannot operate as *res judicata.* But if such previous judgment negatives the title and the main obligation itself, the plaintiff cannot re-agitate the same question of the title by claiming a subsequent item or instalment. *Rajah of Pittapur* v. *Sri Rajah Rau Buchi Sittaya Garu, L. R., 12 I. A., 16,* referred to. A judgment liable to appeal or under appeal is only a provisional and not a definite or final adjudication, and cannot operate as *res judicata* during the interval preceding the appeal or the interval preceding the decision of the appeal. Explanation IV of s 13 of the Civil Procedure Code commented on. *Kakarlapudi Suriyanarayanarazu* v. *Chellamkuri Chellama, 5 Mad., 176,* and *Nilvaru* v. *Nilvaru, I. L. R., 6 Bom., 116,* referred to. The rule of *res judicata* contained in s. 13 of the Code applies equally to appeals and miscellaneous proceedings as to original suits. Having regard to its main object, so far as it relates to the re-trial of an issue, it refers not to the date of the commencement of the litigation, but to the date when the Judge is called upon to decide the issue. Where, after the commencement of the trial of an issue, a final judgment upon the same issue in another case is pronounced by a competent Court (the identity of parties and other conditions of s. 13 being fulfilled), such judgment operates as *res judicata* upon the decision, original or appellate, of the issue in the later litigation. On the 17th August 1885 a suit was instituted for recovery of an annual malikana allowance for the years 1290, 1291, and 1292 Fasli. On the 5th October 1885 the Munsif dismissed the suit. On the 10th March 1886 the Subordinate Judge on appeal reversed the Munsif's decree and decreed the suit. On the 21st June 1886 the defendant appealed to the High Court, which on the 4th July 1887 reversed the Subordinate Judge's decree and restored that of the Munsif, on the ground that the plaintiff had never received and was not entitled to malikana. Meanwhile, on the 8th June 1886, the plaintiff brought another suit against the defendant for recovery of malikana for the year 1293 Fasli, which accrued after the institution of the former suit. By judgments dated respectively the 21st August and 27th November 1886, the lower Courts decreed this suit, holding that the Subordinate Judge's decree of the 10th March 1886 in the former suit operated as *res judicata,* and was conclusive in favour of the plaintiff's title to the malikana. On the 17th May 1887 the defendant appealed to the High Court, and on the 16th May 1888 (the High Court having, in the interval, dismissed the former suit by its judgment of the 4th July 1887) the appeal came on for hearing. *Held* that the lower Courts were wrong in holding that the Subordinate Judge's decree of the 10th March 1886 in the former suit, which, at the date of the institution of the present suit on the 8th June 1886, was liable to appeal, and, at the dates of the decisions of those Courts in August and November 1886, was the subject of a second appeal pending in the High Court, could operate as *res judicata* in favour of the plaintiff's title to malikana. (1) That the High Court's judgment dismissing the former suit on the 4th July 1887, though passed after the decisions of the lower Courts in the present suit and after the institution of the second appeal in the present suit, was nevertheless binding on the High Court in deciding such second appeal, and, being final, was conclusive as *res judicata* against the plaintiff's title to malikana. (2) That the effect of the High Court's judgment dismissing the former

RES JUDICATA—*continued*

2 ESTOPPEL BY JUDGMENT—*continued.*

suit on the 4th July 1887 was not affected by the circumstance that the second suit was brought for recovery of malikana for a different year, inasmuch as that judgment went to the root of the plaintiff's title to malikana, and its scope was not limited to the particular item then claimed BALKISHAN *v.* KISHAN LAL . . I L R, 11 All., 148

58. ———— **Fact in issue not heard and "finally decided" therein**—*Proceedings in a prior suit*—To support the defence of *res judicata*, it is not enough that the parties to the suits are the same, and that the same matter is in issue The matter must have been heard and finally decided (s 13 of the Civil Procedure Code) In 1885 relations of a deceased proprietor, alleging their right to the inheritance, sued for a declaration that they were [illegible]

[illegible] was his true parentage, and dismissed [illegible] High Court maintained the dismissal, not upon the merits but on the grounds that the suit was defective for want of parties, and that a declaratory decree could not be made In 1888 the same plaintiffs, having purchased the interest of the parties not joined in the previous suit, brought the present suit, with the same object, against the same defendant, whom the Subordinate Judge (not the same officer that disposed of the former suit) now found not to have been the son of the said daughter A Bench of the High Court (composed of Judges other than those that heard the former appeal), having examined the record of the former suit, reversed the Subordinate Judge's decision They declined, however, to decide whether or not the latter suit was barred on the ground of *res judicata* But intimating that they would have affirmed the judgment of the lower Court in the former suit had it, on the merits, come before them, they preferred that judgment to the one before them and gave effect to this opinion by reversing the latter *Held* that the question of parentage had not been heard and finally decided in the suit of 1885 The appeal *in that suit had put an end to any finality in the decision of the first Court, and had not led to a decision on the merits* There was therefore no *res judicata*, but unless treated as such, the judgment in the former suit had little or no bearing on the question as afterwards put in issue in this That issue had been rightly decided by the Subordinate Judge on the evidence, and his judgment was accordingly maintained SHEOSAGAR SINGH *v.* SITARAM SINGH . . . I. L. R., 24 Calc, 616
[L R, 24 I. A., 50
1 C. W. N, 297

59 — ———— *Prior decree between the same parties in the same claim—Not arriving at a final decision*—In a former suit between the same parties that were now in litigation, in which [illegible] decree dismissed [illegible]

decided between them *Held* that the prior decree was not a final decision within the meaning of s 13 of the Code of Civil Procedure, and the defence of *res judicata* was not maintained PARSOTAM GIR *v.* NARBADA GIR I L R., 21 All., 505
[L R., 26 I. A, 175
3 C W. N., 517

60 ———— **Possession known and acquiesced in prior to adjudication**—*Sivaganga sanad of 1803—Fraud.*—A suit was brought in 1886, grounded on fraud attributed to the lineal ancestor of the principal defendant in obtaining in 1803 the grant of the sanad of the Sivaganga zamindari, to which the plaintiff claimed title The plaintiff's case was that the defendant's ancestor the younger of two brothers, had fraudulently caused the sanad to be made out in his own name [illegible]

TEVAR *v.* PERIASAMI UDAYAR [illegible]
[I. L R., 17 Mad., 384

S C BALA GOURI VALLABHA TEVAR *v.* ZAMINDAR OF SHIVAGANGA . L. R., 21 I. A., 93

61. ———— **Circumstances and evidence to establish existence of trust.**—*A claim made for a share of property by inheritance from a deceased relation who had been in joint possession of it with the defendant was met by the defence that the estate had been jointly held for religious and charitable purposes under a will, the deceased having had no beneficial or heritable interest* The defendant alleged that the original owner of the property had bequeathed the property in trust for these purposes The claimant alleged a revocation of the will, and denied that there was such a trust. One of the contentions upon this appeal was that the plaintiff was estopped from denying the existence of a trust by there having been a judgment of the High Court, in a prior suit, between the present defendant and the widow of the deceased, that judgment [illegible] stated that the trust had been recognized [illegible]

not conclusive, evidence [illegible] *v.* KESHO PRASAD MISR . I. L. R., 19 All, 277
[L. R., 24 I. A., 10
1 C W. N., 265

RES JUDICATA—*continued.*

2. ESTOPPEL BY JUDGMENT—*continued.*

62. ———— **Judgment obtained by fraud**—*Failure to appear and resist order granting certificate.*—*P* died in 1889, leaving a daughter *B*. *P*, it was alleged, had made a will appointing certain persons his executors. The executors applied for a certificate under the Succession Certificate Act (VII of 1889) to recover a debt due to the deceased's estate from one *N*. *B* opposed this application, and claimed the certificate for herself by a separate application. The District Judge rejected *B*'s application, and issued a certificate to the executors on the 14th September 1892. In the meantime, one *M* obtained a decree against *B* as legal representative of *P*, and in execution bought *P*'s right, title, and interest in the debt due from *N*. On the 12th September 1892 *M* applied for a certificate under Act VII of 1889 to recover this debt. The District Judge rejected this application. *M* appealed to the High Court. To this appeal the executors were made parties at their own request. The High Court reversed the District Judge's order, and remanded the case for disposal on the merits. Upon the remand the executors did not appear before the District Judge to contest *M*'s application, and the District Judge granted him a certificate. Thereupon he applied for revocation of the certificate previously granted to the executors; and the executors in their turn applied for revocation of the certificate granted to him. The District Judge revoked *M*'s certificate on the ground that he had fraudulently concealed from the Court the previous grant of a certificate to the executors. Against this order *M* appealed to the High Court, contending (*inter aliâ*) that the executors, not having resisted his application for a certificate after the case had been remanded by the High Court, were estopped, on the principle of *res judicata*, from applying for a revocation of the certificate granted to him. *Held* that the executors were not estopped. The executors, having applied to be made parties to the appeal proceedings, were bound to appear in the Court below, and their failure to do so disabled them from pleading objections such as the collusive character of the decree and *B*'s want of title, but it did not operate as *res judicata*, especially when there was reason to suspect fraud on the part of *M*. The order obtained by him could not have the effect of *res judicata*, unless the executors, being called on to dispute it, had failed to do so. A party to a proceeding is never disabled from showing that a judgment or order has been obtained by the adverse party by fraud. MANCHHARAM *v.* KALIDAS

[I. L. R., 19 Bom., 821

63. ———— **Decree in previous suit defining rights of a party to a subsequent suit**—*Effect of such decree as against such party until set aside by proper procedure.*—Where there is a subsisting decree in a previous suit which, as regards the subject-matter of a subsequent suit, would take effect under s. 13 of the Code of Civil Procedure, it is not open to the party whose rights are affected by such decree to question in the subsequent suit the validity of such decree, though it might have been open to such party in a separate suit to get the decree set aside. *Karamali Rahimbhoy v. Rahimbhoy Habibhoy, I. L. R., 13 Bom., 137,* referred to. BANSI LAL *v.* RAMJI LAL

[I. L. R., 20 All., 370

3. ADJUDICATIONS.

64. ———— **Mention of cess in survey proceeding**—*Judicial determination.*—*Held* that the mention of a cess in the wajib-ul-urz and settlement proceeding was not equivalent to a judgment on a question raised so as to preclude adjudication on the merits. RAM CHUND *v.* ZAHOOR ALI KHAN

[1 Agra, 135

See RAM CHUND *v.* ZAHOOR ALI KHAN

[1 Agra, 134

65. ———— **Entry in wajib-ul-urz**—*Limitation.*—*Held* that an entry in the wajib-ul urz is only good for what it may be worth as evidence, and cannot be held to be like a judgment or to require to be set aside by a regular suit subject to a limitation calculated from the date of the instrument. BHOLA SINGH *v.* BULRAJ SINGH . . . 1 Agra, 233

66. ———— **Application under Administrator General's Act (XXIV of 1867), Order on**—*Civil Procedure Code (Act X of 1877), s. 13—Act II of 1874, s. 63—"Suit."*—An application by petition under s. 63 of Act II of 1874 was a "suit" within the meaning of s. 13 of Act X of 1877, and therefore such an application was barred by the disposal of a former application in the same matter under the same section, or under s. 60 of Act XXIV of 1867, which the Act of 1874 repealed: this was so whether the order was one for payment of money or one dismissing the petition. S. 63, Act II of 1874, contemplates that the money, which is the subject of the petition, may be claimed by parties other than the applicant, and that those parties may appear and be represented at the hearing; and the words "binding on all parties" were intended to make the order binding upon such parties as well as on the petitioner. SMITH *v.* SECRETARY OF STATE. IN THE MATTER OF ACT II OF 1874 . . I. L. R., 3 Calc., 340

67. ———— **Adjudication in accordance with Oaths Act**—*Oaths Act (X of 1873), ss. 9 and 11—Question of title.*—The decision of a question of title in issue between the parties to a suit in accordance with the provisions of the Oaths Act is not an adjudication which will operate as an estoppel when the same question of title is again raised in another suit between the same parties. KESHAVA THARAGAN *v.* RUDRAN NAMBUDRI . I. L. R., 5 Mad., 259

68. ———— **Order apportioning compensation-money** — *Question of title — Land Acquisition Act, s. 39.*—Under s. 39 of the Land Acquisition Act, it is the duty of the Judge, in apportioning the compensation-money which he is directed to apportion, to decide the question of title between all persons claiming a share of the money. *Semble*—No decision under the Land Acquisition Act should be treated as *res judicata* with respect to the

RES JUDICATA—*continued.*

3 ADJUDICATIONS—*continued*

title to other parts of the property belonging to persons who may come before the Judge under s 30 NOBODEEP CHUNDER CHOWDHRY v. BROJENDRO LALL ROY I L R., 7 Calc, 406: 9 C. L R, 117

69 ——— Investigation under s 331, Civil Procedure Code, 1877—*Title, Question of—Possession* —An investigation under s 331 of the Civil Procedure Code (prior to the Amendment Act of 1879) was limited to the fact of possession, and was no bar to a subsequent suit brought to try the title to the land in dispute CHINNASAMI PILLAI v KRISHNA PILLAI . I. L R, 3 Mad, 104

70 ——— Order for abatement of suit—*Difference of procedure under Civil Procedure Codes, 1859 and 1877, s 371* —Certain property having been mortgaged, was sold in execution of a decree against the mortgagor, and the decree holder became the purchaser The mortgagee subsequently

decree the property in question was purchased by the plaintiff, who now sued to recover possession of the

bar to a fresh suit in the same cause of action NISTARINI DEBI v. BROJO NATH MOOKHOPADHYA [10 C. L R, 229

71. ——— Withdrawal from suit with permission to bring a fresh suit—*Civil Procedure Code, 1859, s 97* —A suit is not barred as *res judicata* because, in a former case between the same parties, and in the same cause of action, the plaintiff after the evidence had been recorded, but

[18 W. R., 276

72. ——— Dismissal of plea of set off —*Subse*

off is ou

coming

therefore be allowed to set up a claim ... a suit had been previously brought by him and dismissed ABDOOLLAH KHAN v SREEKANTO PERSHAD HAJRAH . 15 W. R., 252

73. ——— *Landlord and tenant—Sale for arrears of rent—Deposit to protect under tenure—Set-off—Voluntary payment* —*L* and *R*, the holders of a patni estate, granted ... the

r of

the

mla-

In

sale,

RES JUDICATA—*continued*

3 ADJUDICATIONS—*continued*

tenure, deposited in the Collectorate on 17th November 1864, a sum of money, on which the sale was stayed *K*, being then in arrear in the payment of his dar-patni rent, claimed to set off the amount deposited in the Collectorate against the rent due to *L* and *R* This *L* and *R* refused to allow, and they

being merely a voluntary payment by *K* On 30th October 1867 *K* brought a regular suit against *S* and *L* and *R* to recover the amount of the deposit and obtained a decree, but the decision was reversed on appeal and the suit dismissed for want of jurisdiction. On 6th June 1869 *K* filed his plaint in the proper Court *Held* that he was entitled to recover the amount deposited by him in the Collectorate, and that the suit was not barred as being *res judicata* by the decision of 26th June 1866 LUCKINARAIN MITTER v KHETTRO PAL SINGH ROY

[13 B L. R, P C, 146 20 W R., 380

74. ——— Set off, Plea of, in respect of claim dismissed in former suit—*Civil Procedure Code, 1882, s 13* —In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account

recover the same amount as was now claimed by way

... was no proof of a sale of cloth and

been actually ... to the plaintiff *Held* that a claim for such set-off was not barred under the provisions of s. 13 of the Civil Procedure Code AMIR ZAMA v NATHU MAL I. L. R., 8 All., 396

75 ——— Order of former Magistrate for maintenance—*Criminal Procedure Code (Act X of 1872), s 536—Maintenance of wife—Adultery of wife subsequent to order for maintenance* —A husband, upon whom an order to make an allowance for the maintenance of his wife had been made under s 536 of Act X of 1872, objected to the payment of the allowance on the ground that his wife was living

RES JUDICATA—*continued*.

3. ADJUDICATIONS—*continued*.

in adultery. The Magistrate, entertaining this objection, disallowed it, on the ground that the charge of adultery against the wife was not established. The husband subsequently again objected to the payment of the allowance on the same ground. The Magistrate, entertaining the second objection, allowed it, and directed the husband to discontinue paying the allowance. His order was based on proof of adultery by the wife before the date of the order of the former Magistrate. *Held*, on the general principle of the rule of *res judicata*, that the second Magistrate was wrong in law in re-opening matters already adjudicated upon, and his order directing the discontinuance of the allowance on the ground of facts antecedent to the former Magistrate's order must be held to be illegal. LARAITI *v.* RAM DIAL

[I. L. R., 5 All., 224

76. — Application to set aside decree after refusal by Court to set it aside —*Attachment under ex parte decree.*—A suit was brought against *T* and an *ex-parte* decree obtained against him. An application by *T* to have the decree set aside was dismissed. The defendant afterwards applied to have the attachment and all the proceedings set aside and declared null and void. *Quære*—Whether the former refusal to set it aside would be a bar to prevent the setting aside by the Court. LADKUVARBHAI *v.* SARSANGJI PARTABSANGJI

[7 Bom., O. C., 150

77. ——— Previous suit by next friend dismissed for default—*Civil Procedure Code, 1882, s. 158 (Act VIII of 1859), s. 148 — Evidence of fraud of next friend—Limitation.*—*A* sued in 1885 to recover certain estates from *B*, alleging claim under his adoption which took place in 1865. A suit to recover the same estates had been filed on behalf of *A* by his next friend and had been dismissed for default in 1872. In 1875 *A*, being still a minor, relinquished by deed his claim to the estates for R12,000, but now alleged that he thought he was relinquishing it only in favour of the defendant's predecessor in title, who died in 1883, having been in possession of the estates since 1867. The plaintiff attained his majority in 1878. *Held* that the claim was *res judicata*, the plaintiff having failed to prove fraud on the part of his next friend, and that, whether the cause of action arose in 1865 or 1867, it was equally barred from 1879. *Per Cur.* —The plea of *res judicata* ordinarily presupposes an adjudication on the merits; but s. 148 of the Code of Civil Procedure (Act VIII of 1859) contains a statutory direction that, in case the plaintiff neglects to produce evidence and to prove his claim as he is bound to do, the Court do proceed to decide the suit on such material as is actually before it, and that the decision so pronounced shall have the force of a decree on the merits, notwithstanding the default on the part of the plaintiff. VENKATACHALAM *v.* MAHALAKSHMAMMA . I. L. R., 10 Mad., 272

78. ——— Judgment liable to appeal—*Finality of judgment.*—A judgment liable to appeal or under appeal is only a provisional and not a definitive or final adjudication, and cannot operate as *res judicata* during the interval preceding the appeal or the interval preceding the decision of the appeal. Explanation IV of s. 13 of the Civil Procedure Code commented on. *Kakarlapudi Suriyanarayana Razu v. Shellamkuri Shellamma, 5 Mad., 176*, and *Nilvaru v. Nilvaru, I. L. R., 6 Bom., 110*, referred to. The rule of *res judicata* contained in s. 13 of the Code applies equally to appeals and miscellaneous proceedings as to original suits. Having regard to its main object, so far as it relates to the re-trial of an issue, it refers not to the date of the commencement of the litigation, but to the date when the Judge is called upon to decide the issue. Where, after the commencement of the trial of an issue, a final judgment upon the same issue in another case is pronounced by a competent Court (the identity of parties and other conditions of s. 13 being fulfilled), such judgment operates as *res judicata* upon the decision, original or appellate, of the issue in the later litigation. BALKISHAN *v.* KISHAN LAL

[I. L. R., 11 All., 148

79. ——— Award as to partition in prior arbitration proceedings, Effect of—*Subsequent suit for partition.*—Disputes having arisen in a joint Hindu family, the parties submitted the question of partition to arbitrators, who passed an award thereon. Both parties objected to the award, and it was never carried into effect. On a suit for partition being filed,—*Held* that such an award was equivalent to a final judgment and binding on the parties in the absence of positive evidence that both parties agreed that the former state of things should be restored, and that therefore the present suit for partition could not be maintained. KRISHNA PANDA *v.* BALARAM PANDA

[I. L. R., 19 Mad., 290

SUBBARAYA CHETTI *v.* SADASIVA CHETTI

[I. L. R., 20 Mad., 490

80. ——— Refusal to file award—*Civil Procedure Code, 1882, ss. 13 and 525.*—The refusal of an application for the filing of an award under s. 525, Civil Procedure Code, merely leaves the award to have its own ordinary legal effect, and it cannot be contended that an award is not to be relied on as a defence in a suit relating to the subject-matter dealt with by it, only because such an application has not been granted. Separable claims, *viz.*, (*a*) to share property by right of inheritance, and (*b*) for the office of lambardar, had been disposed of, on the reference of the present parties, without the intervention of a Court by an arbitrator's award between them. An application under s. 525 had been rejected, for the reason, among others, that (*b*) was not a matter of civil jurisdiction. *Held*, however, that the present suit, which was grounded on (*a*), was barred by the award made. MUHAMMED NEWAZ KHAN *v.* ALAM KHAN

[I. L. R., 18 Calc., 414
L. R., 18 I. A., 73

RES JUDICATA—*continued*

3 ADJUDICATIONS—*concluded*

81 ———— Consent decree—*Decree dis ... party from suit*—In 1839, in contempla- ...

the deat ... go to *G* ... to the ... *G* on the ... n the 21st ... r husband, ... 1812 gave ... afterwards ... married to ... he had two children, the plaintiff and a son *G* ... On the 7th November 1859 *E* and her husband filed a bill of complaint in the Supreme Court, Calcutta, against the trustees of the settlement of 1839 and against ... which she ...

Bellcairn, ... *Padmanabha*, *I L R.*, *18 Mad*, *1*, and *Gajapa*... *Radhika* v *Gajapathi Nilamani*, *13 Moore's I A*, *497*, referred to NICHOLAS v ASPHAR

[I. L. R., 24 Calc, 218

82 ———— *Estoppel*—A ... as an estoppel just in the ... xercised ... HANKAR ... om., 77

83 ———— *Evidence—Civil ... Act XIV of 1882), s 13*—A con- ...

the suit ... dence in the latter suit LALA SHIB LAL ... GOURI PRASAD . . . 2 C. W. N., 174

4. JUDGMENTS ON PRELIMINARY POINTS

84 ———— Dismissal without trial on the merits—*Hearing and determination of cause of action*—A suit on the same cause of action, and between the same parties, as a former suit which was summarily dismissed without being tried on its merits, is not one on a cause of action which has been heard and determined by a Court of competent jurisdiction in a former suit SHOKHEE BEWA v MEHDEE MUNDUL . . . 9 W. R., 327

RES JUDICATA—*continued*

4 JUDGMENTS ON PRELIMINARY POINTS—*continued*

85. ———— Decision without trial on merits—*Former judgment on technical defect or irregularity*—A former judgment which proceeded wholly upon a technical defect or irregularity in the proceedings, and not upon the merits of the case is not a bar to a subsequent suit for the same cause of action RAM NATH ROY CHOWDHRY v. BHAGBUT MOHAFUTTUR 3 W. R, Act X, 140

86 ———— *Case decided on technical ground*—The cause of action between two parties cannot be said to be a *res judicata* if the first case was disposed of on appeal on a purely technical point, even though the suit was decided on its merits in the Court of first instance MOKOOND NARAIN DEO v JONARDUN DEY BURMICK

[15 W R, 208

87 ——— Suit dismissed as being premature—*Suit for same subject subsequently brought*—A suit dismissed as being prematurely brought is not a *res judicata* in a subsequent suit brought at the proper time. ELAHEE BUKSH v SHEO NARAIN SINGH . . 17 W. R., 360

... *Act*, s 132— ... bond against the mortgagor was dismissed on the ground that the plaintiff was not entitled to sue for want ... 132 of the Trans ... then gave ... rtgagor, and ... im was not ... ordingly not precluded by s ... Procedure. RAMIREDDI v SUBBAREDDI

[I. L. R, 12 Mad., 500

89 ———— Suit dismissed as not being proper remedy—*Subsequent suit on same cause of action—Civil Procedure Code 1859, ss 2 and 7*—The first defendant mortgaged certain lands to plaintiff by way of zur i peshgi lease, under which ... entered into possession The first defen- ...

plaintiff's ... possession. Plaintiff then brought a subsequent suit for possession against the same parties and on the same cause of action The defendants objected that the suit was barred under ss. 2 and 7, Act VIII of 1859,

RES JUDICATA—*continued.*

4. JUDGMENTS ON PRELIMINARY POINTS —*continued.*

but the contention was overruled. DEODHARI SINGH *v.* LALLA SEWSARUN LAL . . **3 C. L. R., 395**

90. ———— **Suit struck off for default** —*Beng. Reg. XXVI of 1814—Decision of suit—Civil Procedure Code, 1859, s. 148.*—Where a suit had been struck off the file on default under the old law, Regulation XXVI of 1814 ("kharij" being the word used), it was held that there was no "decision" such as is contemplated by s. 148 of the Civil Procedure Code, 1859. GUNGA RAM *v.* KHEM NARAIN POOREE . . . . . **11 W. R., 250**

91. ———— *Dismissal of suit for default in appearance of parties—Remanded case.*—When a suit has been remanded by the Appellate Court and then dismissed by the Court of first instance for non-appearance of the parties, the plaintiff is not debarred thereby from bringing another suit upon the same cause of action against the same defendant. RAGHUNATH SINGH *v.* RAM KUMAR MANDAL . **5 B. L. R., Ap., 64: 14 W. R., 81**

92. ———— *Dismissal of suit for default in appearance—Suit for rent—Subsequent suit for possession—Civil Procedure Code (Act X of 1877), s. 13.*—In 1870 two plots of land, numbered 155 and 147, belonging to the same owner, were sold in execution of a decree. The purchaser of plot 155 sold it to *A*, who in 1873 sued the tenant of a portion of the land for rent. In this suit *A* prayed that it might be declared that he was the owner. The tenant alleged that *B*, the purchaser of plot 147, was the owner of the land in respect of which rent was sought to be recovered, and *B* was made a party to the suit. At the hearing *A* did not appear, and the suit was dismissed for default. Subsequently *A* sold plot 155 to the present plaintiff, who now sued for possession. *Held* that the suit was not barred as *res judicata*. GOBIND CHUNDER ADDYA *v.* AFZUL RABBANI

[I. L. R., 9 Calc., 426: 12 C. L. R., 29

93. ———— *Suit for share of joint family property.*—*A*, one of three members of an undivided Hindu family, mortgaged his share in the immoveable family property to *B*. The mortgage recited that the money was raised in order to enable *A* to sue his co-parceners for partition of the family property and possession of his share therein. *A* subsequently did bring a suit with that object against his co-parceners, but allowed it to be dismissed against him for default. *B* now brought a suit against *A* and his co-parceners for possession of *A*'s share in such family property. *Held* that, as it was not made out that *A* in bringing his suit had acted as the agent of *B* and at *B*'s request, *B*'s suit was not barred by the dismissal of *A*'s suit. KRISHNAJI LAKSHMAN RAJVADE *v.* SITARAM MURARRAV JAKHI . . . . **I. L. R., 5 Bom., 496**

94. ———— *Civil Procedure Code, 1859, ss. 2 and 170—Hindu widow—Reversioner.*—*A*, a Hindu widow, brought a suit to recover possession of her husband's share of certain joint property. After partially examining some of her witnesses, she cited the defendant as a witness, and, on his failure to attend, her suit was dismissed. After the death of the widow, her daughter sued the same defendant on behalf of her two minor sons, as being entitled in reversion to their grandfather's share, to recover the share which was the subject of the former suit: the defendant was summoned as a witness, but failed to attend. *Held* that the suit was not barred under s. 2, Act VIII of 1859, as being *res judicata*, until it was shown that the former decree had been obtained after a fair trial of the right, so as to bind not only the widow, but the reversioners. The defendant having failed to attend and give evidence on this point, the Court was justified in giving the plaintiff a decree under s. 170, Act VIII of 1859. BRAMMOYE DASSEE *v.* KRISTO MOHUN MOOKERJEE

[I. L. R., 2 Calc., 222

95. ———— **Rejection of plaint for non-appearance of plaintiff**—*Possessory suit in Mamlatdar's Court and in Civil Court—Bom. Act III of 1876, s. 13—Specific Relief Act (I of 1877), s. 9—Civil Procedure Code (Act X of 1877), s. 13.*—A plaintiff, whose plaint has been rejected for default of appearance in the Mamlatdar's Court under Bombay Act III of 1876, s. 13, cannot bring another possessory suit on the same cause of action in the Civil Court under s. 9 of the Specific Relief Act I of 1877; for the rejection of a plaint under s. 13 of Bombay Act III of 1876, by reason of the failure of the plaintiff to attend with his proofs on the day appointed, is a hearing and final decision of the suit within the meaning of s. 13 of the Code of Civil Procedure (Act X of 1877), and upon the rejection of the plaint the question in the suit becomes *res judicata*. RAMCHANDRA *v.* BHIKIBAI **I. L. R., 6 Bom., 477**

See RAMCHANDRA BALAJI PHADMI *v.* NARSINHACHARYA NEDUNATH ACHARYA KATTI

[I. L. R., 24 Bom., 251

where the above decision was dissented from.

96. ———— *Dismissal of suit for default—Difference in cause of action—Civil Procedure Code, ss. 13, 102, 103.*—The dismissal of a suit in terms of s. 102, Civil Procedure Code, is not intended to operate in favour of the defendant as *res judicata*. When read with s. 103, it precludes a fresh suit in respect of the same cause of action, referring, irrespectively of the defence or the relief prayed, entirely to the grounds, or alleged media, on which the plaintiff asks the Court to decide in his favour. Brother's sons, as nearest agnates of a deceased proprietor, sued for a decree, declaring that a gift, before then made by the widow in favour of her daughter's son, of the estate of her late husband, would not operate against their right of succession on her death. A prior suit before the date of the gift, brought by two of the plaintiffs for a declaratory decree, and an injunction restraining the widow from alienating the same estate, had been dismissed under the provisions of ss. 102 and 103, Civil Procedure Code (Act X of 1877). *Held* that the causes of action in the two suits were not identical, and the

RES JUDICATA—*continued.*

4 JUDGMENTS ON PRELIMINARY POINTS —*continued.*

fresh suit was not precluded by s 103, the gift having afforded the new ground of claim which also had subsequently arisen CHAND KOUR v PARTAB SINGH . . I L R., 16 Calc, 98 [L. R, 15 I. A, 156

97. ——— ——— *Order of Mamlatdar dismissing suit—Mamlatdar's Courts Act (Bom Act III of 1876), s 13—Limitation Act* . . . *art 47* —In 1891 . . . tendant . . . ndant's . . . intiff's tenant *A* . . . that *A* had disturbed his possession by putting sweepings upon the land and asking to be protected in his enjoyment . . . hearing, and . . . Bombay Act . . . set aside this . . . now brought . . . e . . . l . . . d . . . to the . . . ourt in . . . suit in ejected . . . ore the lower Court *Ramchandra* v *Bhikaji*, *I L R*, *6 Bom*, *447*, referred to RAJARAM v GANESH HARI KARKHANIS I L R, 21 Bom, 91

98. ——— *Dismissal of first application for non-appearance and want of prosecution* —Where, on an application being made for execution of a conditional decree the judgment-debtor did not appear to oppose the decree-holder's application for attachment and sale, but the application was dismissed for default of prosecution —*Held*, on a subsequent application for execution, that, as the question whether the conditional decree was capable of execution before it was made absolute was never before in issue, and was not judicially treated on the occasion of the former application, there was no *res judicata* on the point RAM LAL v NARAIN [I. L. R, 12 All, 539

. . . execution where . . . allotted . . . *under s 260, Civil Procedure Code* . . . *Effect of such refusal—Subsequent order for execution* . . . of a Court dismissed a petition for . . . barred as having been . . . within s 13 of the Civil Procedure Code KISHORE BUN MOHUNT v DWARKANATH ADHIKARI [I L R, 21 Calc., 784 L. R, 21 I. A., 89

RES JUDICATA—*continued.*

4 JUDGMENTS ON PRELIMINARY POINTS —*continued*

100 ——— **Suit struck off for absence of defendant in jail on criminal charge**—*Civil Procedure Code 1859 s 97* —A suit struck off by reason of the defendant being then in jail on a criminal charge cannot be set up as *res judicata* in a subsequent suit, there having been no determination in favour of one party or the other nor can it be treated as a case of withdrawal under s 97, Act VIII of 1859 LUCKNEE RAM DOSS v JOY SUNKUR GOOHO 7 W R., 238

101. **Dismissal for undervaluation** —A suit was brought in the Civil Court of a Munsif, who gave judgment for the plaintiffs but his decree was reversed by the District Judge, on the ground that the claim was improperly valued A . . . uit, on the same cause of action, was then . . . in the Court of the Munsif, who again de- . . . or the plaintiffs, but his decree was reversed . . . District Judge on the ground that the suit was prohibited by Bombay Regulation II of 1827, s 21 The High Court on special appeal, re- . . . the . . . s 2 . . . of . . . is . . . ld . . . it- . . . of *section, and that* . . . of s 30 of Act VIII of 1859, as there being no express power given by the Code to reject a plaint after it had been registered by reason of the claim being improperly valued, the doing so ought to have only the same effect as if the plaint has been originally rejected DULLABH JOGI v NARAYAN LAKHU [4 Bom., A. C., 110

102 — **Dismissal of suit**—*Civil Procedure Code, ss 13, 373—Decree containing clause stating that a fresh suit might be instituted as to a part of the subject-matter* —A suit for possession of immoveable property was wholly dismissed, on the ground that the plaintiff had not made out his title to the whole of the property claimed, though . . . such pro- . . . *these terms* . . . *from in* . . . *interest* of . . . dec . . . appeal was preferred from this decree . . . the plaintiff brought another suit upon the same title to recover possession of the one-third share referred to in the order just quoted *Held* by the Full Bench that the Court in the former suit had no power to include in its decree of dismissal any such reservation or order, that the fact that the decree was not appealed against did not give the order contained in it which was an absolute nullity, any effect, that as in the former suit the plaintiff could have obtained a decree for the one-third share now claimed, and the whole of the

RES JUDICATA—*continued.*

4. JUDGMENTS ON PRELIMINARY POINTS—*continued.*

claim in that suit was dismissed, the decree in that suit was a decision within s. 13 of the Civil Procedure Code; and the present suit was consequently barred as *res judicata.* *Kudrat* v. *Dinu, I. L. R., 9 All., 155; Ganesh Rai* v. *Kalka Prasad, I. L. R., 5 All., 595; Salig Ram Pathak* v. *Pirbhawan Pathak, Weekly Notes, All., 1885, 171;* and *Muhammad Selim* v. *Nabain Bibi, I. L. R., 8 All., 282,* explained. SUKH LAL *v.* BHIKHI [I. L. R., 11 All., 187

103. ———— Dismissal of suit for want of jurisdiction—*Suit for ejectment—Subsequent suit for damages.*—The dismissal, on the ground of want of jurisdiction, by the Civil Court of a suit to eject the defendants from the fishing ground of the plaintiffs, situate below low-water mark, does not operate as a bar to a subsequent suit by the plaintiffs to recover damages from the defendants for fixing their fishing stakes and nets too near to those of the plaintiffs. BABAN MYACHA *v.* NAGU SHRAVUCHA [I. L. R., 2 Bom., 19

104. ———— *Suit on a mortgage against several defendants—Dismissal of suit as against some of the defendants for want of jurisdiction—Subsequent suit on the mortgage against same defendants in another Court—Civil Procedure Code (Act XIV of 1882), ss. 13, 43.*—The plaintiff brought a suit in the High Court of Bombay (No. 169 of 1887) against three defendants on a mortgage executed at Surat of certain property situated there. The second and third defendants in that suit (the defendants in the present suit), who were inhabitants of Surat, pleaded that as against them the Court had no jurisdiction. The suit was accordingly dismissed as against them for want of jurisdiction, but as against the first defendant, who resided in Bombay, the Court passed a decree for the plaintiff. The plaintiff then brought the present suit against the defendants in the Surat Court to enforce their liability under the mortgage. The defendants pleaded that the claim against them was barred by the dismissal of the former suit. *Held* that the suit was not barred. In the former suit there had been as against these defendants no decision on the merits, and the proceedings against them were a nullity. BHUKANDAS VIJBHUKANDAS *v.* LALLUBHAI KASHIDAS . I. L. R., 17 Bom., 562

105. ———— *Omission to get Collector's certificate—Civil Procedure Code (Act X of 1877), s. 13.*—The plaintiff brought in 1876 a suit against the defendant in respect of the same subject-matter and founded on the same cause of action as the present suit. Issues of fact arising on the merits were inquired into; but a certificate of the Collector under s. 6 of the Pensions Act (XXIII of 1871), which was necessary to give jurisdiction to the Court, not having been obtained, the claim was rejected on that ground. *Held* that, the Court not having legally pronounced on the merits of the former case, the opinions expressed on the issues were not *res judicata* so as to bar the maintenance of the present suit. PUTALI MEHETI *v.* TULJA [I. L. R., 3 Bom., 223

106. ———— Dismissal of suit for want of heirship certificate—*Civil Procedure Code (1882), ss. 13 and 158.*—In a suit to recover principal and interest due on a bond executed by the defendants in favour of the plaintiff's father (deceased), it appeared that the plaintiff had previously brought a similar suit which was dismissed for the reason that the plaintiff produced no succession certificate. *Held* that the previous proceedings did not bar the present suit. *Putali Meheti* v. *Tulja, I. L. R., 3 Bom., 223,* referred to. PETHAPERUMAL CHETTI *v.* MURUGANDI SERVAIGARAN I. L. R., 18 Mad., 466

107. ———— Rejection of claim to attached property as too late—*Subsequent claim.*—The rejection of a claim to attached property, simply on the ground that it had been presented too late, was held to be no legal bar to the adjudication of the claim when it was again advanced after attachment made under decree. A claim of this kind may be admitted even after proclamation of sale, provided it has not been designedly and unnecessarily to obstruct the ends of justice. MAHOMED MUBSON *v.* SUMPUTTEE SAHOON CHOWDHRAIN [10 W. R., 305

108. ———— Dismissal of suit as barred by limitation—*Suit against Municipal Commissioners for possession of land.*—Previous to the institution of the present suit, one of the shareholders of a piece of land brought a suit against the Chairman of the Municipality for recovery of possession of his share. The other shareholders were made *pro formâ* defendants in the suit. This suit was dismissed as barred by the law of limitation. After the dismissal of the suit, the plaintiff brought the present suit for recovery of his share of the land, on the allegation that his tenant had relinquished the land within three months, in consequence of his having been dispossessed by the Municipal Commissioners. *Held* that the suit was not barred by s. 2, Act VIII of 1859. PRICE *v.* KHILAT CHUNDRA GHOSE [5 B. L. R., Ap., 50: 13 W. R., 461

109. ———— *Civil Procedure Code (Act VIII of 1859), s. 2—Civil Procedure Code (Act X of 1877), s. 13.*—The plaintiff sued for a declaration of mirasi mokurari rights to certain lands and for mesne profits, alleging that he had been wrongfully ejected by the predecessors in title of the defendants. A previous suit on the same cause of action had been heard and dismissed on the ground of limitation. *Held* that the present suit was not barred (as *res judicata*) under s. 2 of Act VIII of 1859 (corresponding with Act X of 1877, s. 13), inasmuch as, the first suit having been brought after the period allowed by law, the Court in which it was instituted was not competent to hear and determine it. BRINDABUN CHUNDER SIRKAR *v.* DHUNUNJOY NUSHKUR [I. L. R., 5 Calc., 246: 4 C. L. R., 443

RES JUDICATA—*continued*

4 JUDGMENTS ON PRELIMINARY POINTS —*continued*

110 ———— **Dismissal of suit for multifariousness**—*Civil Procedure Code, 1859, s 2.* —The dismissal of a suit for multifariousness is not a hearing and determination of the suit within the meaning of s 2, Act VIII of 1859 FATTEH SINGH *v* LACHMI KOOER

[13 B. L. R, Ap, 37: 21 W. R, 105

TRILOCHUN CHUTTOPADHYA *v* NOBO KISHORE GHUTTUCK 2 C. L R, 10

111. ———— **Dismissal of suit for non joinder of parties**—The dismissal of a suit because it is considered that all the proper parties have not been joined in it, though a decision of the suit, is not a decision on the merits within the meaning of Act VIII of 1859, s 2 PURSUN GOPAL PAUL CHOWDHRY *v* POORNANUND MULLICK

[21 W. R, 272

112 ———— **Dismissal of suit on failure of plaintiff to pay summons costs**—*Suit subsequently brought for same property* —In June 1878 the plaintiffs brought a suit to establish their title to the property attached and for confirmation

... appear and pay the suit was the 4th March 1880 the plaintiffs again brought a suit to establish their title to the same property and for confirmation of possession *Held* that, as the first suit had not been dismissed upon the merits the plaintiffs were entitled to maintain the second suit BESSESSUR BHUGUT *v* MURLI SAHU

[I L R., 9 Calc, 163: 11 C. L R., 409

113 ——— **Dismissal for non payment of Court fees** —The dismissal of a suit for non payment of Court-fees is no bar to a subsequent suit in which the relief sought is substantially the same. NAGATHAL *v* PONNUSAMI

[I. L R., 13 Mad, 44

114. ———— **Dismissal for default in payment of Commissioner's fee**—*Civil Procedure Code (Act XIV of 1882), ss 13, 102, 158*

... the claim was not *res judicata* SHAIK SAHEB *v* MAHOMED I L R., 13 Mad., 510

115. ———— **Dismissal of suit on default of plaintiff to give security for costs** —*Defendant precluded from pleading matter which is res judicata—Civil Procedure Code, 1877, ss 13,*

RES JUDICATA—*continued.*

4 JUDGMENTS ON PRELIMINARY POINTS —*continued*

381 —The plaintiff sued the defendants on a promissory note The defendants filed a written state-

... s. 381 of the Civil Procedure Code (Act X of 1877) It was now contended that the

... Procedure Code The previous suit had been dis-

... Code (Act X of 1877), a defendant may be precluded from pleading as a defence matter which is *res judicata* *Quære*—Whether a plaintiff whose suit has been dismissed under s 381 can again litigate the subject matter of the dismissed suit. RUNORAY RAVJI *v* SIDHI MAHOMED EBRAHIM

[I. L. R., 6 Bom, 482

116 — — — **Dismissal of suit "in present form"**—*Civil Procedure Code, 1877 s 13 expl III*—*K*, the purchaser of certain immoveable property in execution of a decree, sued for possession of the same The suit was dismissed "in the form in which it was brought" because the plaintiff had not filed with the plaint the sale-certificate *K* subsequently brought a fresh suit *Held* that the dismissal of the former suit "in the form it was brought" did not amount to permission to sue again contemplated by s 373 of the Civil Procedure Code,

117. ———— **Dismissal of suit for misjoinder**—*Civil Procedure Code, s 13 Dismissal of suit—Court Fees Act, s 10, cl. ii* – The purchaser of certain immoveable property in execution of a decree sued for possession of the same The suit was dismissed "in its present form" (*bahaisiyat maujuda*) upon two grounds: first with reference

RES JUDICATA—*continued.*

4. JUDGMENTS ON PRELIMINARY POINTS —*continued.*

Held that the dismissal of the former suit was not, under the circumstances, a decision within the meaning of s. 13 of the Civil Procedure Code such as could bar the second suit by way of *res judicata*. *Per* MAHMOOD, *J.*—The object of s. 10 and indeed of the whole of the Court Fees Act is to lay down rules for the collection of one form of taxation, and the rule that statutes which impose pecuniary burdens or encroach upon, or qualify the rights of, the subject must be strictly construed, applies with special force to such provisions of the Act as provide a penalty, whatever its nature may be. S. 10 is simply a penal clause to enforce the collection of the Court-fees, and dismissal of a suit under its provisions cannot operate as *res judicata*. Also *per* MAHMOOD, *J.*—The condition in s. 13 of the Civil Procedure Code, that the former suit must have been "heard and finally decided," means that a former judgment proceeding wholly on a technical defect or irregularity, and not upon the merits, is not a bar to a subsequent suit for the same cause of action. It is not every decree or judgment which will operate as *res judicata*, and every dismissal of a suit does not necessarily bar a fresh action. It is necessary also to show that there was a decision finally granting or withholding the relief sought. *Ramnath Roy Chowdhry* v. *Bhagbut Mohaputter, 3 W. R., Act X, 140; Shokhee Bewah* v. *Mehdee Mundul, 9 W. R., 327; Dullub Jogi* v. *Narayan Lakhu, 4 Bom., A. C., 110; Rungrav Raiji* v. *Sidhi Mahomed Ebrahim, I. L. R., 6 Bom., 482; Fatteh Singh* v. *Lachmi Koer, 13 B. L. R., Ap., 37; Roghoonath Mundul* v. *Juggut Bundhoo Bose, I. L. R., 7 Calc., 214;* and *Saikappa Chetti* v. *Kulandapuri Nachiyar, 3 Mad., 84,* referred to. Also *per* MAHMOOD, *J.*—The words *bahaisiyat maujuda* must be taken as amounting to a permission to the plaintiff to bring a fresh suit within the meaning of s. 373 of the Civil Procedure Code, and could only mean that the Judge using them in his decree had no intention to decide the case finally, so as to bar the adjudication upon the merits of the rights of the parties in a future litigation between them. The procedure provided by Ch. XXII of the Code is not the only manner in which a plaintiff can come into Court for the second time to ask for adjudication upon the merits of his rights, which were not adjudicated upon on the former occasion owing to some technical defect which proved fatal to the former suit. *Ganesh Rai* v. *Kalka Prasad, I. L. R., 5 All., 595,* dissented from. *Watson* v. *Collector of Rajshahye, 13 Moore's I. A., 60,* and *Salig Ram* v. *Tibhawan, Weekly Notes, All., 1885, p. 171,* referred to. MUHAMMAD SALIM *v.* NABIAN BIBI [I. L. R., 8 All., 282

118. ——— **Suit dismissed "as brought"**—*Civil Procedure Code, s. 13.*—In a suit in which the plaintiffs claimed exclusive possession and in the alternative joint possession of certain land, evidence was taken upon the issues raised; but the Court, without discussing the evidence, held that the alternative claims were "contradictory," and the plaintiffs' claim therefore "uncertain," and accordingly ordered "that the plaintiff's claim, as brought, be dismissed with costs." The plaintiffs did not appeal from this decision, but subsequently brought a suit against the same defendants, claiming joint possession of the same property. *Held* that the suit was barred by s. 13 of the Civil Procedure Code, the Court in the former suit not having reserved to the plaintiffs the right to bring a fresh action. *Gonesh* v. *Kalka Prasad, I. L. R., 5 All., 595; Muhammad Salim* v. *Nabian Bibi, I. L. R., 8 All., 282,* and *Watson* v. *Collector of Rajshahye, 13 Moore's I. A., 169,* referred to by TYRRELL, *J.* KUDRAT *v.* DINU [I. L. R., 9 All., 155

119. ——— **Striking off case for discrepancy in statement**—*Variation in plaint and deposition of plaintiff.*—A case struck off on the ground of discrepancy between the plaint and the plaintiff's deposition cannot operate as a *res judicata*. GUNGA NARAIN DASS *v.* PUNCHANUNEE DASSEE [W. R., 1864, 163

120. ——— **Dismissal of joint claim on ground that liability is several**—*Civil Procedure Code, 1859, s. 2.*—Where a suit against several defendants for a joint jumma is dismissed on the ground that the jumma is several, and not joint, the plaintiff is not precluded by Act VIII of 1859, s. 2, from afterwards suing each of them severally for the separate jumma. TELOKDHAREE SAHOO *v.* BISSENDRO NARAIN SAHEE [Marsh., 418: 2 Hay, 528

121. ——— **Dismissal of suit for balance of account, no balance being proved.**—*A* and his brothers made consignments of indigo to *B*, who sued *A* for the balance of an account due to him in respect of advances made by him to *A* and his brothers, and that suit was dismissed on the ground that no balance was proved to be due. *Held* that the dismissal of the former suit was not a bar to a subsequent suit by *A* to recover the proceeds of the indigo or his share of such proceeds. PUNCHANUN ROY *v.* MODOOSOODUN ROY [W. R., 1864, 245

122. ——— **Dismissal of suit on deed of sale when found to be a mortgage only**—*Refusal of leave to bring fresh suit.*—The dismissal of a suit on the ground that a deed put in by the plaintiff was a mortgage, and not a deed of sale, does not preclude him from treating it as a mortgage in a subsequent suit, notwithstanding the former suit was dismissed after refusing plaintiff permission to withdraw it and bring a fresh suit. RAMKISTO SHAHA *v.* NEMY CHURN CHOLHAI [W. R., 1864, 110

123. ——— **Dismissal of suit on failure to produce evidence.**—Dismissal of a claim for failure on the part of the plaintiff to produce evidence to substantiate it is of the same effect as a dismissal founded upon evidence, for the purpose of barring a subsequent suit as *res judicata*. RAMA RAO *v.* SURIYA RAO . . I. L. R., 1 Mad., 84

RES JUDICATA—*continued*

4 JUDGMENTS ON PRELIMINARY POINTS —*continued*

Reversed by Privy Council in ZAMINDAR OF PITTAPURAM v PROPRIETORS OF KOLANKA
[I L R., 2 Mad, 23 · L R., 5 I. A, 200

124 ———— ———— *Non production of witnesses and insufficiency of proof*—In a suit for removal of an alleged nuisance which was dis

MOFIZOODDEEN v AMOODDEEN 23 W R, 58

125 ———— **Dismissal of suit on failure to prove same title to different property**—*Civil Procedure Code 1859 s 2*—A plaintiff's failure in a former suit to establish his claim with reference to a different property from which he was dispossessed on a different date cannot render a subsequent suit inadmissible under the provisions of s 2 Act VIII of 1859 even though the title set forth in both the suits is identical BOOA RUSSOOLEE v NAWAB NAZIM OF BENGAL 11 W R, 382

126 ———— **Dismissal of suit for dissolution for want of proof of partnership**—*Suit for money due for losses in partnership business*

ground that no partnership was proved In 1880

bringing the present suit SAMARAPURI CHETTI v SHANMUGA CHETTI I. L R., 5 Mad., 47

127. ———— **Finality of order**—*Civil*

mortgaged premises After the decree, a compromise was effected between all the parties with the exception of *I S* by the terms of which in consideration of the judgment debtors (mortgagors) undertaking to do certain acts *S S* promised to execute his decree against only a 3 annas 12 dams share of the mortgaged premises The judgment debtors (mortgagors) having failed to carry out the compromise, *S S* applied for a sale of the whole of the mortgaged premises but on the petition of *R S* setting out the terms of the compromise to which he was no party, the Subordinate Judge, by an order of the 7th September 1885 held that under the agreement *S S* was entitled to sell only a 3 annas 12 dams share of the mortgaged premises which was accordingly directed to be sold. That order was not appealed against, but subsequently in March 1886 *S S* made a fresh application for a sale of the remainder of the premises, *R S* objecting *Held* that the order of the 7th September was one which the Court was competent to make under s 244 of the Code of Civil Procedure, and, by reason of that order not being appealed from, it became final. BASUDEO NARAIN SINGH v SEOLOJY SINGH
[I. L R, 14 Calc., 640

128 ———— **Decree against mortgaged property**—*Liability of judgment debtor to arrest under such decree—Principles of res judicata applicable to execution proceedings*—A decree cannot be extended in execution beyond the real meaning of its terms A decree obtained on a mortgage directed that the judgment debtor should pay the sum adjudged out of the property mortgaged. After executing the decree against the mortgaged property, the decree-holder made an application for execution against the person of the judgment debtor A notice was issued calling upon him to show cause why execution should not be further proceeded with But the notice did not give him any intimation of the application for the arrest of his person He did not appear and in his absence, an order was made for his personal arrest but the order was not executed as the decree-holder did not pay the process fee Subsequently a fresh application was made for execution against the person of the judgment debtor *Held* that the question as to the personal liability of the judgment debtor to satisfy the decree was not concluded by the order made in the previous execution proceedings for execution to issue against his person The order would have operated as a *res*

special construction ... sought to impose on it BUDAN v RAMCHANDRA BHUNJGAYA I. L. R., 11 Bom, 537

129 ———— **Application for execution struck off in consequence of non payment of talbana**—*Civil Procedure Code ss 158 and 647*—*Civil Procedure Amendment Act (VI of 1892), s 4*—*Subsequent application for execution*—An application for execution of a decree by attachment of immoveable property having been presented by a decree-holder the Court executing the decree ordered that the costs of such attachment should be deposited by the decree-holder on or before a certain specified date The costs of attachment were not deposited by the day named in the order above referred to and the Court thereupon passed the following order "This case came on for hearing to day as the decree-holder has not deposited the costs of attachment, etc., therefore it is ordered that the case be struck off for default" *Held* that whether

RES JUDICATA—*continued.*

4. JUDGMENTS ON PRELIMINARY POINTS —*concluded.*

this second order was an order under s. 158 of the Code of Civil Procedure deciding the application for attachment, or whether its effect was merely to remove the application from the file of pending applications without deciding it, in either case no fresh application (being of a precisely similar nature) was entertainable, though in the latter case possibly the former application might be renewed. PHEKU *v.* PIRTHI PAL SINGH

[I. L. R., 15 All., 49

130. ——— Striking off of execution-proceedings.—*Per* EDGE, *C.J.*, TYRRELL, KNOX, BLAIR, BURKITT, and AIKMAN, *JJ.*—When an order is made striking an execution case off the file of pending cases, or dismissing it on grounds other than a distinct finding that the decree is incapable of execution, that the decree-holder's right to get the decree executed is barred by limitation, or by any other rule of law, or on some similar ground on which the application has clearly been dismissed on the merits, whether the word "dismissed" or the words "struck off the file" or any other similar words have been used in the order, the decree-holder is not barred by the force of any such order from presenting and prosecuting a fresh application for the execution of his decree. DHONKAL SINGH *v.* PHAKKAR SINGH

[I. L. R., 15 All., 84

131. ——— Dismissal for default of application for execution of decree—*Civil Procedure Code (1882), s. 158—Civil Procedure Code Amendment Act (VI of 1892), s. 4.*—The dismissal of a petition for execution for default does not bar a fresh application. s. 158 of the Code of Civil Procedure being inapplicable, since by reason of s. 4 of Act VI of 1892 it does not apply to proceedings in execution. *Dhonkal Singh* v. *Phakkar Singh, I. L. R, 15 All, 84; Hajrat Akramnissa Begam* v. *Valiulnissa Begam, I. L. R., 18 Bom., 429;* and *Delhi and London Bank* v. *Orchard, L. R., 4 I. A., 127,* followed. TIRTHASAMI *v.* ANNAPPAYYA

[I. L. R.. 18 Mad., 131

5. ORDERS IN EXECUTION OF DECREE.

132. ——— Summary order in execution—*Subsequent suit.*—A summary order rejecting plaintiff's claim in an execution case to the property in dispute, when it had been attached by a decree-holder, which order was not followed by the sale of the property attached, cannot in any manner affect a subsequent suit against parties other than the decree-holder brought for a different purpose and on a different cause of action. BOOA KUSSOOLEE *v.* NAWAB NAZIM OF BENGAL . . . 11 W.R., 382

133. ——— Order rejecting application for execution of decree on the ground of limitation—*Civil Procedure Code, 1859, s. 2.*—An order passed by a Court rejecting a *bonâ fide* application by a judgment-creditor for the execution of his decree, on the ground that the period allowed by law for execution had expired, held not to be

RES JUDICATA—*continued.*

5. ORDERS IN EXECUTION OF DECREE —*continued.*

an adjudication within the rule of *res judicata* or within s. 2, Act VIII of 1859. DELHI AND LONDON BANK *v.* ORCHARD

[I. L. R., 3 Calc., 47: L. R., 4 I. A., 127

134. ——— Order refusing to execute decree—*Adjudication.*—An order refusing an application to execute a decree is not an adjudication within the rule of *res judicata.* HURROSOONDARY DASSEE *v.* JUGOBUNDHOO DUTT

[I. L. R., 6 Calc., 203: 7 C. L. R., 61

JEETOSHUR DHURN DEB *v.* FOOSEE SINGH

[1 Hay, 515

135. ——— Orders as to construction of decree not appealed from—*Application for execution by defendant—Objection by plaintiff to continued execution on behalf of defendant.*—Although a decree does not in terms give a certain relief, yet if it is construed in orders passed upon it as having given that relief, it is not competent to the Court on subsequent applications to treat those orders as erroneous and put another construction on the decree. VENKATANARASIMHA NAIDU *v.* PAPAMMAH . . . I. L. R., 19 Mad., 54

136. ——— Application for execution of maintenance decree—*Previous application held to be barred by limitation.*—On an application made in 1891 for the execution of a decree passed in 1870 it appeared that the decree directed the payment of maintenance to the plaintiff annually on a specified date, and the present application related to the period of three years from 1888 to 1891. There had been an application for execution in 1873. The next application was made in 1879, and it was dismissed as being barred by limitation. *Held* that the question whether the application was barred by limitation was not *res judicata.* KUPPU AMMAL *v.* SAMINATHA AYYAR . I. L. R., 18 Mad., 482

137. ——— Order refusing to execute decree—*Attachment without sale—Transfer of Property Act (IV of 1882), s. 67.*—The plaintiff, a judgment-creditor, had in the High Court obtained a decree against the defendant, whereby it was ordered that the defendant should pay to the plaintiff a sum of R1,68,123, and that the said sum should be a charge on certain immoveable properties situated in the mofussil and specified in a schedule to the decree. In August 1894 the plaintiff obtained an order for transfer of the decree to a mofussil Court and sent a copy of the decree for execution there. He obtained in that Court an order for attachment and sale of the property, but that order was reversed on appeal in May 1895, the High Court holding that the properties could not be sold in execution of the decree, but that a separate suit must be brought under s. 67 of the Transfer of Property Act. The plaintiff then applied to the Court that passed the decree for an order for transmission of the decree to the mofussil Court with a view to execution. That application was refused by SALE, *J.*, who held that the decision of May 1895 was conclusive as to the plaintiff's right

RES JUDICATA—*continued*

5 ORDERS IN EXECUTION OF DECREE—*continued.*

to attach the property as distinct from a sale or to [illegible] of the Transfer [illegible] 1 (reversing the [illegible] plication was not [illegible] NDAY *v* ABHOY-ESSWARI DABEE . I. L. R., 25 Calc., 262

138. ———— Order refusing to award mesne profits under decree—*Proceedings in* [illegible]

cuting it determined that it did not award mesne [illegible]

[I L R, 3 All, 141

139 ———— Refusal to execute decree [illegible]

decree On appeal by the decree holder, the District Judge disallowed all three such objections, holding that the decree should be executed, and remanded [illegible]

already finally determined [illegible] sor's order, so far as such application for execution of the decree was concerned, was final BALLABH SHANKAR *v* NARAIN SINGH I. L. R., 3 All., 178

140 ———— Refusal to execute decree as being barred—*Application for execution of decree subsequently made*—When a Court, upon an [illegible] has decided that the exe- [illegible] has [illegible] ng been [illegible] subse [illegible] decree, [illegible] RIM *v*. [illegible] R., 145

See MUNGUL PERSHAD DICHIT *v* GRIJA KANT LAHIRI I. L. R., 8 Calc., 51
[L. R., 8 I. A., 123: 11 C. L. R., 113

141 ———— *Civil Procedure Code (Act X of 1877), s 13 (Act VIII of 1859), s 2*—The decision, by a competent Court, that an application for the execution of a decree is barred by limitation, has the effect of *res judicata*; and although such decision may be erroneous, yet so long as it remains unreversed in appeal it is valid and binding, and the question cannot be re-opened. A decision that an application for execution is not time-barred has a similar effect On the 15th April 1868 the plaintiff applied for the execution of a decree held by him against the defendant, and certain houses were thereupon attached In April 1869 the attachment was raised on the *intervention of a third person* The plaintiff then brought a suit to establish his right to attach the houses, and obtained a decree on the 28th February 1871 An appeal was made, and the *suit was finally decided in the plaintiff's favour in April 1873* After the plaintiff had obtained his original decree and while the appeal was pending, he applied for the sale of the houses in execution on the 30th November 1871, and sub [illegible]

the execution of the decree was barred as more than three years had elapsed between the first and second applications, *i e*, the applications of the 15th April 1868 and 30th November 1871) The plaintiff appealed against the order, but his appeal was rejected because he had failed to produce with it a copy of the order appealed against The plaintiff took no further steps in that proceeding, but made a fresh application for execution on the 10th August 1878 The Subordinate Judge rejected it on the ground that the execution was barred the matter being *res judicata* On appeal the District Judge reversed that order and allowed execution On [illegible] *Held* on the authority of [illegible]

fortiori, every subsequent application was barred. *Semble*—A proceeding in execution is a proceeding which terminates in a decree as defined by s 244 of the Civil Procedure Code (Act X of 1877) and is therefore a suit within the meaning of the Code MANJUNATH BADRABHAT *v*. VENKATESH GOVIND SHANBHOG . I. L. R., 6 Bom., 54

142. ———— Order construing decree—*Order as to possession and mesne profits—Subsequent suit for possession*—Certain lands having been divided under a batwara between *A* and *B*, who together took one portion, and *C*, who took the remainder, *A* in 1847 mortgaged his share to *B* under [illegible]

RES JUDICATA—*continued.*

5. ORDERS IN EXECUTION OF DECREE —*continued.*

mention of the 51½ bighas being made in the decree. In execution of the decree, wasilat in respect of a moiety of the 51½ bighas was allowed, an objection by the defendant to such wasilat being charged having been overruled. In 1878 *B* sued to recover possession of the moiety of the 51½ bighas which had been taken by *A* under his decree. *Held* that, in rejecting the objection raised by *B* and allowing wasilat in respect of the 51½ bighas, the Court had interpreted the decree passed, and declared that under it possession of a moiety of the 51½ bighas had been decreed and given to *A*, and that the suit instituted in 1878 was therefore barred. *Held* also that this matter, having been decided under s. 11, Act XXIII of 1861, between the parties in execution of a decree, could not be made the subject of a suit. KALI MUNDUL *v.* KADER NATH CHUCKERBUTTY [6 C. L. R., 215

143. ——— *Civil Procedure Code (Act XIV of 1882), s. 230—Limitation—Vatandars (Bombay) Act, III of 1874, s. 10—Collector's certificate.*—A decree of a District Court, dated 5th October 1863, declared the plaintiff to be a hereditary deputy vatandar of a certain deshpande vatan vested in the ancestors of the defendant as hereditary vatandars, and that the plaintiff, as such deputy, was entitled to receive a certain sum annually out of the income of the vatan. The decree did not explicitly deal with the claim to future payments then set up by the plaintiff as hereditary deputy vatandar. The plaintiff received moneys from time to time under the decree until 1875, but he neglected to have himself registered as a representative vatandar under Bombay Act III of 1874, s. 56. In 1875 he made a claim for certain arrears of the allowance which he alleged to be due under the decree, and he attached certain moneys out of the income of the defendant's vatan. The Collector issued a certificate under s. 10 of the Vatandars Act (III of 1874) for the removal of the attachment, and the attachment was accordingly removed by the Subordinate Judge. The plaintiff appealed from the order of removal, but the Appellate Court confirmed that order. On second appeal to the High Court, it was held on 23rd June 1879 that the lower Courts were right in raising the attachment; that the Civil Courts had no jurisdiction to register the plaintiff as a representative vatandar, and that the Collector was the proper authority to be referred to. Thereupon the plaintiff applied to the Collector to cancel the certificate which had removed the attachment, and to register him as a representative vatandar. The Collector rejected the plaintiff's application on 31st March 1881. In 1881 the plaintiff presented a fresh darkhast to attach the same vatan property in virtue of the said decree of 1863, but the application was rejected as *res judicata* by both the lower Courts. They held that the certificate of the Collector, which remained uncancelled, operated as a bar. On second appeal to the High Court,—*Held,* reversing the order of the lower Courts, that the decree was one capable of execution. *Held,* as regards the Collector's certificate, that under s. 10 of the Vatandars Act (Bombay), III of 1874, the certificate was exhausted in operating on the execution which it stopped, and that the lower Court ought to have dealt with the case apart from that certificate. GOPAL HANMANT DESHKA *v.* KONDO KASHINATH [I. L. R., 9 Bom., 328

144. ——— **Withdrawal of application for execution**—*Effect of such withdrawal.*—Orders in execution proceedings, if not appealed from, are binding on the parties to the suit in all subsequent proceedings in that suit, on principles analogous to those of *res judicata* strictly so called. It is therefore necessary to constitute a bar that there should be a hearing and final decision. Where an application for execution is allowed to be withdrawn, the matters in dispute are not heard and decided. There is therefore no *res judicata.* HARI GANESH *v.* YAMUNABAI . I. L. R., 23 Bom., 35

145. ——— **Principle of res judicata as applied to execution-proceedings**—*Civil Procedure Code, s. 373.*—Where a judgment-debtor, being entitled and having an opportunity to plead s. 373 of the Code of Civil Procedure as a bar to execution of the decree against him, neglects to do so, and the application in respect of which such objection might have been taken is entertained by the Court and orders passed thereon, the principle of *res judicata* will apply to such proceedings, and the judgment-debtor cannot at a subsequent stage of the same execution-proceedings object that such previous application for execution ought, in fact, to have been held to be barred by the operation of s. 373 abovementioned. SHER SINGH *v.* DAYA RAM [I. L. R., 13 All., 564

See KISHAN SAHAI *v.* ALADAD KHAN [I. L. R., 14 All., 64

146. ——— **Orders disallowing objection to party representative**—*Civil Procedure Code (Act XIV of 1882), ss. 13 and 244.*—*G* brought a suit against *I* for the establishment of her rights as purchaser of certain immoveable properties sold in execution of a decree obtained against *I* and for possession of the same. After the settlement of issues, but before the suit was finally disposed of, *I* died, and his brother *J* was made defendant as his legal representative. *J* consented to the suit being tried on the defence raised by *I* and upon the issues already settled. The suit was decreed, it being held that *G* was the purchaser. In execution of this decree, in which *G* sought to obtain possession, *J* objected that he was entitled to a half share of some and to the entire sixteen annas of the other properties, and that his brother *I* had no right whatever in the same. This objection was disallowed by the Court executing the decree on the ground that it had not been raised in the original suit, and that, as the decree had been passed in the presence of the party then objecting, he was not entitled to urge it. Thereupon *J* brought a suit against *G* to establish his rights. The defence was that the order passed in the execution-proceedings, disallowing the plaintiff's objection,

RES JUDICATA—*continued*

5 ORDERS IN EXECUTION OF DECREE —*concluded*

was a bar to the suit under s 13 and s 244 of the Civil Procedure Code *Held* that the order disallowing the plaintiff's objection did not operate as *res judicata* under s 13 of the Civil Procedure Code *The Delhi and London Bank* v *Orchard, I L R 3 Calc 47 L R, 4 I A, 127* relied on *Held* also that this order was no bar to the suit under s 244 of the Civil Procedure Code *Kanai Lall Khan* v *Shashi Bhosun Biswas, I L R, 6 Calc 777 8 C L R 117,* followed GOURMONI DABEE *v* JUGUT CHANDRA AUDHIKARI I L R., 17 Calc, 57

147 ——— Order in execution proceedings that deed was valid—*Sale of two plots of land by one sale deed—Validity of deed questioned in dispute as to one of the plots—Subsequent dispute as to second plot included in deed—Question of validity of deed again raised—Orders in execution proceedings how far final—Civil Procedure Code (Act XIV of 1882) ss 13 and 283*—The plaintiff purchased two distinct plots of land (A and B) from one *G* by a deed of sale dated 30th September 1875 In 1884 in execution of a decree against *G*, plot A was attached and sold as ... defendant The ... t time took no ... this land In ... decree against ... The plaintiff ... attached as his own under the sale-deed of 30th December 1875 The defendant disputed the sale, but the Court found in favour of the validity of the sale deed and allowed the plaintiff's claim The defendant did not file a suit to set aside this order The plaintiff then filed a suit to establish his title to plot A relying on his ...

suit *Per* JARDINE J —... validity of the deed had been a final decision in a suit ...

siveness exists only as regards the particular property in dispute DINKAR BALLAL CHAKRADEV *v* HARI SHRIDHAR APTE I. L. R., 14 Bom, 206

6 CAUSES OF ACTION

148 ——— Nature of cause of action—*Obligation to disclose title*—A plaintiff's cause of action is a very different thing from his title; the one being something done contrary to his interest which obliges him to seek the aid of a Court of Justice, the other being the proof that that something affords him a valid ground for relief DUDSAR BIBEE *v* SHAKIR BURKUNDAZ . . 15 W. R., 168

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued*

149 ——— Identity of bases of claim—*Dismissal of claim on failure to produce evidence*—Where the relief sought for in respect of certain ...

second suit RAM RAO *v* SURYA RAO [I. L. R., 1 Mad., 84

S C on appeal to Privy Council, ZAMINDAR OF PATTAPURAM *v* PROPRIETORS OF KOLANKA [I L R., 2 Mad, 23 L. R., 5 I. A, 200

150 ——— Difference in rights on which claim is made—*Omission to assert every title*—Act VIII of 1859 s. 2 does not require a plaintiff at once to assert all his titles to property or ...

[I. L. R., 2 Mad, 352

151. ——— Omission to decide part of case—*Suit as to part of case raised in former suit*—A plaintiff is bound to raise every title in which ... on every ... part of ... by the ... perty to ... SREE KRISTO BISWAS *v* JOY KRISTO BISWAS [24 W R, 304

... MITTER . . 12 W R., 55

DUDSAR BIBEE *v* SHAKIR BURKUNDAZ [15 W R., 168

153 ——— Civil Procedure Code s 13 expl II—*Idem corpus alia causa petendi*—In 1876 *A* sued *K* and others to recover certain lands alleging that he was the karnavan of their tarwad and that the lands were granted to them for maintenance under an oral agreement which had been broken by *K* having mortgaged some of the lands This suit was dismissed In 1881 *A* sued the same defendants to recover the same lands on the ground that as karnavan of the tarwad he was entitled to resume possession of the lands. *Held* reversing the decrees of the lower Courts, that the suit brought by *A* in 1881 was not barred by s. 13 of the Code of Civil Procedure 1877 *Per* MUTTUSAMI AYYAR, J —Expl II to s. 13 of the Code of Civil Procedure, 1877, refers to the title litigated in the former suit as distinguished from the relief claimed Where several independent grounds of action are available,

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

a party is not bound to unite them all in one suit though he is bound to bring before the Court all grounds of attack available to him with reference to the title which is made the ground of action. ALUNNI v. KUNJUSHA I. L. R., 7 Mad., 264

154. ——— *Civil Procedure Code, 1882—Suit for land based on plaintiff's title—Previous suit as lessor—Omission to make title a ground of attack in previous suit No denial of plaintiff's title as landlord—Maintainability of suit.*—In a previous suit, brought in 1890, plaintiff had sued for the recovery of certain land which he alleged to have been let verbally to the defendants in 1886. Defendants denied the verbal letting, and pleaded that they held the land from plaintiff's predecessor under a written agreement of 1876. The Court passed a decree in plaintiff's favour, holding that the lease under the written agreement had expired prior to 1886, and that the subsequent enjoyment of the land was under a verbal agreement. No steps were taken to execute that decree. Plaintiff now sued defendants for the recovery of the same land, together with arrears of rent basing his claim on the same written agreement of 1876, and also on his title as owner thereof. The District Court held the claim on the written agreement to be *res judicata*, and that plaintiff could not now sue upon his title, as that should have been made a ground of attack in the former suit. On appeal to the High Court, *Held* that, inasmuch as plaintiff's title as landlord was recognized in the suit of 1890, the defendants could not have acquired a prescriptive title as against him in 1898, when the present suit was filed; and that plaintiff was therefore entitled to recover the land upon his title independently of any letting by him to the defendants. That the claim for arrears of rent under the old written agreement was *res judicata* by reason of the former suit, but that plaintiff's omission to sue on the strength of his general title in the former suit was no bar to the present suit, inasmuch as his title as landlord had never been disputed. *Zamorin of Calicut* v. *Narayanan Mussad, I. L. R., 22 Mad., 323,* referred to. KUTTI ALI v. CHINDAN I. L. R., 23 Mad., 629

155. ——— Dismissal of suit for proprietary right to land—*Subsequent suit for possession of portion of same land as planter of the trees on it.* The dismissal of a suit in which the plaintiff had claimed a proprietary title in certain land held not to bar a subsequent suit in which he prayed for a declaration that, as planter of the trees and constructor of a tank in a garden forming a portion of the land, he was entitled to retain possession of the garden and tank. GOSHAIN JUGOOPOOREE v. BISHEN DYAL CHUND 2 Agra, 32

156. ——— Dismissal of suit on demise as continuation of prior demise—*Subsequent suit on prior demise.*—In 1883 plaintiff sued to recover certain land from the defendant on a demise of 1856 which he alleged was a renewal of a prior demise of 1835. The suit was dismissed on the ground that the demise of 1856 was not proved. Plaintiff then sued to recover the same land on the demise of 1835 and on title. *Held* that the decree in the former suit was no bar to this suit. KANDUNNI v. KATIAMMA I. L. R., 9 Mad., 251

157. ——— *Suit for land based on plaintiff's title—Prior suit alleging that defendants held on lease from plaintiff.*—In a previous suit in which plaintiff had been a party, it had been attempted to assert plaintiff's title to a piece of land occupied by the defendants by proving that they held the same by virtue of an alleged specific lease. The Court had held that no such lease had been executed. Plaintiff now claimed the land as belonging to his devasom, and sued to recover it on the strength of his title; he also set up the alleged lease once more *Held* that, though the question of the validity of the lease was *res judicata,* plaintiff was at liberty to sue also on the strength of his title, independently of the lease, and he was not estopped from so suing by the fact that the former suit had been based on the lease alone. If the relation of landlord and tenant were shown to have existed prior to the specific lease sued upon, it was for the tenant to prove that such relation had ceased to exist. In the absence of such proof, the relation would be presumed to continue, and the tenant's possession in that case could not be adverse. ZAMORIN OF CALICUT v. NARAYANAN MUSSAD [I. L. R., 22 Mad., 323

158. ——— Suit for same property on different cause of action—*Civil Procedure Code, 1859, s. 2.*—The plaintiff sued to recover certain land, on the ground that he had been forcibly dispossessed of it by the defendant. As the plaintiff did not prove the alleged dispossession, his claim was rejected, but the Court suggested that he might recover in a fresh suit, treating the defendant as a trustee, and offering to make certain payments to him. The plaintiff then filed a fresh suit, framing it in the manner indicated by the Court. *Held* that the latter suit, being based on a different cause of action from the former, was not barred, and that the question at issue between the parties was not *res judicata.* BISTO SHANKAR PATIL v. RAMCHANDRARAV RAGHUNATH JAHAGIRDAR [8 Bom., A. C., 89

159. ——— *Civil Procedure Code, 1859, s. 2—Decision as to nature of document.*—In 1864 the original plaintiff, *L*, as heir of *F*, brought a suit against *J* (the guardian of *F*), *A*, *B*, and *C*, to recover a piece of land. The suit was rejected, as it was proved that (though the plaintiff was the heir of *F*) *F*'s guardian had mortgaged the land for necessary purposes to *C*, the two defendants *A* and *B* being merely tenants of *C*. The plaintiff then sued *C* for redemption of the mortgaged premises. *Held* that the second suit was not barred under s. 2 of the Code of Civil Procedure. *Held* also that the fact of the document under which *C* held the land being described in the Court's judgment in the earlier suit as an instrument of sale

RES JUDICATA—*continued.*

6 CAUSES OF ACTION—*continued.*

was not conclusive in the second suit as to the real nature of the instrument VALLABH BHULA v RAMA . . . 9 Bom., 65

160. ——— **Suit by sons to set aside alienation by widow as guardian**—*Former suit by widow against purchaser.*—Where the mother and guardian of minor sons had once sued a certain party in order to set aside certain kobalas by which she had conveyed away to him the property of her late husband, on the ground that her action may have been injurious to the interests of her sons, and the said suit had been thrown out by the Judges, and the sons subsequently brought another suit with substantially the same object in view, but making the mother a co-defendant with the original defendant,—*Held* that the validity of the kobalas having once been decided, the only ground on which the subsequent suit could lie would be that the mother had, in giving the kobalas, acted collusively with the defendant, of which, however, there was no evidence whatever GUNGA RAM SADHOOKHAN v PANCH COWREE PORAMANIK 25 W R., 366

161. ——— **Decision as to genuineness of document**—*Civil Procedure Code, 1859, s 2—Co defendants*—A former judgment, in which a certain document has been held to be genuine between a third person as plaintiff and the present plaintiff and present principal defendant as defendants, was held to be conclusive in this suit on the point of authenticity of the document, though not a *res judicata* under s 2, Act VIII of 1859, in other respects KALLY PERSAD SEIN CHOWDHRY v MOHESH CHUNDER BHUTTACHARJEE 1 Hay, 430

162 ——— *Sanction for forgery in respect of document in another suit*—A [illegible]

OOMANATH ROY CHOWDHRY v RAGHOONATH MITTER Marsh., 43 : W. R., F. B., 10 [1 Hay, 75

163. ——— *Subsequent suit in which same question arose*—Where a Court in a former suit against the present plaintiffs to set aside a mortgage decided that the mortgage as to a certain share of the property was invalid, although it was not a matter for adjudication then before the Court, —*Held* that that decision was no bar to a subsequent [illegible]

SINGH . 2 Agra, 62

164. **Decision as to validity of document**—*Matter in issue—Defence not relied on*—A suit was brought by *A* to recover property, [illegible]

[illegible] conveyed away to *A's* father by a deed of testamentary disposition The lower Court had decided only the latter point, and the Privy Council remanded the case for determination of the former point. On a second appeal to the Privy Council, that Committee were about to enter upon the question as to the validity of the testamentary paper, when *A* gave up the point that the paper was in any sense testamentary in its character, and disclaimed having any title under it as a testamentary devise, and the Privy Council therefore did not decide that question *Held* that a subsequent suit by *A*, in which he sought to recover the property by setting up the paper as a valid will and testament, was a suit instituted without *boná fides* and could not be allowed to proceed, because the nature of the paper was in issue in the former suit, and what was in issue must be taken to have been decided by the judgment RAGHOONADHA PERYA OODYA TAVER v KATTAMA NAUCHEAR 10 W. R., P C., 1

S C VIJAYA RAGHANADHA BODHA GOOROO SAWMY PERIYA OODYA TAVER v KATAMA NATCHIAR (RAJAH OF SHIVAGUNGA) [11 Moore's I. A., 50

Affirming S. C in High Court, UDAIYA TEVAR v KATAMA NACHIYAR 2 Mad., 131

165 ——— *Deed of sale or mortgage—Parties—Question decided in former suit*—*R* obtained on the 7th January 1862 a decree declaring a deed of sale in his favour, dated the 7th January 1854, to be a genuine, authentic and valid instrument The question whether the sale was changed into a conditional sale or mortgage by an agreement entered into by him with the vendors on the same day that the deed of sale was executed could not be raised by any of the parties to that suit or their representatives in a suit brought by *R* to obtain proprietary possession of the subject of the sale, in virtue of the deed and the decree DHUNDI v RAM LAL 7 N W., 149

166 ——— *Suit for possession under deed of gift—Subsequent suit by heir of donor to set aside deed of gift as invalid*—*G* executed a deed of gift of his whole property in favour of *J* *J* sued for possession and obtained a decree On the death of *G*, his heir sued to set aside the deed of gift, alleging that, notwithstanding the decree, *J* did not obtain possession till after the death of *G*, and that the deed of gift was, under the Imamea law, invalid. *Held* that this might have been a good [illegible]

v JAFFREE BEGUM . [illegible]

167. ——— *Deed of gift—Civil Procedure Code, 1859, s 2—Matter not determined in former suit—Suit on different cause of*

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

action.—*M* brought a suit to obtain her share of the entire property of *A*, her deceased father. It was pleaded, with respect to a certain portion of the property, that *A* had made it over by parol gift to his minor son. The case came before the High Court on special appeal, when it was contended on behalf of *M*, the appellant, that the gift was not proved, and that some portion of the property was "mush'a" (undivided), and the gift in regard to it invalid. The High Court refused to allow the last plea, which had not been taken in the Court of first instance, to be taken in appeal, the point raised being one of fact, and, as the gift had been established by evidence, dismissed the appeal. *F*, the purchaser of the rights and interests in *A*'s estate of W, a defendant in the suit, brought a suit against his vendor, *M*, and the guardian of the minor, to obtain possession of the property conveyed by the sale in which property affected by the gift was included, and claimed the setting aside of the gift because a portion of the property conveyed by it was undivided. *Held* that his suit was not barred by s. 2 of Act VIII of 1859. IMAMAN *v.* FAZUL KARIM . **7 N. W., 251**

168. ———— *Suit to compel execution of release from document—Suit to declare document executed for nominal purpose.*—On 23rd March 1878 plaintiff executed to defendant a document purporting to be a deed of gift. In 1886 plaintiff sued to cancel the document, alleging that defendant on 11th May 1881 had agreed to execute a release, but had not done so; that suit was dismissed for non-payment of duty due under the Court Fees Act. The plaintiff now sued in 1887 for a declaration that the document "was executed for nominal purposes and was not intended to take effect." *Held* that, since the cause of action in the suits of 1886 and 1887 were not the same, the claim in the latter suit was not *res judicata*. NAGATHAL *v.* PONNUSAMI . **I. L. R., 13 Mad., 44**

169. ———— *Suit for same object on different cause of action—Decision in former suit.*—Plaintiff, claiming as grandson of one *S M*, the only undivided brother of *S*, sought to recover half of the village sold by *S* to first defendant's father in 1855; the village having been (as alleged) family property, and sold without the consent of plaintiff's father, who succeeded his father, *S M*, and not for family purposes. In a former suit (No. 3 of 1855), brought by the plaintiff's father against *S* and *R*, the father of the present first defendant, and the present second defendant, the paternal nephew of the first defendant, for possession of the whole of the family property belonging to him and *S* as co-parceners, and to rescind the sale to *R*, the plaint stated, amongst other things, that *S* was imbecile; and that the sale-deed was obtained by taking a fraudulent advantage of his imbecility, and that it was invalid as being made without plaintiff's consent. The Court decided that *S* was "both physically and mentally qualified to manage and legally competent to deal with the estate, supposing it to be undivided, to the extent of his own share," and dismissed the suit. In 1862 the plaintiff again sued the present defendant for the whole of the village on the same ground of imbecility and fraud. The Civil Court decided that the suit was barred by the decree in the first suit, and on appeal the decree was affirmed. *Held* that the present cause of action—namely, the plaintiff's right as co-parcener to a moiety of the property and the invalidity of the instrument of sale to pass that right to the defendant—was not *res judicata*. CHINNIYA MUDALI *v.* VENKATACHELLA PILLAI . . **3 Mad., 320**

170. ———— **Former suit on same cause of action**—*Suits stating different grounds for right to succeed to estate.*—Plaintiff sued to recover a zamindari from his step-brother, alleging that the zamindari was hereditary property belonging to the family, the succession thereto being governed by the law of primogeniture; that his father died in 1859, leaving the plaintiff, defendant, and another, his sons, the former by the first wife, and the latter two by the second wife; and that the defendant (respondent) unlawfully enjoyed the estate, while plaintiff, as the eldest son, had a legal claim thereto. In defence it was pleaded that the claim was *res judicata* by the decree in a suit which was brought by plaintiff to obtain declaration of his status as the son of his father's pattaba stri, or royal wife, in which suit the plaintiff's father was first defendant, and defendant's mother was second defendant, and wherein they both denied that plaintiff was son of the pattaba stri and affirmed that second defendant was first defendant's first wife, and that her sons were preferential heirs to the zamindari. Among the points recorded was for "plaintiff to prove his status and right as alleged," and that issue was set down for defendants to rebut. The Judge disbelieved that plaintiff was the son of his father's first wife, and added, "Plaintiff further pleads that he is the eldest son, a position not denied, but one which cannot confer on him the status he now claims." The Judge decided that plaintiff had failed to prove that his mother was the pattaba stri, and that he was heir to the exclusion of second defendant's sons. On appeal to the Sudder Adawlat, the decree below was confirmed and the Court made the following observation: "It has been attempted at the hearing of the appeal to maintain the plaintiff's right to succeed as being the eldest son. This, however, was not the position taken in the Court below, where the succession was allowed to depend on another circumstance,—namely, the mother being the pattaba stri; and the Court therefore held the argument to be an inadmissible one." *Held* on appeal that the present suit was barred by *res judicata*, a different *causa* to the former not having been adduced. To the judgment in *Chinnaya Mudali* v. *Venkata Pillai, 3 Mad., 326*, after the words in page 334, "in favour of the defendant all the objective grounds of the decision which have led to the dismissal of the suit," the following ought to be added: "and without the establishment of which the suit could not have been logically or legally dismissed." MUTHUMADEVA NAIK *v.* SEVATTAMUTHUMADEVA NAIK . **7 Mad., 160**

RES JUDICATA—*continued.*

6 CAUSES OF ACTION—*continued*

171. ——— Suit for enhancement of rent—*Subsequent suit for admitted rent* — A suit [illegible]

[13 W. R., 317

172 ——— Suit for rent against same tenant as in former suit—*Decision in former suit* — *A* and *B* were co-sharers in a certain talukh to [illegible] ely *B* [illegible] lect the [illegible] one of [illegible] An issue having been raised as to the extent of *A*'s share [illegible] annas only, [illegible] subsequent [illegible] iant for the rent due for the 11 annas share — *Held* that the decision in the former suit did not debar her from showing that she was entitled to the rent due on account of *B*'s 4 annas share SHAMADANISSA BEEBEE v. FERASUTOOLLAH SIRDAR 2 C. L. R., 23

173. ——— Claim as heir to property [illegible] *claim as* [illegible] ther's son, [illegible] ad title as [illegible] the other [illegible] s joint and [illegible] regarding her property as separate, with a view to a declaration of his right as such heir to have a certain alienation by the widow (alleged by him to be illegal under Hindu law) set aside. *Held* that the two cases and causes of action were essentially different SUNKUR DYAL SINGH v. PURMESSUR DYAL SINGH [8 W. R., 44

174 ——— Dismissal of former suit to set aside assignments—*Subsequent suit for possession by reversioner*—*C*, the reversioner ex- [illegible] by *B*, but this suit was dismissed under Act I of 1845, s 24, on the ground that more than a year had elapsed since the sale for arrears of revenue. After the death of the widow, the reversioner sued *B* for recovery of possession of the lands *Held* that the plaintiff was not barred by the dismissal of the suit instituted in the lifetime of the widow; the object of that suit being to set aside the assignments of the widow's interest, and not for the assertion of the

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued*

plaintiff's right to the re [illegible] on DOORGA CHURN v KASSY CHUNDER MOITREE [Marsh, 539: 2 Hay, 646

175. ——— Suit to set aside alienation by widow—*Subsequent suit to recover property as reversioner* —A widow (a life tenant of an ancestral estate) [illegible] the widow died, and her reversioner applied to be [illegible] KOOWAR v INDURJEET KOOWAR 12 W. R., 234

176 [illegible] by an agreement made between *A* and *S*, *A* acknowledged the title of *S* as adopted son of *H* [illegible] *A* having died, a suit was brought against S by a reversioner of *H* to recover the estate of *H* *Held* that *S* was estopped by the decree in the former suit from setting up his claim as adopted son against the plaintiff, and that the subsequent agreement between *A* and *S* did not affect plaintiff's right. ARUNACHALA v. PANCHANADAM I. L. R., 8 Mad., 348

177. ——— Second suit for restitution of conjugal rights—*Decree not executed—Subsequent voluntary cohabitation followed again by desertion—Satisfaction of decree—Civil Procedure Code (1882), s 13—Husband and wife.*—Plaintiff obtained a decree against his wife for restitution [illegible] of Civil Procedure (Act XIV of 1882) A second withdrawal from cohabitation constitutes a fresh cause of action KESHAVALAL GIRDHARLAL v BAI PARVATI . I. L. R., 18 Bom., 327

178. ——— Suit on bond—*Failure to prove execution—Subsequent suit for same money on account* —A previous suit against the same defendant on a bond having been dismissed on the ground that

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

plaintiff had failed to prove the execution of the bond, defendant sued to recover the identical sum as a balance due on a khatta account. *Held* that the second suit was not brought on a cause of action previously tried and determined between the parties, and was cognizable by the Court of Small Causes. AUGHORE NATH GHOSSAL *v.* ROOP CHAND MUNDUL [13 W. R., 97

179. ———— *Deed inadmissible as being unregistered—Subsequent suit on registered bond.*—*I*, to whom the obligee of a bond for the payment of money in which immoveable property was hypothecated had assigned by sale her right thereunder, sued in virtue of the deed of sale on such bond for the money due thereunder, claiming to recover by the sale of the hypothecated property. This suit was dismissed on the ground that the deed of sale, not being registered, could not be received in evidence, and consequently *I*'s right to sue on such bond failed. *I*, having procured the execution of a fresh deed of sale and caused it to be registered, brought a second suit on such bond in virtue of such deed of sale, claiming as before. *Held* that the second suit was not barred by the provisions of s. 13 of Act X of 1877. ISHRI DAT *v.* HAR NARAIN LAL . . . . I. L. R., 3 All., 334

180. ———— **Dismissal of suit for amount due on document**—*Subsequent suit for same amount.*—The defendants and two others jointly executed a document (A), whereby they promised, on the 27th April 1874, to pay to the plaintiff R25 at the end of April 1875, and also to give to the plaintiff, in April 1875, a certain quantity of grain by way of interest. *Held* on a suit on the document (KERNAN, J., dissenting) that the suit was not barred by the dismissal of a suit in 1877, in which the plaintiff sued the defendants for a proportionate amount due by them under the document (A), alleging a verbal promise by the defendants, in November 1876, to pay such proportionate amount. MUTTU CHETTI *v.* MUTTAN CHETTI . . I. L. R., 4 Mad., 296

181. ———— **Suit for sum due on mortgage**—*Decisions in former suit for interest—Civil Procedure Code, 1877, s. 13—Sale of mortgaged property in execution of decree.*—Certain immoveable property was mortgaged to *R* and then sold to *N*. It was then brought to sale in execution of a decree against *N* and was purchased by *H*. The balance of the sale-proceeds after satisfaction of that decree was paid to *N*. Under the terms of the mortgage to *R*, interest on the principal amount was payable annually and its payment was charged on the property as well as the payment of the principal amount. The mortgagors having failed to pay the interest annually, *R* in 1875 sued them and *N* and *H* to recover the interest due. It was decided in that suit that *N* was primarily and personally liable for the interest then due on the mortgage, as he had received the sale-proceeds of the property, and that the property was only liable in case he failed to satisfy the claim. *N* subsequently paid into Court the sale-proceeds he had received, and *R* was paid the same. In 1878 *R* again sued the same persons for interest, and again *N* was declared primarily and personally liable, on the ground that he had not at once made over the sale-proceeds to *R*. In 1880 *R* sued the same persons to recover the principal amount and interest due on the mortgage, by the sale of the mortgaged property. *Held* that, whatever might have been the rights and relations of the parties so long as any portion of the sale-proceeds remained with *N*, their position towards him assumed an entirely different character when once he had discharged himself of those moneys, and with this change in the situation the *ratio decidendi* of the suits of 1875 and 1878 no longer existed, and therefore the decisions in those suits did not preclude *R* from bringing a suit to recover the principal and interest due on his mortgage from the mortgaged property. RATAN RAI *v.* HANUMAN DAS [I. L. R., 5 All., 118

182. ———— **Mortgage-deed passing possession of certain parcels of land and hypothecating others**—*Remedy of mortgagee—Previous decrees for rent obtained against mortgagors.*—The obligee under an instrument, dated 1878, by which certain land was usufructuarily mortgaged and other land merely hypothecated to him, having obtained against the mortgagors decrees for rent due on part of the land under the terms of pattainchits executed by them on the date of the mortgage, now sued to recover the principal and interest due under that instrument. *Held* that he was not precluded from obtaining a decree by reason of his previous suits, and was entitled to a decree for the amount due, and in default of payment for the sale of the mortgaged premises. NANU *v.* RAMAN I. L. R., 16 Mad., 335

183. ———— **Suit for personal decree against some members of tarwad**—*Subsequent suit against tarwad for mortgage-debt.*—A suit seeking to enforce liability for a mortgage-debt on a Malabar tarwad is not barred by a previous personal decree obtained against certain members of the tarwad for the same debt. GOVINDA *v.* MANA VIKRAMAN. MANA VIKRAMAN *v.* GOVINDA [I. L. R., 14 Mad., 284

184. ———— **Suit declaring right to redemption**—*Subsequent suit by representative for redemption.*—Where *D* sued for redemption and obtained a conditional decree, and subsequently the plaintiff sued *D* to establish his right to the mortgaged property and obtained a decree,—*Held* that a suit by the plaintiff for redemption was not barred by s. 2, Act VIII of 1859. BHOOP SINGH *v.* NURSINGH RAI . . . . . 3 Agra, 144

185. ———— **Dismissal of suit for ejectment**—*Subsequent suit for redemption.*—Failure in a suit of simple ejectment does not bar a subsequent suit for redemption, notwithstanding that the defendant had asserted the existence of his mortgage in the former suit. SHRIDHAR VAINAYAK *v.* NARAYAN VALAD BABAJI . . . . 11 Bom., 224

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued*

from the defendants' predecessors in title The suit was dismissed on the ground that the plaintiffs' equity of redemption had been sold in execution of a decree to *A B* The plaintiffs, having repurchased

Ravuthan v. Elayachanidathil Kombia Achen [I L R, 5 Mad, 239

187. ——— *Foreclosure in the*

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the proprietary right in the from an order cancelling his pottah being rejected by the revenue authorities on 8th December 1864 and 27th July 1865 respectively, and on 12th August 1867 *G* conveyed the village by deed of sale to the respondents In a suit brought by them to redeem

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188 ——— *Limitation—Declaratory mortgage decree for redemption not executed for 15 years.*—In 1866 *S* obtained a decree authorizing him to recover certain property on payment of a certain sum to the mortgagee, but not

RES JUDICATA—*continued.*

6 CAUSES OF ACTION—*continued*

Achari I. L. R., 6 Mad, 119

189 ——— *Decree for redemption—Second suit to redeem—Civil Procedure Code, ss 13, 244* – A decree obtained by a mortgagor, which declared that the mortgagee should deliver up possession on payment of the sum found due to him, not having been executed for three years a purchaser of the equity of redemption sued the mortgagee to redeem *Held* that this suit was not barred by the former decree, and that the plaintiff was entitled to redeem *Sami v. Somasundram*

190 ——— *Conditional decree—Failure of mortgagor to pay in accordance with decree—Subsequent suit for redemption—Civil Procedure Code, s 13—Foreclosure Act II of 1882 (Transfer of Property Act), s 93* – In a suit for

the distinction between simple and usufructuary mortgages that the decree in the former suit only decided that in order to redeem and get possession of the property, the mortgagor must pay the sum then found to be due by him to the mortgagee, and did not

a usufructuary mortgagor for possession on the ground that the mortgage debt has been satisfied from the usufruct, and in which the plaintiff is ordered to pay something because the debt has not been satisfied

I. L. R., 5 All, 481, referred to. Muhammad Sami-ud-din Khan v. Mannu Lal [I. L. R., 11 All., 386

191. ——— *Second redemption suit—Kanom, Nature of—Transfer of Property Act, ss 58, 67, 92, 93*—The jenmi of land in

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

Malabar sued in 1886 to redeem a kanom of 1849, to which it was subject, and obtained a decree which merely directed the surrender of the land to the plaintiff, on payment of the kanom amount and the value of improvements, within three months of the date of the decree. This decree remained unexecuted, the money not being paid. The jenmi now brought another suit to redeem the same kanom. *Held* that the present suit was not barred by the former decree. The nature of a kanom discussed. RAMUNNI *v.* BRAHMA DATTAN **I. L. R., 15 Mad., 366**

192. ———— *Decree for redemption—Mortgagor's failure to pay amount due within period fixed—Subsequent suit for redemption—Transfer of Property Act (IV of 1882), ss. 92 and 93.*—A decree under s. 92 of the Transfer of Property Act becomes a final decree on the expiry of the time limited thereby, although no order is passed under s. 93: accordingly, no subsequent suit for redemption can be maintained. RAMASAMI *v.* SAMI . . . **I. L. R., 17 Mad., 96**

193. ———— *Transfer of Property Act (IV of 1882), ss. 92 and 93—Decretal money not paid within the time limited—Second suit for redemption—Civil Procedure Code (1882), s. 13—Right of suit—Decree barred by limitation.*—*Held* that a mortgagor, whether under a simple or a usufructuary mortgage, who has obtained a decree for redemption and allows such decree to lapse by reason of his not paying in the decretal amount within the time limited for payment by the decree, cannot subsequently bring a second suit for redemption of the mortgage in respect of which such infructuous decree was obtained. *Golam Hossein* v. *Alla Rukhee Beebee, 3 N. W., 62,* and *Maloji* v. *Sagaji, I. L. R., 13 Bom., 567,* followed. *Hari Ravji Chiplunkar* v. *Shapurji Hormasji Shet, I. L. R., 10 Bom., 461,* referred to. *Muhammad Samiuddin Khan* v. *Mannu Lal, I. L. R., 11 All., 386 ; Sami Achari* v. *Samasundram Achari, I. L. R., 6 Mad., 119 ; Periandi* v. *Angappa, I. L. R., 7 Mad., 423 ;* and *Ramunni* v. *Brahma Dattan, I. L. R., 15 Mad., 366,* dissented from. HAY *v.* RAZI-UD-DIN **I. L. R., 19 All., 202**

194. ———— *Ejectment suit by mortgagor treated as suit for redemption—Subsequent suit for redemption—Civil Procedure Code, ss. 12, 13.*—A zamindar mortgaged his estate under four successive instruments to the same creditor who was subsequently placed in possession. On the death of the mortgag[illegible] to have succeeded by the law of [illegible] zamindari as an impartible estate, sued to eject the mortgagee ; and a decree was passed declaring what was the sum due on a date named and how far it was binding on the estate, and decreeing that, on payment of what might be due on taking an account, the mortgagee should give up possession. Many years later the zamindar applied to the Court to carry out this decree, and a like application was put in by the present plaintiff to whom seven-eighths of the equity of redemption had been assigned. Both of these applications were rejected in the High Court as barred by limitation, and the applicants applied for leave to appeal to the Privy Council against the order of the High Court. Meanwhile the plaintiff brought the present suit to redeem the mortgages of the late zamindar. *Held* (1) that the suit was not barred under Civil Procedure Code, s. 12, by reason of the pendency of the application for leave to appeal to the Privy Council; (2) that, as there was no decree for foreclosure passed in the previous suit which had been treated as a suit for redemption, the present suit was not precluded by the decree therein ; (3) that the findings in the previous suit as to the amount of the debt and the extent to which it bound the estate were *res judicata.* NAINAPPA CHETTI *v.* CHIDAMBARAM CHETTI **I. L. R., 21 Mad., 18**

195. ———— *Usufructuary mortgage—Non-payment at the proper time of the whole mortgage money—Dismissal of suit—Second suit for redemption accompanied by payment in full—Act No. IV of 1882 (Transfer of Property Act), ss. 92, 63.*—*Held* that a decree in a suit for redemption of a usufructuary mortgage, not being a conditional decree for redemption under s. 92 of the Transfer of Property Act, 1882, but simply dismissing the suit on the ground that the mortgagor had not, prior to its institution, paid or tendered the whole of the mortgage-money at a time authorized by the deed, did not have the effect of foreclosure or of *res judicata* so as to bar a second suit for redemption, the deed expressly authorizing redemption on payment of the mortgage money in a particular month in any future year after due date, and the plaintiff having tendered the whole in that month between the dismissal of the first suit and the institution of the second. *Inman* v. *Wearing, 3 De. Gex. & S., 729 ; Marshall* v. *Shrewsbury, L. R., 10 Ch., Ap., 250 ; Curtis* v. *Holcombe, 6 L. J., N. S., Ch., 156 ; Collinson* v. *Jeffery, L. R. (1896), 1 Ch., 644 ; Karuthasami* v. *Jaganatha, I. L. R., 8 Mad., 478 ; Nainappa Chetti* v. *Chidambaram Chitti, I. L. R., 21 Mad., 18 ; Roy Dinkur Doyal* v. *Sheo Golam, 22 W. R., 172 ; Muhammad Sami-ud-din Khan* v. *Mannu Lal, I. L. R., 11 All., 386;* and *Golam Hoosein* v. *Alla Rukhee Beebee, 3 N. W., 62,* referred to. *Hay* v. *Raziuddin, I. L. R., 19 All., 202,* distinguished. DONDH BAHADUR RAI *v.* TEK NARAIN RAI . . **I. L. R., 21 All., 251**

196. ———— *Omission to direct foreclosure—Neglect to redeem—Second suit to redeem—Hindu family—Suit by manager in his own name—Representative character—Practice—Parties—Civil Procedure Code (Act XIV of 1882), s. 50.* In 1856 *V*, a member of an undivided Hindu family, sued the defendants, and obtained a decree for the redemption of certain immoveable property, but the decree was never executed. At the date of that suit *V* was the manager of the family, consisting of himself and the plaintiff *N* who was then a minor. The decree did not provide for the foreclosure of the mortgage in the event of *V* failing to redeem. In 1878 *N* brought another suit to redeem the same property. The lower Court held that, as the former

RES JUDICATA—*continued.*

6 CAUSES OF ACTION—*continued*

decree did not direct foreclosure, the relation of mortgagor and mortgagee continued between the

A decree for redemption on the default of the decree-holder to pay the money declared to be due within the time fixed by the decree or if none be fixed, within the time allowed by the law for the execution of the decree, *operates as a judgment of* foreclosure, and debars the mortgagor from afterwards bringing a second suit to redeem the same property. GAN SAVANT BAL SAVANT *v* NARAYAN DHOND SAVANT . . I. L R., 7 Bom., 467

197. ——— **Dismissal of former suit for rent of portion of estate**—*Suit to establish proprietary right to whole estate* —The dismissal of a suit for the declaration of plaintiff's right to receive rent from a tenant of a portion of an estate cannot be pleaded as an estoppel in a suit to establish plaintiff's general right as proprietor of the whole estate KISHEN DHUN NUNDEE *v* BHOOKTO POLLY . . 9 W R., 461

198. ——— **Dismissal of suit for rent**—*Subsequent suit for possession* —A suit for rent,

the plaintiff against *A*, *B*, and *C* for possession *Held* that the suit was barred under s 13 of the Civil Procedure Code, 1882 GOPAL DASS *v* GOPI NATH SIRCAR . . . . 12 C. L R., 38

199. ——— *Civil Procedure Code (Act XIV of 1882) s 13—Suit for rent—Suit for establishment of title* —A decision in a suit for rent brought by a plaintiff against a person who is alleged to have been his tenant in respect of certain land does not operate as *res judicata* in a subsequent suit brought by the same plaintiff for

v RAM CHAND AICH I. L. R., 26 Calc, 428
[3 C. W. N, 266

200. ——— ***Suit for enhancement of* rent**—*Suit for rent of succeeding years* —A decree passed in a suit as to the propriety of enhancement of rent in a preceding year is no bar to a suit for enhancing the rent in a subsequent year, nor does it preclude a comparison of the rents paid by actual cultivators for the year in respect of which the second enhancement was made GUNGA PERSHAD *v* BULDEO SINGH . . . 3 Agra, 310

201. ——— *Civil Procedure Code, s 2—Declaratory decree* —Where in a suit for enhancement of rent the plaintiff failed to prove notice of enhancement, but the Court enquired into

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued.*

and gave a declaratory decree as to his right to enhance, such decree *is decisive of the right in a subsequent suit for enhancement of the rent of the same* tenure founded on a valid notice NUFFERCHUNDER PAUL CHOWDRY *v* POULSON
[12 B. L. R., P C, 53 : 19 W. R, 175

RAKHAL DOSS BOSE *v*. GOLAM SURWAR
[2 W R, Act X, 69

202. ——— *Former suit in*

SREEDHESSURY CHOWDRY *v* MUDDUN KOOWAR JHA . . 1 W R., 128

203 ——— *Declaration of right in suit for enhancement* —Where a Munsif, in a suit for enhancement of rent, found that the

204. ——— **Suit for khas possession.**—The plaintiffs, as talukhdars, brought a suit against their tenant *M* for recovery of rent at enhanced rates of land held by him, as to two cottahs of

lands, and obtained a decree simply declaring their

years *in possession* and had *erected a house without any opposition from the plaintiffs* they had no right now to sue for khas possession. *Held* that the suit was not barred by s. 2, Act VIII of 1859, and the plaintiffs were entitled to a decree for khas possession. ISHAN CHUNDER GHOSE *v*. HURRISH CHUNDER BANERJEE . 10 B. L. R., Ap., 5 : 18 W. R, 10

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

205. ——— **Suit for declaratory decree** —*Civil Procedure Code, 1877, s. 13—Dismissal of suit for declaratory decree and to have deed set aside —Subsequent suit for possession with respect to same property and to set aside same deed.*—In December 1878 *H*, a Hindu widow, in possession by way of maintenance of a certain estate, of which *R* owned one-third, and *P*, *B*, and *S* one-third jointly, made a gift thereof to *N*. *H* died in January 1879. In February 1879 *R* and *P*, *B*, and *S* joined in suing *N* for a declaration of their proprietary right to two-thirds of the estate and to have the deed of gift set aside. The Court trying this suit treated it as one for a mere declaration of right and dismissed it with reference to the provisions of s. 42 of the Specific Relief Act, 1877, on the ground that the plaintiffs had omitted to sue for possession, although they were not in possession and were able to sue for it. In November 1879 *R* and *P*, *B*, and *S* again joined in suing *N*. In this suit they claimed possession of two-thirds of the estate and to have the deed of gift set aside. *Held* by the Full Bench (reversing the judgment of PEARSON, *J.*, and affirming that of OLDFIELD, *J.*) that the decision in the former suit was no bar to the determination in the second suit of the question as to the validity of the deed of gift. RAM SEWAK SINGH *v.* NAKCHED SINGH . **I. L. R., 4 All., 261**

206. ——— *Suit for declaration of title—Subsequent suit to recover arrears— —Deshpande vatan—Suit by one sharer against other.*—Where a person having previously obtained a decree declaratory of his title sues his co-sharer in a deshpande vatan, who is bound by the decree to recover arrears, the previous decree operates as *res judicata* as regards the plaintiff's title, except so far as circumstances subsequent to decree may affect it. DULABH VAHUNJI *v.* BANSIDHAR RAI

[I. L. R., 9 Bom., 111

207. ——— *Suit for moveables after former suit declaring right to them.*—Where a suit for a share of ancestral property was decreed, but the decree was modified on appeal as regards certain immoveables so far as to be made declaratory of plaintiff's right to a specified share without any specific declaration of value, and plaintiff subsequently brought a second suit for the value of the moveables,—*Held* that the second suit was not barred by Act VIII of 1859, s. 2. SHEORAJ NUNDUN SINGH *v.* RAJCOOMAR BABOO DEO NUNDUN SINGH

[24 W. R., 23

208. ——— *Civil Procedure Code, 1877, s. 13—Instalment-bond—Hypothecation—Declaratory decree.*—In 1864 the obligee of an instalment bond, in which certain immoveable property was hypothecated as collateral security for the payment of the instalments, brought a suit upon such bond "against *Z* and *A* (the obligors) and the property hypothecated in the bond, defendants," claiming to recover instalments which were due and unpaid, and a declaration of his right to recover instalments which were not due, as they fell due. He obtained a decree in such suit for "the amount claimed" against the "two defendants." It was also provided in such decree that, "until the satisfaction of the entire amount of the bond, the plaintiff can realize the amount of each instalment by executing this decree." The obligee applied in execution of such decree to recover, by the sale of such property, which had passed into the hands of third parties after the passing of such decree, instalments which had become due after the passing of such decree, and had not been paid. Such execution having been refused on the ground that such decree was a money-decree, the obligee brought a second suit upon such bond to recover such instalments by the enforcement of the lien therein created on such property. *Held* that, although the enforcement of such lien was claimed in the former suit, yet, inasmuch as it was very questionable whether the Court was competent to grant the second relief claimed in that suit, *viz.*, a declaration of right to recover instalments which were not due in execution of a decree for instalments which were due, and the claim in the second suit was not the same as that in the former suit, the plaintiff asking for instalments said to be actually due, and not for a declaratory decree for instalments not due, the second suit was not barred by s. 13 of Act X of 1877. UMRAO LAL *v.* BEHARI SINGH

[I. L. R., 3 All., 297

209. ——— **Suit for partition**—*Right of widow —Subsequent suit to get rid of partition.* —Where a widow was treated as an equal sharer in her husband's estate with her sons, and in conjunction with one son applied for partition as a sharer, and objections taken to the partition were overruled, and no appeal made to the Civil Court,—*Held* that a suit to declare the widow only entitled to maintenance was not maintainable. OODIA *v.* BHOPAL

[3 Agra, 137

210. ——— *Civil Procedure Code, 1859, ss. 2 and 3—Admission—Revision of judgment.*—Plaintiffs, having purchased the rights of a widow in certain properties, sued the defendants for partition of the share purchased; defendants admitted the widow's right to a certain extent, but the suit was dismissed on the ground that plaintiffs, before they could obtain partition, must establish the extent of their right and the validity of the purchase. *Held*, on plaintiffs' second suit, that it being between the same parties, and for the same property on the same cause of action, was barred by s. 2, Act VIII of 1859; that defendants' admission, which was merely an admission in plaintiffs' favour, gave no new cause of action; and that, if the Courts failed to decide all the matters in dispute which they had before them in the former suit, their judgment could not be revised in a new suit; such revision being contrary to the provisions of s. 3, Act VIII of 1859. GHASEE KHAN *v.* KULLOO . **1 Agra, 152**

211. ——— *Bom. Act V of 1864.*—In 1871 the plaintiff sued to establish his sole right to a portion of a field on the ground that it had been allotted to him by partition. The defendant also claimed it as his share obtained by partition.

RES JUDICATA—*continued.*

6 CAUSES OF ACTION—*continued*

The Court rejected the plaintiff's claim, holding that no partition had taken place, and that the field was the joint property of five co-parceners, including the plaintiff and defendant In 18 8 the plaintiff brought a second suit for a partition of the field including the portion for which his former suit had been instituted *Held* that the present suit for partition was not barred by the previ us suit which was brought to establish the plaintiff's sole right to the lands in question SHIDRAM *v* NARAYAN

[I. L R., 5 Bom., 27

212 ——————— *Former suit for declaration of right to partition, Civil Procedure Code (Act VIII of 1859), s 2*—A Hindu of the Southern Maratha Country having two sons undivided from him died in 1871, leaving a will disposing of ancestral estate substantially in favour of his second son, excluding the elder who claimed his share in this suit In 1861 a suit brought by this elder son against his father and brother to obtain a declaration of his right to a partition of the ancestral estate was dismissed, on the ground that he had no right in his father's lifetime to compel a partition of moveables, and that, as to the immoveables the claim failed, because they were situate beyond the jurisdiction of the Court In a suit by the elder son against his brother after the father's death for a share of the property on the ground that it was ancestral estate, —*Held* that this suit was not barred under Act VIII of 1859 s 2, the proceedings of 1861 not having amounted to an adjudication between the brothers as to their rights in the estate arising on their father's death LAKSHMAN DADA NAIK *v* RAMCHANDRA DADA NAIK I L R, 5 Bom., 48

[L R, 7 I A, 181 7 C L R, 320

213 ——————— *Effect of unexecuted decree for partition in subsequent suit for partition of same property—Mortgage of share—Purchase by a stranger of portion of the lands included in the decree—Suit by him for partition—* —*A* and *B* were the joint owners in equal shares of certain property In 1869 *B* mortgaged his share to *A* under a mortgage deed drawn up in the English form Later on, in 1869, *A* brought a suit against *B* for partition, and in 1870 obtained a decree appointing a commissioner of partition and directing the partition No return was made to this commission, and no actual partition was come to In 1873 *A* obtained a decree for an account, and for payment, or in default, for sale of the property In 1878 *B*'s share was put up for sale, and purchased by *C*, and *C* was put into possession. In 1881 *C*

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued*

214. ——————— *Suit for declaration of right to partition—Decree not executed—subsequent suit for same purpose*—Where a decree declaring a right to partition has not been given effect to by the parties proceeding to partition

may operate as *res judicata* in respect of any claim or defence which was or might have been raised in the suit in which it was passed NAZRAT ULLAH *v* MUJIB ULLAH . . I. L. R., 13 All, 309

215 ——————— *Decree in former suit for partition—Partial and general partition—Account*—In a previous suit between the plaintiff and the defendant, the plaintiff alleged that there had been a partition of the family property into two parcels and under a deed of partition drawn up at the time claimed one of these parcels The deed being held invalid, the suit was rejected with liberty to the plaintiff to sue for a general partition In the second suit the plaintiff prayed for a general

partition in case he failed to establish the previous partition which he alleged yet it could not be said that he ought to have done so. *Held* also that in the case of joint enjoyment by the members of the whole family or enjoyment by different members of different portions of the family property the Court will not, except under special circumstances, order an account to be taken of past transactions but will make division of the property actually existing at the date of partition *Lakshman Dada Naik v Ramchandra Dada Naik I L R, 5 Bom, 48* followed. KONERRAV *v* GURRAV . I. L. R., 5 Bom., 589

216 ——————— *First suit based on the general right of a co-parcener to claim partition of the joint estate—Refusal of Judge in first suit to allow plaint to be amended so as to include claim to partition based on an award—Second suit based on an award—Code of Civil Procedure (Act XIV of 1882), s 13 expls I, II*—In 1874 the plaintiffs' father filed a suit against the defendants for partition of joint family property The subject matter of the suit was referred to arbitration out of Court The

the award of 1874 but relied on his right as a co-parcener to enforce partition After the settlement of issues, he applied for amendment of the plaint,

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

so as to include his claim on the award. The Court refused the amendment, on the ground that it would materially alter the character of the suit, and dismissed the suit, as barred under s. 373 of the Code of Civil Procedure (Act XIV of 1882). Against this decision plaintiffs' father did not appeal. In 1884 the plaintiffs filed the present suit for partition, relying expressly on their title under the award of 1874. *Held* that the suit was not barred by the plea of *res judicata.* THAKORE BECHARJI RANAJI *v.* THAKORE PUJAJI VAKTAJI [I. L. R., 14 Bom., 31

217. ——— Suit for mesne profits—*Former suit for possession.*—The plaintiff sued to recover possession of land and for wasilat from the period at which he alleged he was dispossessed; and he obtained a decree for possession of the lands and for wasilat from the date of the plaint. He afterwards sued the defendant for wasilat from the date of the alleged dispossession to the date of the plaint. *Held* that wasilat having been claimed in the previous plaint for that period, and there having been an adjudication upon his claim for wasilat and no evidence that wasilat was withheld for the period for which it was now claimed, through inadvertence or by mistake, the case was within Act VIII of 1859, s. 2, excluding from the jurisdiction of the Court causes of action "which shall have been heard and determined by a Court of competent jurisdiction to a former suit between the same parties." LUTEEFOONISSA BIBEE *v.* LUCKEEMONEE DOSSEE [Marsh., 93: 1 Hay, 161

218. ——— Where a plaint prayed for possession and wasilat, and a decree was given for possession without mention of the wasilat, and on application for review it was urged, though not in the written grounds of application, that the question of wasilat ought to have been disposed of, but no decision was given as to it either by the High Court or by the Court of first instance, to which application was afterwards made,—*Held* that the fact that a prayer for wasilat was contained in the plaint in the suit in which only a decree for a possession was given was not a bar to a subsequent suit for mesne profits within s. 2, Act VIII of 1859. GAURI BAIJNATHPRASAD *v.* BUDHU SING [2 B. L. R., S. N., 16

S. C. BYJNATH PERSHAD *v.* BADHOO SINGH [10 W. R., 486

219. ——— *Former suit alleging tenancy—Suit for mesne profits.*—*D* sued *R* for an arrear of rent, but *R* denied his tenancy and *D*'s title to the land, and was successful in that defence. *D* then sued in the Civil Court to recover possession with wasilat, which he estimated at the rate of the rent previously claimed, and obtained a decree for possession without wasilat. *Held* that the second suit was not for the same thing as the first under a different name, and that plaintiff was entitled to wasilat as well as possession. DATARAM *v.* RAM KRISTO . . . . . 9 W. R., 594

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

220. ——— Suit for ejectment—*Former suit deciding as to relinquishment of the land.*—*Held* that a former suit which decided the question of relinquishment of the land by defendant, a raiyat, did not bar a subsequent suit which was brought on the allegation that, the land being sír land, the defendant, the occupant, had no right of occupancy, and should consequently be ejected. NAIPAL SINGH *v.* RAM NARAIN . . . . 2 Agra, 93

221. ——— *Suit to recover possession, Dismissal of—Subsequent suit to enhance rent.*—In a suit to recover khas possession of land, of which the plaintiff alleged he had been fraudulently dispossessed by the defendant, the defendant claimed to be entitled to the possession of the land under a deed of gift at a fixed rent. The Judge found upon the facts that the deed of gift was invalid; that the land was mâl; and that the defendant was entitled to retain the possession, and thereupon dismissed the suit. *Held* that the plaintiff was not precluded by the decision in that suit from afterwards maintaining a suit against the defendant to enhance the rent. NEELMONEY SINGH DEO *v.* SHOBHAN BEBEE [Marsh., 600

222. ——— Suit for same land on different title—*Failure in former suit.*—Plaintiff, after failing in a former suit to establish her right to certain land as belonging to her patni talukh, was not allowed to fall back on a different title and bring a separate suit claiming the same land as belonging to her mirasi, the cause of action in both cases being really the same. AUNUNGO MOHUN DEB *v.* UNNODA DOSSEE . 17 W. R., 351

223. ——— Suit for possession—*Dismissal of former suit for possession as heir.*—A suit for possession as the heir of *S* is not barred by s. 2, Act VIII of 1859, because plaintiff's former claim to the same property as the heir of *S*'s father was dismissed. GOOROO DUTT *v.* SOOROO [16 W. R., 264

224. ——— *Suit on title derived by gift—Subsequent suit as heir.*—*Held* (MITTER, *J., dubitante*) that a suit claiming property on a title by inheritance was barred by ss. 2 and 7, Code of Civil Procedure, 1859, where plaintiff's claim on a title derived by gift had already been adjudicated upon. DUDSAR BIBEE *v.* SHAKIR BURKUNDAZ . . . . . 15 W. R., 168

225. ——— *Suit for ejectment based on alleged lease—Subsequent suit to eject tenant as trespasser founded on ownership.*—The present plaintiffs in 1869 sued the present defendants to eject the latter from a certain piece of land, alleging that the defendants held it under certain leases dated July 1864. The genuineness of the alleged leases was put in issue in that suit, and was decided by the Subordinate Judge in favour of the plaintiffs, who accordingly obtained a decree. On appeal the District Judge reversed that decree, being of opinion that the alleged leases were not proved. In 1874 the plaintiffs brought the present suit to eject the

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued*

defendants In this suit the plaintiffs sued simply as owners and alleged that the defendants were in occupation as tenants paying rent to the plaintiffs and that the ... the defendants ...

... as tenants of the plaintiffs did not imply that the suits were on the same cause of action The term "tenancy" may be applied to a great many different relations between the occupier and the owner of property agreeing perhaps only in the single circumstance of a holding by the one of the property of the other The test in each case is not whether a tenancy has in both suits been sued on, but whether the particular contract or relation put forward in the first case was the same specific contract sued on in the second A cause of action reduced to the concrete form in a contest between individuals implied a specific right and a specific infringement of the right, and a judgment that one such specific right had not been made out was not a trial and determination of a cause of action resting on another specific right The specific rights on which the plaintiffs relied in the two suits were different and would have to be proved by different evidence GIRDHAR MANORDAS *v* DAYABHAI KALABHAI . I L R., 8 Bom, 174

226 ———— *Civil Procedure Code, 1859, s 2—Suit for accretion—Different cause of action*—A suit for a declaration of the plaintiff s right to a chur, which they claimed as an accretion to mouzah L was held to be barred under Act VIII of 1859, s 2 by a judgment in a former suit, in which they had claimed the same land as an accretion to mouzah R because whether by accretion to the one estate or to the other the question in both suits was that of title by accretion A complainant is bound to bring forward in this suit all the grounds of origin of his right A difference in the origin of the right is not a matter which makes a different cause of action KASHEE KISHORE ROY CHOWDHRY *v* KRISTO CHUNDER SANDYAL CHOWDHRY 23 W R., 464

227 ———— *Former suit for kabuliat—Decision as to quantity of land held*—In a previous suit the plaintiff sought to obtain a kabuliat from the defendant in respect of land held by him alleging the quantity to be 8 bighas and 17 cottahs It was therein determined that the defendant held only 7 bighas and no more In the present suit brought to eject the defendant from 1 bigha 17 cottahs of land,—*Held* that it was not maintainable as it was for the determination of a question decided in the former suit GOPAL CHANDRA ROY *v* NABIN CHANDRA BHANDARI [3 B L R, Ap, 34

228 ———— **Decision as to quantity of land held**—*Suit for rent—Suit for measurement—Civil Procedure Code (Act X of 1877, s 13)*—In a suit by raiyats against their zamindar praying for measurement of certain land, and for a declaration of the amount of yearly rental it appeared that in a previous suit for rent by the zamindar against the raiyats the raiyats had alleged that the amount of *rent and the* extent of land had been overstated by the zamindar, but the Court ... were bound b... refused to try ... *Held* that th... *judicata* ROOGHOONATH MUNDUL *v* JUGGUT BUNDHOO BOSE [I. L. R., 7 Calc., 214 8 C L. R., 393

229 ———— **Decision as to boundaries of land**—*Civil Procedure Code (Act X of 1877), s 13*—The plaintiff sued to recover certain lands claiming them as a portion of A and alleging that A was portion of a mouzah which had been leased to him in patni by the zamindar The suit was dismissed on the ground that though A was known as a part of the plaintiff's mouzah yet it had been included in a patni lease of an adjoining mouzah, which the zamindars had granted to the defendants previously to the date of the plaintiff's lease The plaintiff brought a second suit claiming another portion of A on the same title *Held* that the claim was barred as *res judicata* *Mohidin v Muhammad Abrahim, 1 Mad 245 Nundkishore Singh v Huree Pershad Mundul, 13 W R 64; Prannath Sandyal v Ramcoomar Sandyal, 2 C L R 33* and *Gobind Chunder Koontoo v Taruck Chunder Bose I L R., 3 Calc 145,* followed SUNDHYA MALA *v* DABI CHURN DUTT [I L R, 6 Calc, 715

S C SUNDHYAMULA *v* DEVI CHURN DUTT [9 C L R., 216

230 ———— *Failure of suit for possession*—Where a party failing to obtain judgment for the possession of land claimed by her in her first suit as taufir brought a fresh suit claiming the land as property belonging to her taluk according to the true boundary line—*Held*, affirming the decision of the High Court that her suit was barred by s 2 of Act VIII of 1859 WOOMATARA DEBIA *v* UNNOPOORNA DASSEE [11 B L R., P. C, 158 · 18 W. R., 163

S C in High Court. UMATARA DEBIA *v* KRISHNA KAMINI DASI 2 B. L. R., A. C, 102

S C WOOMATARA DABEE *v* UNNOPOORNA DOSSEE [10 W R, 426

SHIB SHUNKUR NEOGY *v* HURO SOONDUREE GOOPTA . 13 W R., 209

231 ———— **Suit for possession and to set aside sale in execution of decree**—*Subsequent suit on the ground that sale was ab initio void*—When a plaintiff sues for possession and determination of right to a certain property and to set aside an execution sale of a portion of the property on the ground of irregularity and his suit is dismissed on the merits a subsequent suit for possession of the property s II on the ground that the sale was void *ab initio* is barred as *res judicata* *Woomа Tara Debia v Unnopoorna Dassee 11 B L R., 158* and *Periya Odaya Tevar v Katama Natchiar,*

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

11 Moore's I. A, 50, cited and followed. PIGOU *v.* MOHAMED ABOO SYED . 3 C. L. R., 253

232. ——— *Sales under different decrees—Reversal on appeal of decision setting aside sale—Civil Procedure Code, 1859, s. 2.*—In execution of a decree, the right, title, and interest of *A* in a certain property were sold and purchased by *B*. In execution of another decree, the right, title, and interest of *A* and *C* in the same property were sold and purchased by *D*. In a suit by *A* the sale to *B* was set aside, but on appeal the decision of the Court of first instance was, upon consent of the parties, set aside, and the sale allowed to stand good. *D* sued for possession of the share of *A* and *C* in the property purchased by him, and obtained a decree for possession of the share of *C* only. *D* now sued to set aside the sale to *B* and for possession of the share of *A*. *Held* that the suit was not barred by s. 2, Act VIII of 1859. CHANNA LAL SAHU *v.* MANU LAL

[5 B. L. R., 220: 13 W. R., 343

233. ——— **Subsequent suit on different grounds for same property**—*Civil Procedure Code, 1859, s. 2—Act XXIII of 1861, s. 11.*—On the 30th June 1855 *S*, a Lingayat priest, died, possessed of moveable and immoveable property. The right of succession to it being disputed, the District Judge placed it under the management of the nazir, under Bombay Regulation VIII of 1827, s. 9. In 1839, *B*, representing himself as the disciple of *S* and claiming, as such, to be entitled to the whole of the property left by *S*, brought a suit (No. 962 of 1869) against the defendant to establish his right to the property in question, and to recover possession of it. The suit was compromised by an agreement, upon which the Court passed a decree on the 23rd March 1870, dividing the property of *S* in certain shares between *B* and the defendant. When *B* and the defendant applied for possession of the property in execution of this decree, the nazir, who had it in his charge, resisted them. The execution proceedings dropped in consequence of the death of *B*. The plaintiff thereupon (as a disciple of *B*, deceased) and the defendant sued the nazir separately, each claiming the whole property of *S*. The plaintiff's suit was rejected on the ground that he failed to prove himself the disciple of *B*. In that suit the plaintiff produced neither the compromise made between *B* and the defendant, nor the decree passed on it in suit No. 962 of 1869. The defendant succeeded in his suit, and obtained possession of the whole property. The plaintiff then sued, as the disciple of *B*, to recover from the defendant the portion of the property of *S* which fell to the share of *B* according to the compromise on which the decree in suit No. 962 of 1869 was made. *Held* by WEST, *J.*, that the suit was barred, first, because the plaintiff had been judicially pronounced not to be the disciple of *B* in his suit against the nazir to which the defendant was a party as the true successor or *primâ facie* successor represented by the nazir in that suit. It was not open to those who had as heirs sued the official representative of an estate, and failed, to sue the owner, when ascertained, a second time on the same right. Secondly, because the plaintiff, in his suit against the nazir, was bound to bring forward every ground on which he could claim the property; and if the compromise effected by *B* was such a ground, that compromise and the decree founded on it ought to have been brought forward to sustain the claim, as it would have shut out a ground of defence consisting of the defendant's superior right. As the plaintiff omitted to do so, the more recent decree, which pronounced him not entitled to any part of the property of *S*, superseded the earlier one, which ineffectually awarded *B* a moiety of that property as against that person not in possession; and while that decree was unreversed, another decree could not be made awarding to the same plaintiff one-half of the same property in the same right as against the defendant whom the nazir represented in the earlier suit. *Held* by PINHEY, *J.*, that the property claimed in the present suit had been specifically awarded to *B* by the decree of the 23rd March 1870, and if that decree were not time-barred, *B* or his legal representative could obtain possession by taking out execution proceedings on that decree. The present suit therefore was barred alike by s. 2 of Act VIII of 1859 and s. 11 of Act XXIII of 1861, and the fact that execution of the decree in suit No. 962 of 1869 was time-barred did not confer on *B* or any legal heir of his a new right to sue for the estate of *S* or any part of it. SHIVALINGAYA *v.* NAGALINGAYA . . I. L. R., 4 Bom., 247

234. ——— **Suit for same property on different cause of action**—*Civil Procedure Code, 1859, s. 2.*—In 1856 the plaintiff, the zamindar of Tarla (who had attained his majority in 18?3), instituted suits for the recovery of the two villages claimed in the present suit on the ground that the villages were jerayati, and had been temporarily alienated, and he claimed a right of resumption. It was decided that the villages had formed a mokasa jaghir from a date prior to that of the permanent settlement, and that, as they did not constitute a portion of the assets of the zamindari at the date of the settlement, there was no right of resumption. Pending those suits, an order was issued by Government which plaintiff construed as a transfer to him of the Government right in the villages, and he founded the present suit upon the lapse of the mokasa to Government, and the order transferring the right to him,—*Held* that the present suit was not *res judicata*. RAMA CHANDRA SURYA ARICHANDRANA DEO *v.* DARVADA RAMANNA CHANDIRI .

[3 Mad., 207

235. ——— **Suit for same property on same cause of action**—*Suit for possession—Civil Procedure Code, 1859, ss. 223, 224.*—Where a suit was preferred for the purpose of recovering possession of defendants' lands, for possession of which plaintiff had already obtained a decree against the same defendants and others, the suit was held to be barred, as the cause of action was not different from that which had been previously determined. Instead of asking for delivery of possession under

ES JUDICATA—*continued.*

6 CAUSES OF ACTION—*continued*

s 224, plaintiff's proper course would have been a resort to the provisions of s 223 of the Civil Procedure Code RAM SURN MUHTON *v* JINONAUTH BHUGGUT 10 W. R, 396

236 ——— Suit for confirmation of sale—*Subsequent suit for certificate of sale*—

confirmation of ... possession of the talukh, and for a decree for mesne profits This suit being dismissed on the merits, he instituted another suit, in which he craved a bynamah, ... suit was ... matter as ... fore precl... from obtaining it LAMB *v*. DEWAN PUDDUM LOCHUN [Marsh, 96. W. R, F B, 28 1 Hay, 168

... plaintiff's right to a shar of ancestral property, part of which was in his sole possession, cannot operate as ... possess- ... was forcibly evicted ... pendency of that suit HURONATH ROY *v* GOORGO DOSS ROY. GOOROO DASS ROY *v* HURONATH ROY [7 W R, 423

238 ——— Causes of action identical—*Title—Test for determination as to res* ... lands from ... *defendant* ... from their co-heirs In 1864 the plaintiff ... the sale to the defendant *M* set aside In the course of the suit, however, he admitted that he was in possession of all the lands he had bought and his claim was therefore rejected In 1869 the plaintiff brought a suit, in the ... praying for demarcation of ... and himself, ... ment suit, and ... as above stated In ... made in 1868 The plaintiff contended that ... the cause of action was in existence when the second suit was brought in 1869, yet that it had not been adjudicated upon and that in appeal he had been prevented from arguing it *Held* that the plaintiff was estopped. The causes of action in the second and

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued*

... settled with the ... held, that they ... for the consi... ing whether a ... ll have regard ... nt rather than ... sed on a right ... group of facts ... suit is barred ... LIANDAS [I. L R., 3 Bom, 137

239 ——— Suit for share of joint pro... *Subsequent suit as* ... e died in 1850 ... *B* and *S*, a son ... spectively of *B* ... The plain- ... r some time ... ntly owing to domestic quarrels they lived separately and the plaintiff was allowed by *M* a portion of the family property, under an agreement in writing They were, however, joint and undivided in estate, and continued to be so until the death of *M* in 1865 In 1866 the plaintiff brought a suit on the agreement, ... against *B*, *S*, *D* and *R* (a lessee ... agreement. ... as heir of ... whole of the ... *is rejected* ... *Held* in ...

BAIZA ...

240 ——— *Suit on a family arrangement—Second suit for the same subject-matter as co sharers—Causes of action*—The defendant's great grandfather was uncle of one *B H*, who was the great grandfather of the plaintiffs and they (*i e*, the defendant's great grandfather and his nephew *B H*) were entitled in equal half shares to a certain vatan property. The defendant and his brothers now represented the former, and were entitled to his half ... the latter, and ... father, ... endant's ... ndivided ... e plain- ... village, ... a deed ... stral property into two equal ... of which the plaintiffs' father was to receive the other half going to the defendant and his brothers. The deed, among other recitals, contained a clause to the effect that the plaintiff's father being then absent from the

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

village, the defendant's brothers would manage his share during his absence, and on his return hand the same over to him on his paying the expenses incurred by them in such management. In 1873 the plaintiffs' undivided brother brought a suit against the defendant and others on an agreement alleged to have been executed between him (plaintiffs' brother) and the defendant and his brothers by which the said brothers had bound themselves to return one-third share to him (the plaintiffs' brother). This suit was dismissed as against the defendant, as he had not been a party to that agreement, and plaintiffs' brother was referred to a separate suit for partition against the defendant. The plaintiffs therefore now brought the present suit claiming their share in the vatan estate. The defendant (*inter aliâ*) contended that the suit was barred as *res judicata* by the former suit, that neither the plaintiffs nor their forefathers had enjoyed the property during the previous 150 years, and that the claim was barred by limitation. Both the lower Courts allowed the plaintiffs' claim. The defendant preferred a second appeal to the High Court. *Held*, confirming the decree of the lower Court, that the former suit having been brought on an alleged agreement, it did not bar the present suit, which was based on the plaintiffs' hereditary right to sue as members of the family. NILO RAMCHANDRA *v.* GOBIND BALLAL . . . . **I. L. R., 10 Bom., 24**

241. ———— **Suit under will**—*Subsequent suit in right of heirship—Former suit on different grounds.*—*N* sued *M* and *K* claiming proprietary possession under the Mahomedan law of a share in certain property by right of heirship to her deceased husband. She had previously sued the same persons to recover a portion of the same property under a will of her husband, and obtained a decree which was reversed on the ground of the will being invalid. *Held* (in accordance with the opinion of the Full Bench) that the second suit was not barred by s. 2, Act VIII of 1859. NOUSHA BEGUM *v.* UMRAO BEGUM . . . . . **7 N. W., 60**

242. ———— **Suit for possession as heiress**—*Subsequent suit on ground of family custom.*—In a suit governed by the Mitakshara, in which *A*, a Hindu widow, was the plaintiff, and *B* was one of the defendants, the plaintiff sought and obtained a decree for possession of certain lands to which she claimed to be entitled as mother and heiress of her deceased son. *B* subsequently brought a suit against *A*, alleging that he, and not *A*, had become entitled thereto on the death of *A*'s son, under a kulachar, or family custom, which excluded female heirs, and gave him a preferential right among male heirs, and thereby sought to recover from her possession of the same lands, and alternatively to obtain a declaration that he was, as such heir if then living, entitled to possession of them on her death, and that a deed executed by her alienating a portion of them was valid only for her lifetime. *Held* that the decision in the former suit, that *A* was entitled to the lands as mother and heiress of her deceased son, was conclusive against *B*'s claim for possession during her lifetime, on the ground that she was not the heiress ; but that the plaintiff was not barred by the adjudication in the former suit from setting up the family custom with the object of showing that on *A*'s death he would be entitled to succeed her, if living, and was by reason of such heirship entitled to obtain a declaratory decree as to the deed of alienation. DOORGA PERSAD SINGH *v.* DOORGA KONWARI

[I. L. R., 4 Calc., 190 : 3 C. L. R., 31
L. R., 5 I. A., 149

243. ———— **Suit for property in right of inheritance**—*Ground of claim disposed of in former suit—Civil Procedure Code, 1859, s. 2.*—In a suit to recover, in virtue of a right of inheritance, a share of a deceased father's estate from which plaintiff had been ousted in 1858,—*Held* that, as the plaintiff had brought a suit in 1853 in which she claimed the same properties as belonging to her father's estate, and had accepted and acted upon the decree then passed, which excluded the property in question from her claim, her present suit was barred by s. 2, Act VIII of 1859 ; and further that she could not claim the property on the ground of a solenamah by which it was admitted and declared that the property belonged to her father's estate, when it had been already decided in the former suit that it ought not to appertain to that estate. SYUDOONISSA *v.* FEDA HOSSEIN . **12 W. R., 182**

244. ———— **Compromise of suit**—*Civil Procedure Code, 1859, s. 2—Suit on same cause of action as former suit.*—A suit between two brothers, *A* and *B*, respecting ancestral property, was compromised, and the particulars of the compromise embodied in a razinama presented in Court by both parties. *A* having died, his widow and *B* presented in Court another razinama embodying the particulars of an arrangement respecting the property in which she had become interested as widow, and which was comprised in the former razinama ; and of this second razinama they subsequently put in an amended copy. *Held* that a claim arising out of such arrangement could not, within the meaning of Act VIII of 1859, s. 2, be considered to have been a cause of action heard and determined in the former suit. LAKSHMI AMMAL *v.* TIKARAM TOVAJI . . **1 Mad., 240**

245. ———— **Suit for property as joint**—*Former suit for same property as separate—Civil Procedure Code, 1859, s. 2.*—The plaintiffs in the present suit claimed, as the heirs of *J*, certain property from *M*, the daughter of *R*, alleging that such property was the joint and undivided property of *R* and *J* to which, on *R*'s death, *J* had succeeded. The plaintiffs had formerly, after the death of *J*, sued *M* for such property, alleging that it was the separate property of *R*, and that, on the death of *R*'s widow, they were entitled to succeed thereto. *Held* that the decision in the former suit that such property was the separate property of *R* to which *M* was entitled to succeed on the death of his widow was a bar to their present suit. RADHIA *v.* BENI

[I. L. R., 1 All., 560

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued.*

dissenting) that the suit was barred DENOBUNDHOO CHOWDHRY v. KRISTOMONEE DOSSEE

[I. L. R., 2 Calc., 152

247. ———— Suit for specific sum of money—*Act VIII of 1859, s. 2*—In a suit for a specific sum of money, it was held, in accordance with the Full Bench decision in *Dinobundhoo Chowdhry* v. *Kristomonee Dossee, I. L. R., 2 Calc., 152,* that the plaintiff was bound to put forward every right under which he claims BHEEKA LALL v. BHUGOOO LALL . I. L. R., 3 Calc., 23

248. ———— Subsequent suit for same cause of action, but larger amount—*Civil*

appeal lies to the High Court, is a bar to a second suit in which the amount claimed is above R100 DAVID v. GRISH CHUNDER GUHA

[I. L. R., 9 Calc., 183: 11 C. L. R., 305

249. ———— Suit for account—*Subsequent suit for balance due—Principal and agent*—In the

DUTTY v. SHERIFF

[I. L. R., 7 Calc., 169: 8 C. L. R., 357

250. ———— Suit to recover property from zur-i-peshgidars—*Subsequent suit alleging discharge of mortgage—Civil Procedure Code, 1859, s. 2—Different cause of action*—The plaintiffs had

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued*

cause of action within the meaning of Act VIII of 1859, s. 2, was a fresh cause of action as compared with the former one, which was for an adjudication of the state of the accounts between the parties

251. ———— Suit to set aside attachment, Dismissal of—*Subsequent suit to recover property*—The plaintiff sued to raise an attachment placed upon a certain house, but failed in the lower Court, and the decision of the lower Court was confirmed upon appeal. The house was then sold. The plaintiff sued the purchaser to recover possession of it. *Held* that he was not estopped from suing by the decision in the former suit refusing to raise the attachment, and that such decision could not be given in evidence in the latter suit. MORO BALKRISHNA MULE v. SHEK SAHEB VALAD BADRUDDIN KAMBLE . . . 5 Bom., A. C., 199

252. ———— Suit to establish title—*Former suit to raise attachment*—K sued to establish his title to a house purchased by him from *D D*'s guardians during minority, alleging that the greater part of the purchase money was employed in paying off a mortgage-claim upon the house; that after he had obtained possession under his deed one *D S*, the holder of a decree against *D D*'s guardians, attached the house, and that he brought the suit to raise the attachment, in which having failed he paid into Court the amount of *D S*'s claim. *Held* that *K* was not estopped from bringing this suit against *D D*, by the decree in his former suit to raise the attachment, which declared that the deed of sale now relied upon was fraudulent and void as against *D S*. DAGDU BIN DAUD TELI PARDESHI v. SHEK SAHEB VALAD BADRUDDIN KAMBLE

[2 Bom., 369: 2nd Ed., 348

253. ———— Suit to set aside order releasing from attachment properties as to which a former suit has been dismissed—*Civil Procedure Code (Act VIII of 1859), ss. 2 and 7—Relinquishment—Mortgage made during infructuous attachment—Subsequent attachment and sale*—*R*, on the 30th December 1870, obtained an *ex-parte* decree against *D*, in execution of which he attached properties X and Y on the 4th January 1871. *D* applied for a re-hearing, which was granted; and on the 30th of December 1871 a decree was again passed against *D*, in execution of which the same properties were attached on the 6th of August 1872, and purchased at the execution sale on the 1st August 1874 by *P*. On the 14th February 1871, *D* had executed a solehnama and mortgage in favour of *G*, pledging, among other properties, X and Y as security for a loan made to him by *G*. *D* having made default in payment, *G* obtained a decree against him in terms of the solehnama on the 25th February 1871. Subsequently, *D* granted another mortgage of the same properties in favour of *G*. *G* sold his decree and mortgage to the plaintiff, who in execution of the decree attached properties X and Y.

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

In these execution proceedings *R* brought forward the fact of his purchase of the same properties in August 1874, and his claim was allowed, and the properties X and Y released from attachment on the 4th March 1876. The plaintiffs had, on the 8th March 1872, obtained a mortgage from *D*, on which they had obtained a decree on the 25th September 1874, in execution of which they had attached X and Y; but on *R* claiming them under his purchase in August 1874, an order was made on the 10th April 1875 releasing X and Y from attachment; and in a suit by plaintiff to set aside that order, they failed as to properties X and Y, on the ground that those properties were not included in the mortgage of March 1872. In a subsequent suit brought by the plaintiffs against *R* and *D* to set aside the order of the 4th March 1876, and to have X and Y declared liable to be sold under the decree of the 28th February 1871, *Held* that the suit was not barred under s. 2 of Act VIII of 1859 by the decree in the previous suit, nor was it barred by s. 7 of the same Act. *Held* also that the purchase by *R* in August 1874 was subject to the mortgage to *G* of the 14th February 1871. RADHANATH KUNDU *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 6 Calc., 559: 8 C. L. R., 10

254. ——— Attachment, Application to remove *Removal of attachment unknown to applicant—Failure of application—Second attachment—Second application to remove—New cause of action.*—The plaintiff, mortgagee in possession of certain property, applied for the removal of an attachment placed on it by the defendant in execution of a decree against a third party. In default of payment of Court-fees by the defendant, the attachment was removed, but in ignorance of this fact the plaintiff's application was proceeded with, and ultimately rejected. The plaintiff then brought a suit for a declaration of his right, but it was dismissed, on the ground that the attachment had already been removed. Subsequently the defendant placed a second attachment on the property, which the plaintiff again applied to remove. The defendant contended that the plaintiff's application was barred by the proceedings on the first attachment. *Held* that the decision on the plaintiff's first application having no object existing on which to operate, the attachment having then been removed, it could not properly be regarded as *res judicata* at all, since no one was seriously interested in having it decided in a different way; and that supposing submission to that decision on the part of the plaintiff for a certain time could have given it a final effect, there had, as a matter of fact, been no such submission, the plaintiff having done all that was incumbent on him to get the summary inquiry and orders replaced by a formal trial and judgment; and that there was nothing therefore in these proceedings disentitling the defendant to oppose the second attachment. *Held* also that the second attachment, after the first had been removed, was a new and distinct act, giving rise to a new cause of action, or complaint, to the plaintiff, on which, in any case, he was entitled to a fresh inquiry and decision. KASHINATH MORSHETH *v.* RAMCHANDRA GOPINATH

[I. L. R., 7 Bom., 408

255. ——— Suit for declaration of title—*Subsequent suit for possession—Application to remove attachment.*—*B* sold to *J* a turuf of which 3½ kanees were subsequently attached on a decree obtained by *M*. After objecting unsuccessfully to the attachment, *J* brought a suit against the auction-purchaser, joining *B* as a defendant, to have it declared that the 3½ kanees belonged to himself; but failed on the ground that he was holding it benami for *B*. Subsequently the auction-purchaser bought from *B* the rest of the talukh and sued her for possession. *J* got himself entered as a defendant under s. 73, Act VIII of 1859. *Held* that there was no identity between the subjects of the two suits, and *J*'s former suit for all that he was then entitled to sue for on the cause of action that he had on the attachment did not deprive him of his right to a fresh and independent judgment in the present case. *Held* also that the former judgment did not create an adjudication of the cause in the latter suit, and if evidence, it was not conclusive evidence or binding on the Judge. RAM CHUNDER CHOWDHRY *v.* KASHEE MOHUN . . . 21 W. R., 57

256. ——— Suit for declaration of liability to sale in execution—*Joint property, Liability of, to sale in execution of decree against one member of a family—Hindu law—Joint family—Civil Procedure Code (1882), ss. 278, 280, and 283—Limitation—Right of suit.*—In execution of a decree for rent against a lessee, who was one of the members of a joint Hindu family governed by the Mitakshara law, property other than the tenure was attached by the decree-holder. Objection was raised under s. 278 of the Civil Procedure Code by other members, and an order was passed under s. 280 releasing the interest of all members except the lessee. Within one year of the order, the present suit was brought by the decree-holder to bring to sale the whole property, on the ground that all the defendants being members of a joint family were benefited by the lease, and were liable for the decretal money. The defendant pleaded, *inter alia*, that the suit was barred by *res judicata*, and that the suits decreed having been for rents of the years 1884 to 1887, the present suit brought in 1891 against the additional parties was barred by limitation. *Held* (*per* PRINSEP and GHOSE, JJ.) that the suit would lie, and neither the plea of limitation nor the bar of *res judicata* was applicable to it. *Held* (*per* PRINSEP, J.)—Ss. 278 to 283 of the Civil Procedure Code contemplate the liability of the property to sale, because of its being the property of the judgment-debtor or because it is liable to the decree passed against him as sued in a representative capacity; they do not contemplate a suit to establish the liability of third persons. *Nuthoo Lall Chowdhry* v. *Shoukee Lall*, *10 B. L. R., 200 : 18 W. R., 458*, and *Nobin Chandra Roy* v. *Magantara Dassya, I. L. R., 10 Calc., 923*, referred to. *Sitanath Koer* v. *Land Mortgage*

RES JUDICATA—*continued*

6 CAUSES OF ACTION—*continued.*

Bank of India, I. L. R., 9 Calc., 888, dissented from *Held* (*per* GHOSE, *J*) that having in view the principle which underlies the cases of *Bissessur Lall Shahoo* v. *Luchmessur Singh, L R, 6 I. A, 233 5 C L R, 477,* and *Jeo Lal Singh* v. *Gunga Pershad, I. L R, 10 Calc, 996,* as also the cases of *Sitanath Koer* v. *Land Mortgage Bank of India, I L. R, 9 Calc, 888,* and *Nobin Chandra Roy* v *Magantara Dassya, I. L R, 10 Calc, 924,* the present suit was maintainable, the suit being regarded as one for declaration that the decree was obtained against the lessee in his representative capacity, and that the other members were therefore liable to satisfy it *Nuthoo Lall Chowdhry* v. *Shoukee Lall, 10 B L R, 200 18 W. R., 458,* and *Hemendro Coomar Mullick* v *Rajendro Lall Moonshee, I L R, 3 Calc, 353,* distinguished. RADHA PERSHAD SINGH v. RAMKHELAWAN SINGH

[I. L. R, 23 Calc, 302

257. ———— Continuing contract—*Suit for damages*—*A,* on the 1st of February 1868 entered into a contract with *B* to supply him with straw for twelve months the supplies to be sent as ordered daily On the 12th of March *B* brought an action in the Small Cause Court against *A* for

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person who executed it in *A's* behalf) in favour of *B,* and gave him a decree On the 21st of April, a second suit was brought by *B* against *A* on the same contract The claim was for damages sustained by the plaintiff by reason of *A's* having failed to supply straw as agreed from the 20th of February to the 17th April That suit was dismissed, the Judge holding that the matter was *res adjudicata,* as he considered that the contract was an entire one, and that *B* had shown by suing on it for general damages that he treated it as such and had elected to rescind it On the 9th of May a rule *nisi* was granted for a new trial, and on the 16th of May the rule was made absolute On the 12th June, at the new trial, a decree was made in favour of *B* for so much of the damages claimed as had been sustained subsequently to the date of the decree of the 25th March In an action brought by *B* on the same contract for damages sustained between the 17th April and the 16th of June, by reason of *A* having failed to supply straw according to the terms of the same contract, *A* denied that there had been any such contract and further pleaded that the matter of the contract, if there had been one, had already been adjudicated upon On a reference from the Small Cause Court,—*Held* that the finding of the Judge upon the contract in the action brought on the 12th of March was conclusive between the the parties, and that *A's* plea of *res adjudicata* was not well founded. COOK v. JADUB CHANDRA NANDI

[2 B. L. R., O. C, 43

258. ———— Suit on joint contract—*Civil Procedure Code, s 2*—*Suit on joint bond*—

RES JUDICATA—*continued.*

6 CAUSES OF ACTION—*continued.*

D and *B* executed a bond, by which they mortgaged certain lands as security for a loan taken by them from the plaintiffs. A suit was brought and a decree was obtained by the plaintiffs against *D* and *B,* under which they recovered a portion of the amount due on the bond The plaintiffs now sued *S* and others on the ground that they were joint proprietors of the land mortgaged, that the loan was taken by *D* and *B,* as managers for the use of all the parties interested, and for carrying on their joint business and trade, and that therefore they were all jointly liable *Held* that the suit could not be maintained *Ramnath Roy Choudhry* v *Chunder Sekhur Mohapattur, 4 W R, 50,* dissented from NUTHOO LALL CHOWDHRY v SHOUKEE LALL

[10 B. L. R., 200: 18 W. R., 458

259 ———— ———— *Civil Procedure Code, 1882, ss 13 and 43*—*Joint owners*—*Suit against one sharer*—*Decree against property*—*Claim by other co sharer allowed*—*Suit against both sharers*—Through ignorance of the position of affairs, one only of two persons joint owners in a property, was sued for a debt for which the property had been pledged by the person sued, and a decree was obtained and execution issued against the property, and in such execution proceedings the other sharer put in a claim, and obtained an order releasing her share of the property from attachment A second suit was then brought by the judgment creditor against both sharers, for the purpose of making the share of the co sharers who had not been previously sued available to satisfy the defendant, and praying that the order releasing the

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260 ———— ———— *Suit for arrears of rent*—*Joint and joint and several liability*—In the year 1877, *A,* who was the owner of a fractional share of a zamindari, which was let in patni and of a 4 annas share in the patni sued his co sharers in the patni for his share of the arrears of rent for the years 1873 to 1875 after deducting the rent of his 4 annas share Before the hearing of the suit, *L* intervened alleging that he had purchased a 6 annas share of the patni and he was made a defendant. *A* then discovered that his co sharers in the patni had sold their remaining shares to *C* *A* applied to make *C* a party to the suit, and subsequently for leave to withdraw the suit Both these applications were refused and a decree for the arrears of rent was made *A,* alleging that he did not wish to enforce the decree in the previous suit, then instituted this suit against *C* and the defendants in the former suit, for the purpose of

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which exists between persons who have made themselves jointly and severally liable to perform a particular contract; and that, as a decree obtained against

RES JUDICATA—*continued.*

6. CAUSES OF ACTION—*continued.*

one of the joint and several promisors without satisfaction is no bar to a suit against another, the present suit was not barred by the decree obtained in the suit of 1877. *Nuthoo Lall Chowdhry* v. *Shoukee Lall, 10 B. L. R., 200,* and *Hemendro Coomar Mullick* v. *Rajendro Lall Moonshee, I. L. R., 3 Calc., 353,* distinguished. DHUNPUT SINGH *v.* SHAM SOONDER MITTER

[I. L. R., 5 Calc., 291: 4 C. L. R., 501

See DHARAM SINGH *v.* ANGAN LALL

[I. L. R., 21 All., 301

261. ———————— *Judgment against one co-sharer, Effect of, on interest of other co-sharers—Code of Civil Procedure (Act X of 1877), s. 13, expln. (5)—Repeal, Effect of.*—Expln. 5 to s. 13 of the Code of Civil Procedure would not make a judgment obtained in a suit against one co-sharer binding on another co-sharer no party to such suit in respect of the rights enjoyed in common by such co-sharers in their common property. Nor could such explanation be applied to a case instituted, or the judgment delivered in such case, during the time when the old Code of Civil Procedure was in force. HAZIR GAZI *v.* SONAMONEE DASSEE . I. L. R., 6 Calc., 31: 6 C. L. R., 516

262. ———— Suit on mortgage—*Right of mortgagee to exercise another remedy after obtaining decree for sale.*—A mortgagee can resort to all his remedies on the mortgage at the same time, and is not estopped in an action on the covenant to pay the mortgage-money by the fact of his having obtained a decree for sale. MACKINNON *v.* GUNNES CHUNDER DEY . . 1 Ind. Jur., N. S., 370

263. ———————— *Civil Procedure Code, 1859, s. 2—Suit to set aside sale under mortgage-decree—Subsequent suit to declare property liable to sale.*—Certain property having been sold in execution of a money-decree against the representative of a mortgagor, a suit was instituted and a decree obtained setting aside the sale as being that of land in which the mortgagor had no interest. The holders of the original money-decree then again brought a suit to obtain a declaration that the said property was liable to be sold in satisfaction of the said decree. *Held* that, the matter in issue having been heard and determined by a Court of competent jurisdiction, the suit was barred by s. 2, Act VIII of 1859. NUFUR CHUNDER PAUL CHOWDHRY *v.* LUCKHEE MONEE DABEE . . 9 W. R., 300

264. ———————— *Taking money-decree on mortgage—Registration Act, XX of 1866, s. 53—Suit on mortgage-bond.*—A proceeding under s. 53 of Act XX of 1866 was a suit of a civil nature within the meaning of s. 1, Act VIII of 1859, independently of any peculiarities in the special procedure to be adopted. Therefore, where a creditor had resorted to the summary procedure provided by s. 53, and had recovered a portion of his claim in execution of the decree so obtained, a regular suit subsequently brought to enforce his remedies on the bond, giving the defendant credit for the amount already recovered, was barred by s. 2, Act VIII of 1859. EMAM MOMTAZOODEEN MAHOMED *v.* RAJCOOMAR DOSS. HARAN CHUNDER GHOSE *v.* DINOBUNDHOO BOSE

[14 B. L. R., F. B., 408: 23 W. R., 187

MOTHOORA MOHUN ROY CHOWDHRY *v.* PEAREE MOHUN SHAHA . . . . 23 W. R., 344

But *see* UTSHUB NARAYAN CHOWDHRY *v.* CHITTRA RAKA GUPTA . . . 8 B. L. R., Ap., 92

S. C. OOTSHUB NARAIN CHOWDHRY *v.* CHITTRA RECKA GOOPTA . . . . 17 W. R., 154

where it was held that a regular suit will lie for a declaration that property mortgaged by a bond on which a simple money-decree had been obtained by the mortgagee under the provisions of Act XX of 1866 continues liable for the decree, though in the hands of a third person.

265. ———————— *Civil Procedure Code, 1859, s. 2—Suit on mortgage-bond—Registration Act, 1866, s. 53.*—*A*, having a simple mortgage-bond, which was specially registered, obtained a summary decree under the provisions of the Registration Act, and attached the lands under mortgage to him. Prior to *A's* decree, these lands had been attached by other creditors, and subsequently to *A's* decree they were sold to *B*. After such sale *A*, under his attachment, sold the right, title, and interest of the mortgagor, which he himself purchased. *A* now sued the mortgagor and *B* to enforce his mortgage lien against the mortgaged properties. *Held* that, according to the decision of *Eman Momtazooddeen Mahomed* v. *Rajcoomar Dass, 14 B. L. R., 408,* the suit should be dismissed. DOSS MONEY DOSSEE *v.* JONMENJOY MULLICK

[I. L. R., 3 Calc., 363: 1 C. L. R., 446

266. ———————— *Civil Procedure Code, 1859, s. 2—Suit to enforce lien on bond after suit in which money-decree has been obtained.*—*B* sued on a bond to recover its amount and to enforce a mortgage lien. He obtained only a money-decree on the 26th of August 1871. *D*, who also held a decree against the same debtor, caused a portion of the property which had been included in the plaintiff's mortgage to be brought to sale. *B* instituted a second suit on the 21st of January 1873, to enforce the lien. *Held* (in accordance with the opinions of TURNER, OLDFIELD, and BRODHURST, *JJ.*, STUART, *C.J.*, and PEARSON, *J.* dissenting) that the suit was unmaintainable. BHAO SINGH *v.* HET RAM

. [7 N. W., 17

267. ———— Suit to enforce lien on mortgaged property—*First and second mortgagees.*—In 1870 *M* granted a certain person a lease of a certain zamindari share, for a term of years, at an annual rent, *L*, as the lessee's surety, hypothecating a mouzah called A as security for the payment of such rent. In 1871, *L* gave *B* a bond for the payment of certain moneys, hypothecating mouzah A as security for their payment. In 1872 and again in 1873, *M* obtained a decree in the Revenue Court against his lessee and *L*, his surety, for arrears

RES JUDICATA—*continued*

6. CAUSES OF ACTION—*continued*.

of rent In execution of the decree of 1872, *M* caused

defended this suit on the ground that holder of a prior lien on the property The Court

and that, when he did so the purchaser and the first

ver by the nt awarded r with the and interest *C J*, that

the dec of 1872 and rom claim-

was sold to satisfy the money doubt, the proceeds of the sale would, after satisfaction of the costs of the decree, go *pro tanto* to the satisfaction of the sums secured by the first incumbrance, but *M*, by selling in execution the *mortgagor's equity of redemption*, did not forgo his incumbrance *Held* also that *M* could not enforce his lien for the recovery of the costs incurred by him in the Revenue Courts, as the surety bond did not provide for the payment of such costs, that he could enforce his lien for the recovery of interest, as that bond did provide for the payment of interest; and that the moneys realized by the sale of the

in satisfaction of the arrear the balance of that arrear, and of the arrear sued for in the second suit, with interest at the rate agreed upon in the surety bond *from the date of the accrual of those arrears until realization* BABUJAL *v* ISHRI PARSAD NARAIN SINGH I L. R., 2 All., 583

268. ——— Suit for possession—*Agreement not to appeal—Suit for possession in terms of agreement*—*A*, having sued *B* for possession of a piece of land and obtained a decree for possession of portion only, entered into an agreement, by the terms of which he was to take a greater part of the land than he was entitled to under the decree upon the condition that he (*A*) should not prefer an appeal,

Held that the agreement was valid, although its effect was practically to render the former suit inoperative, and further, that the previous suit between the parties was no bar to *B's* suit, a new cause of action having arisen upon the breach of the agreement JATI RAM TALUKHDAR *v* DASS RAM KOLITA

[3 C. L. R., 574

269 ——— Damages—*Civil Procedure*

paddy from such land on the 23rd December

on the ground that no dispos ing referred No appeal March 1887 the unsif's Court land and for mesne profits and possession of 3 bighas 6 cottahs of land with mesne profits; possession of the one bigha the subject of the suit of 1886, being included in the 3 bighas 6 cottahs decree He subsequently sued the same defendants in a Small Cause Court for damages for the paddy cut and carried on the 23rd December 1885 *Held* that such suit was not barred by either s 13 or s 43 of the Civil Procedure Code MAHABEER SINGH *v*. RAMBHAJJAN SHA . I. L. R., 16 Calc, 545

270. ——— Suit on judgment in a Native territory—*Civil Procedure Code s 12 Jhansi and Morar Act (XVII of 1886), s 8— Cession of territory*

of in of ould be continued rict after the cession thereof; therefore the present suit which if it had been originally instituted in a Court of British India, could not have been maintained, being an action on a judgment of a Court of British India, was a good and maintainable action in the Court where it was instituted and is to be deemed to be a properly instituted suit to which in other respects the law of the Courts of British India may now be applied *Arnott v. Hoare 13 M & W., 504; 14 L. J Ex., 29*, referred to as illustrating the distinction between an original cause of action founded upon a judgment recovered on the original cause of action SALONI *v* HAR LAL

[I L. R., 10 All., 517

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE.

271. ———— **Reasons for decision**—*Estoppel by former judgment—Final decision of same question.*—A party to a suit is not estopped, merely by the reasons which a Judge may give for his decision. In order to make out that a decision in a former suit is an estoppel, it must be established that the same identical question has been formally raised and finally decided. NUGENDUR NARAIN *v.* RUGHOONATH NARAIN DEY . **W. R., 1864, 20**

272. ———— ———— *Collateral matters.*—Such matters only as are decided between the parties by the decree in the suit ought to be treated as binding against them in subsequent litigation. No part of the reasoning on the findings of facts which have induced the Court to come to its decision is binding as between the parties further than for the purposes of the particular decision. AUKHIL CHUNDER MOOKERJEE *v.* SHIB NARAIN GHOSE

[15 W. R., 527

HURO DOSS DOSTEDAR *v.* HURO PRIA

[21 W. R., 30

RAMASAMI PADEIYATCHI *v.* VIRASAMI PADEIYATCHI . . . . . . **3 Mad., 272**

273. ———— **Opinions not material to decision**—*Civil Procedure Code, 1877, s. 13—Judgment—Decree.*—In order to see whether a question is "*res judicata*" within the meaning of s. 13 of the Code of Civil Procedure, the former decree and the questions decided thereby must alone be considered. The words in s. 13 of the Code of Civil Procedure, "has been heard and finally decided by such Court," do not apply to an opinion expressed in the judgment on other issues not material for the purpose of the decree, though properly determined under s. 201 of the Code of Civil Procedure by the Court of first instance. *Niamut Khan* v. *Phadu Buldia, I. L. R., 6 Calc., 319,* and *Lachman Singh* v. *Mohan, I. L. R., 2 All., 497,* dissented from. DEVARAKONDA NARAS AMMA *v.* DEVARAKONDA KANAYA . . . **I. L. R., 4 Mad., 134**

274. ———— **Decree not in conformity with judgment**—*Civil Procedure Code, 1882, s. 13—Omission to make reservation in decree though in judgment.*—It is by the decree and not by the judgment that a question of *res judicata* must be decided. In 1881 *A* sued *K* and others claiming a declaration of his title to certain land and an injunction against interference with his possession. *K* claimed part of the land by purchase from *M.* The Munsif decreed for *A*, and this decree was confirmed on appeal by the District Judge, but in his judgment the District Judge recorded that *K*'s claim was not adjudicated upon, and that he should bring a fresh suit if he had any claim. In 1883 *K* sued *A* to recover the land, which he claimed by purchase from *M.* *A* pleaded that the claim was *res judicata* by virtue of the decree in the former suit. The District Munsif and, on appeal, the District Judge held that the claim was not *res judicata,* and decreed for *K.* *Held,* on appeal to the High Court that as no reservation was made in the decree of *K*'s right to bring another suit, the plea of *res judicata* was good, but that, under the circumstances, an opportunity should be given to *K* to apply to the District Court to have the decree in the former suit brought into conformity with the judgment. This having been done, the decree of the lower Courts was confirmed. AVALA *v.* KUPPU

[I. L. R., 8 Mad., 77

275. ———— **Finding in judgment not embodied in decree**—*Suit for enhancement of rent—Civil Procedure Code (Act X of 1877), s. 13.*—*N* brought a suit against *P* for enhancement of rent. *P*'s defence was, first, that no notice of enhancement had been given; secondly, that the rent was not enhanceable, as he and his predecessors in title had held it at a fixed rent from the date of the permanent settlement. The suit was dismissed on the ground that no notice had been given; but the Munsif stated in his judgment that he considered the rent enhanceable, because he did not believe in the genuineness of the documentary evidence produced by *P.* The decree merely ordered that the suit should be dismissed, the portion of the judgment as to the enhanceability of the rent not being embodied in the decree. *P* therefore had no right of appeal against that portion of the judgment. In a subsequent suit by *N* against *P* for enhancement of rent of the same tenure,—*Held* that, on the rule laid down by the Privy Council in *Soorjeemonee Dayee* v. *Suddanund Mohapatter, 12 B. L. R., 304,* and *Krishna Behari Roy* v. *Bunwari Lall Roy, I. L. R., 1 Calc., 144, P* was precluded, by the decision in the former suit, from denying that the rent of the tenure was enhanceable, although the decision on that point was not embodied in the decree. The material findings in each case should be embodied in the decree, and, if they are not, it is incumbent on the parties, to avoid their being bound by decisions against which they have no right of appeal, to apply to amend the decree in accordance with the judgment. NIAMUT KHAN *v.* PHADU BULDIA

[I. L. R., 6 Calc., 319

S. C. NIAMUT KHAN *v.* BHADU BULDIA

[7 C. L. R., 227

But *see* RUN BAHADUR SINGH *v.* LUCHO KOER

[I. L. R., 11 Calc., 301: L. R., 12 I. A., 23

276. ———— *Objections by respondent to decree—Civil Procedure Code, 1882, ss. 13, 540, 561, 584.*—In a suit to obtain possession of certain property, and to set aside a deed called a deed of endowment (wakfnama), on the ground that the defendant had fraudulently obtained its execution, the defendant pleaded (i) that the deed was a valid one, and (ii) that she was in possession of the property in satisfaction of a dower-debt, and her possession could not be disturbed so long as the debt remained unsatisfied. The Court of first instance held that the deed was valid, but that the defendant was entitled to remain in possession of the property till her dower-debt was satisfied and the Court passed a decree which merely dismissed the suit, without embodying the finding as to the deed. On appeal by the plaintiff to the District Judge, the defendant

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

filed objections under s. 561 of the Civil Procedure

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pealing therefrom under s 540, he must take steps under s. 206 to have the decree properly brought

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clared by the decree amount to no more than obiter dicta, and do not constitute a final decision of the kind contemplated by s. 13 of the Civil Procedure Code. *Held* also that in the present case the Judge was right

the validity or

that he may not have applied for amendment of the decree under s 206, or for review of judgment; and that, in the present case, the defeat in the decree would afford a good ground of appeal. *Per* MAH-

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matter directly and substantially in issue between the parties, and was adjudicated upon, the finding of the first Court upon that issue was not a mere *obiter*

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

whatever has the force of *res judicata* is necessarily appealable; that the word "from" as used in s. 540 or s. 584 and the expression "objection to the decree" in s 561 refer not only to matters existing upon the face of the decree, but also to those which should have existed, but do not exist there, and that the defendant in the present case was aggrieved or injured by the omission in the decree of the first Court, and was therefore entitled to file objections to it, and, for the same reason, to appeal to the High Court from the decree of the lower Appellate Court Also *per* MAHMOOD, *J.*, that it was doubtful whether the reliefs contemplated by ss. 206 and 623 were open to the defendant, but that, even conceding that she ought to have sought her remedy under either of these sections, her *neglect to do so did not make her*

JAMAITUNNISSA *v.* LUTFUNNISSA

[I. L. R., 7 All., 606

277. ——— **Incidental finding**—*Appeal from favourable decree.*—The plaintiff sued for a declaration that certain lands were his, and for possession of them Defendant No 1 claimed the ownership of the lands; defendant No 2 claimed to be mortgagee in possession The decree simply dis

Defendant No 1 now appealed on the ground that,

decree. ANUSUYABAI *v.* SAKHARAM PANDURANG

[I. L. R., 7 Bom., 464

278. ——— **Collateral issue**—*Dismissal for want of notice.*—Where a suit for arrears of rent at enhanced rates for a certain year was dismissed for want of notice, but the Court also found that the pottah set up by defendant was not genuine,—*Held* that the decision was no bar to a subsequent suit by the same plaintiff for arrears of rent at enhanced rates for a subsequent year. A matter which is directly adjudicated upon by a Court of competent jurisdiction can be treated as *res adjudicata*, but not

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

matters determined for collateral or incidental purposes only. JARDINE, SKINNER & CO. *v.* DWARKANATH CHUCKERBUTTY . . 14 W. R., 412

279. ——— *Finding in former suit.*—A finding in one suit to which *A* was a party is no bar against *A* in another suit, unless it is shown that the issue in question in the latter was raised in the former suit, and was a material issue in it. DAHOO MUNDER *v.* GOPEE NUND JHA [2 W. R., 79

NANAH *alias* NARAIN RAO *v.* JUMNA BAEE [2 Agra, 192

SALAHMUNISSA KHATOON *v.* MOHESH CHUNDER ROY . . . . . 16 W. R., 85

280. ——— *Issue material to rights of parties.*—Any issue which is material to the rights of parties in the matter of the suit between them, whether actually contested or not, shall not afterwards be raised in a subsequent suit between the same parties. DEOKEE NUNDUN ROY *v.* KALEE PERSHAD . . . . . 8 W. R., 366

RAMSOOKH *v.* TARA SINGH . . 3 Agra, 40

281. ——— When a Court of competent jurisdiction in deciding upon a particular subject-matter thinks it necessary to go into collateral facts for the purposes of its decision, its opinion on those facts is not conclusively binding in a subsequent suit which relates to a different subject-matter. MADHOO RAM DEY *v.* BOYDONATH DOSS [9 W. R., 592

282. ——— *Civil Procedure Code, 1859, s. 2—Matter incidentally in issue.*—The cause of action in a suit cannot be said to have been heard and determined in a former judgment, unless it was put in issue and directly determined. Any finding or observations merely bearing on such issue or any opinion incidentally expressed cannot be considered a finding upon the issue so as to make that judgment a determination of the cause of action within the meaning of Act VIII of 1859, s. 2. SHIB NATH CHATTERJEE *v.* NUBO KISHEN CHATTERJEE [21 W. R., 189

283. ——— *Civil Procedure Code, 1859, s. 2—Trial and determination of issues unnecessary for disposal of suit.*—A Court of competent jurisdiction, having tried and determined an issue arising in a suit on which the suit might have been disposed of, proceeded to try and determine another issue which also arose out of the pleadings, but the determination of which in that suit was not required for its disposal. *Held* that such Court was not bound under the circumstances to refrain from trying and determining such last-mentioned issue, and that the trial and determination of it could not be treated as a nullity and the issue could not again be tried and determined in another suit. MAN SINGH *v.* NARAYAN DAS . . . I. L. R., 1 All., 480

284. ——— *Issue not affirmed and denied—Requisites for res judicata.*—In order to constitute the bar of *res judicata,* it is not sufficient merely that an issue on the same point should have been raised in the former suit, although that issue may have been incidentally decided; but it must appear that the matter referred to was alleged by one party, and either denied or admitted expressly or impliedly by the other. SHAMA CHURN CHATTERJEE *v.* PROSONO COOMAR SANTIKAREE [5 C. L. R., 251

285. ——— *Suit to set aside will—Question as to validity of will—Suit for possession—Cause of action.*—*C,* a Hindu subject to the Mitakshara law, adopted *S,* and afterwards *B,* and made a will, whereby, after providing for his widow, the family worship, etc., he made a division of his real and personal property between his two adopted sons. Provision was also made for forfeiture by either of the sons in case they disputed the will, in which event the whole estate was to go to the other son. This will was registered and filed in the Collector's Court. *S* was subsequently disowned by *C* and declared to have forfeited his right to anything under the will. In 1859 *S* brought a suit against *C, B,* and certain persons who claimed portions of the property under deeds executed by *C,* to cancel those deeds, to cancel the will, to set aside adoption of *B,* and for maintenance. In this suit he alleged that *C* had no power to make any of the devises of real estate contained in the will, inasmuch as the whole estate, consisting of property inherited by *C* and property acquired by him from the income of such inherited property, was ancestral. The only issue raised in that suit referring to the will was whether it was assentrd to by *S.* The first Court found that it had been so assented to; that the adoption of *B* was valid; and that *S's* conduct justified *C* [illegible]: the suit was accordingly [illegible] to the High Court, and in his grounds of appeal raised the same contention as before, *viz.,* that the whole of the real property was ancestral, and therefore *C* had no power to dispose of it without his consent. The High Court in 1863 varied the decree of the first Court, and held that the will must be set aside so far as it affected the right of *S* in the ancestral property, but that the ancestral property only included that inherited, and not that acquired by *C* with the income of the inherited property. In a suit brought by *S,* after the death of *B* and *C,* against *B's* widow and the parties to the former suit, or their representatives, to obtain possession of the whole estate of *C* on the ground that both the inherited property and the property acquired from the income thereof were ancestral,—*Held* (reversing the decision of the High Court) that, although the issue as to the assent of *S* to the will clearly embraced only a portion of the controversy between the parties, the Court had jurisdiction, and indeed was bound, to decide whether or not the will was operative as to all or to any and what portion of the property, and that its decision on that point was binding on the parties. According to the general law relating to *res judicata,* where a question has been necessarily decided in effect, though not in express terms, between parties to a suit, they cannot

RES JUDICATA—*continued*

7 MATTERS IN ISSUE—*continued*

raise the same question as between themselves in any other suit in any other form S 2, Act VIII of 1859, does not prevent the operation of this general law The words "cause of action" in that section must be construed in reference to the substance rather than the form of the action SOORJOMONEE DAYEE *v* SUDDANUND MOHAPATTER

[12 B L R., P C, 304, 20 W R, 377
L R, I A, Sup Vol, 212

reversing the decision of the High Court in SUDANUND MOHAPATTUR *v* SOORJOMONEE DEBEE

[8 W R, 455

and on review 11 W R, 436

286 ——————— *Suit by C for mesne profits of land as devisee under will of A—Will held valid and C's claim allowed—Application by C as legal representative of A for execution of decree obtained by A—Question of validity of will again raised*—A obtained a decree against B for possession of certain land and then died Thereupon C applied for execution of the decree as A's legal representative relying upon a will made by A in his favour At the same time C filed a

ings He therefore reversed the Subordinate Judge's

separate suit. ... raised an issue as to the validity of the will relied upon by C in the suit for mesne profits was entitled to act upon his determination of that issue in the execution proceedings BHAVANISHANKAR *v* NARAN SHANKAR . I L R., 23 Bom., 536

287 ——————— *Suit to set aside adoption—Decree in former suit*—In a suit brought to set aside the adoption of the first defendant, to declare plaintiff's title to certain lands and for possession, the first defendant pleaded that the question of his adoption was *res judicata* in a former suit In that suit between the present plaintiff's son ... plaintiff) as ... first defendant ... defendant, the ... son of the undivided brother of the present plaintiff

288 ——————— *Failure to*

BHAGWAN DASS

[1 B L R., A C., 68 10 W R., 100

289 ——————— *Suit to set aside adoption*—B as adopted son and heir of G, instituted a suit to set aside certain patni leases under which certain persons claimed to hold land, which had belonged to G The defence was that B was not the legally adopted son of G and an issue on this point having been settled A who ... was made ... f 1850 and ... that B was the duly adopted son of G *Held* that a subsequent suit by K against B to set aside the adoption could not on the principles laid down in the case of *Soorjeemonee Dayee v Suddanund Mohapatter 12 B L R, 304* be maintained *Kriparam v Bhagwan Das 1 B L R, A C 68* overruled KRISHNA BEHARI ROY *v* BUNWARI LALL ROY

[I. L R., 1 Calc., 144 25 W R., 1

S C KRISHNA BEHARI ROY *v* BROJESWARI CHOWDHRANEE L. R., 2 I. A., 283

affirming the decision of the High Court in KRISTO BEHAREE ROY *v* BUNWAREE LALL ROY

[19 W R., 62

Followed in RUN BAHADUR SINGH *v* LUCHO KOER . I. L. R., 11 Calc., 301
[L. R., 12 I. A., 23

290 ——————— *Civil Procedure Code s 2—Cause of action*—A a Hindu of Gya died leaving a sister, B and C the son of a deceased sister On A's death B took possession of the property left by A In a suit by C against B for recovery of possession thereof as heir to his maternal uncle the Court of first instance held that B should retain possession of the property during her lifetime without power of waste, and that on her death C should be entitled to the possession thereof

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

This was reserved by the High Court on appeal, who held that the decree should have been simply a decree of dismissal of the plaintiff's suit. *B* died, leaving an adopted son, *D*. *C* sued *D* for recovery of possession of the property, the subject-matter of the former suit, on the ground that *D* was not the adopted son of *B*, and that *C*, who came within the class of bandhus, was entitled to succeed to the property left by *A* and *B*, there being no nearer heir in existence *Held* that s. 2, Act VIII of 1859, did not bar the suit MOHUN LAL BHAYA GYAL *v.* LACHMAN LAL 5 B. L. R., 663 : 14 W. R., 73

291. ——— *Civil Procedure Code, 1882, s. 13—Estoppel—Privity in estate.*—A competent Court having decided upon an issue directly raised in a suit brought by a person alleging himself to have been adopted that this adoption had not taken place, it was held that the present suit was barred under Act X of 1877, s. 13, as *res judicata*, having been brought by the son of the defendant in the former suit, claiming through his father, to establish the same adoption; and that the section applied, although the suits related to different properties. The establishment of the adoption alleged in the first suit would have obliged the father of the present plaintiff to share with the adopted son his ancestral estate. That adoption having been negatived, the son, in this suit, to be estopped from making title on ... found that adoption had placed ... from whom he claimed to inherit, in the relation of father's brother to him. VENKATA MAHIPATI GANGADHARA RAMA RAU *v.* BUCHI SITAYYA. PITTAPUR RAJA *v.* BUCHI SITAYYA . . . I. L. R., 8 Mad., 219

S. C. RAJAH OF PITTAPUR *v.* BUCHI SITAYYA GARU [L. R., 12 I. A., 16

292. ——— Issue in former suit—*Former decree in favour of plaintiff, but issue as to adoption found against him—No appeal open to plaintiff against that finding—Subsequent suit to recover property on strength of adoption.*—One *S* died in September 1878, leaving a widow *B*. The year before his death his only son (Bala), a child eight years old, had left his home and was never heard of again. A few days before his death, *S* adopted the plaintiff (his nephew) and executed a deed of adoption, which stated that he had no hope that his son Bala was alive, and that he had therefore adopted the plaintiff. The deed further declared the plaintiff to be the owner of all *S*'s property with all the rights of a natural son, but provided that, in the event of the lost son returning, he should have half. In 1892 the plaintiff, as *S*'s adopted son, brought this suit to recover some of *S*'s property, which was in the hands of the defendants, who claimed it as *S*'s heirs. They (*inter alia*) impeached the plaintiff's adoption. The plaintiff had previously sued one *K*, the father of the defendants, in another suit (No. 804 of 1885) to recover certain other lands. In that suit it had been held that the plaintiff was not the adopted son of *S*, but that nevertheless he was entitled to recover the lands sued for on the strength of the above-stated deed of adoption a decree was passed for the plaintiff. ... issue as to adoption in that suit was not *res j*... in the present suit. In the former suit the ... recovered upon the deed. He could not have appealed from the decree which was in his favour, nor could he, under the Civil Procedure Code (Act ... of 1882), appeal from the finding upon the issue which was against him. Upon that ... had not been a final decision. RANGO BALAJI *v.* MUDIYEPPA . . I. L. R., 23 Bom., ...

293. ——— Pending suits—*Civil Procedure Code, ss. 12 and 13—Malikana—reliefs claimed.*—For the purpose of the *res judicata*, it is not essential that the matters of the present and the former ... should be identical. Where a recurring ... the subject of claim, a previous judgment dismissing a suit between the same parties upon findings ... do not go to the root of the title on which the claim rests, but relate merely to a ... item instalment, cannot operate as *res ju... a*. But such previous judgment negatives the ... and obligation ... same question ... cannot ... item of the title by claiming a subsequent instalment. *Rajah of Pittapur* v. *Buchi Sittya Garu, L. R., 12 I. A., 16*, referred to. The pendency of litigation regarding rent, malikana, or other demand for one year does not, under s. 12 of the Civil Procedure Code, bar a suit between the same parties in which the same demand is made for a subsequent year, inasmuch as the reliefs claimed in the two cases are different. Ss. 12 and 13 of the Code compared. On the 17th August 1885 a suit was instituted for recovery of an annual ... allowance for the years 1290, 1291, and 1292 Faslis. On the 5th October 1885 the Munsif dismissed the suit. On the 10th March 1886 the Subordinate Judge on appeal reversed the Munsif's decree, and decreed the suit. On the 21st June 1886 the defendant appealed to the High Court, which on the 4th July 1887 reversed the Subordinate Judge's decree, and restored that of the Munsif, on the ground that the plaintiff had never received and was not entitled to malikana. Meanwhile, on the 8th June 1886, the plaintiff brought another suit against the defendant for recovery of malikana for the year 1293 Fasli, which accrued after the institution of the former suit. By judgments dated respectively the 21st August and 27th November 1886, the lower Courts decreed this suit holding that the Subordinate Judge's decree of the 10th March 1886, in the former suit, operated as *res judicata* and was conclusive in favour of the plaintiff's title to the malikana. On the 17th May 1887 the defendant appealed to the High Court, and on the 16th May 1888 (the High Court having in the interval dismissed the former suit by its judgment of the 4th July 1887) ... on for hearing. *Held* that the ... suit by either of the lower Courts ... s. 12 of the Civil Procedure Code by reason of the fact that, at the time of such trial in August and November 1886, the previous litigation between the

JUDICATA—*continued*

7 MATTERS IN ISSUE—*continued*

s was pending in second appeal before the High BALKISHAN v KISHAN LAL [I L R., 11 All, 148

294. ——————— *Civil Procedure Code (1882), ss 12 48, 244—Proceeding in* *execution*—A suit, according to s 48 of the Code of Civil Procedure, must commence with a plaint, and proceeding which is capable of terminating in a decree or an order having the force of a decree cannot, on that ground alone, be deemed to be a suit within the meaning of the Code, if it has not commenced with a plaint Such a proceeding is, in strictness, only a proceeding in a suit *Semble*—That a proceeding under s 244 is not a suit within the meaning of s 12 of the Code of Civil Procedure. VENKATA CHANDRAPPA NAYANIVARU v VENKATARAMA REDDI I. L R, 22 Mad, 256

295 ——— Issue as to rate of rent—*Possession—Suit for kabuliat—Decision on right of occupancy*—A suit for a kabuliat in which the

[9 W. R, 595

296 — — Issue as to amount of rent—*Suit for rent—Civil Procedure Code 1859, s 2*—*Held*, with reference to Act VIII of 1859, s 2, that where the cause of action is the same in substance in both suits and where the former suit was so constituted that the parties to the present suit were in direct contest with each other and had full opportunity of asserting their rights, the decision in the former suit is *res adjudicata*, *e g*, decrees passed in suits for patni rent in which the jumma payable is put in issue are decisive as to the amount of such jumma RAKHAL DOSS SINGH v HEERA MOTEE DOSSEE 22 W. R, 283

297. — Issue as to title *Subsequent suit for declaration of right*—In a former suit A G (appellant) sought to establish his right in execution of his decree against R P, to have a talukh sold as belonging to R P D S, a defendant in that suit, pleaded that the whole talukh had been conveyed to him absolutely by his father R P under a hibbanamah An issue was raised and tried whether the talukh belonged to D S or not, and it was expressly decided that it did not, and that the zamindari was liable to be attached and sold in execution of A G's decree as belonging to R P *Held* that it was not open to D S or to plaintiff claiming under him in a subsequent suit to come into Court and ask for a declaration of his right to a half share of the talukh as against A G ABDOOL GUNNEE v KISHANUND DOSS *alias* KEBUL RAM DOSS [17 W R., 350

298 *Civil Procedure Code, s 13, expls I and II, and s. 44*—L was the owner of a 4 anna share in a village On the 1st March 1880, his childless widow R, and his nephew B, who had separated from his two brothers and

RES JUDICATA—*continued*

7 MATTERS IN ISSUE—*continued*

lived for some years with both L and R, sold to S one third of the 4-anna share The brothers of B sued the vendors and the vendee to enforce a right of pre emption, alleging that they, as well as B, had acquired and entered into exclusive possession of the estate of L as his heirs In the second appeal in this suit the High Court held that, as it was proved that the 4-anna share was L's separate estate, and R had succeeded to it and was in possession of it, and thus the plaintiffs had not established a title to, or acquired possession of, any part of the share, the plaintiffs were not in a position to assert a preferential claim to purchase the property in dispute The plaintiffs also pleaded that the question of the right and title asserted by [illegible] been tried a [illegible] Court reject [illegible] had been based merely on the allegation of *de facto* possession and that their claim was to obtain by purchase one-third share only, and not for any remedy in respect of their right to possession by inheritance of the entire 4-anna estate Subsequently to this decision, the same plaintiffs, alleging equal rights with B as reversionary heirs of L, sued the same defendants for a declaration of the incompetence of R, the widow, to alienate the property, and that the sale deed might be declared, as against them, null and of no effect The cause of action was stated to be the execution, on the 1st March 1880, of the deed of sale *Held* that the plea of *res judicata* failed The matter now substantially in issue between the [illegible]

s 13 It was not matter which might and ought to have been made the ground of attack in the former suit, within expl II The law does not require a plaintiff at once to assert all his titles to [illegible]

SHEO RATAN SINGH v SHEOSAHAI MISR [I. L R., 6 All, 358

299. Issue as to account—*Suit for money due on bond—Act X of 1877, s 13*—[illegible] Munsif for a bond [illegible]

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

was not aggrieved by the Munsif's decree. The Division Bench before which the appeal came, on the 10th August 1877, holding that *R* was not competent to appeal to the Subordinate Judge, set aside the proceedings of the Subordinate Judge. In deciding the case the Division Bench made certain observations to the effect that the account between the parties was not finally settled, but might be taken again in a fresh suit. In November 1877, *M* instituted a fresh suit against *R* to recover the bond on payment of R188-7-4, the sum found by the Munsif in the former suit to be due by him to *R*. ***Held***, on the question whether the finding of the Munsif in the former suit was final and conclusive between the parties or the account might be again taken, that that finding, being a finding on a matter directly and substantially in issue in the former suit, which was heard and finally decided by the Munsif, was final and conclusive between the parties, and the account could not be again taken. *Held* also that the observations of the Division Bench in the former suit were mere "*obiter dicta*" which did not bind the Courts disposing of the fresh suit. MOHAN LALL *v.* RAM DIAL . . . . I. L. R., 2 All., 843

300. ——— **Issue as to satisfaction of money-bonds**—*Subsequent suit on bonds—Civil Procedure Code, 1882, s. 45—Matter directly and substantially in issue—Meaning of "suit" in Civil Procedure Code, 1882, s. 13.*—*S* sued *K* for four bonds, alleging that the same had been satisfied. *K* had formerly sued *S* on two of these bonds. *S* had alleged in defence of that suit that those two bonds, as also the other two, had been satisfied. It was decided in that suit that not one of the bonds had been satisfied. *Held* by PETHERAM, *C.J.*, and OLDFIELD, BRODHURST, and DUTHOIT, *JJ.*, that the only issue in the former suit which had to be decided being whether the bonds on which that suit was brought had been satisfied or not, the second suit was, under s. 13 of the Civil Procedure Code, *res judicata* only in respect of those bonds, and not in respect of the other two bonds. The Court which tried the former suit had not jurisdiction to try the subsequent suit. *Per* MAHMOOD, *J.*—This being so, if the word "suit" in s. 13 were taken literally, it might, with some plausibility, be contended that there was no *res judicata* in respect of any of the bonds. The word "suit," however, must be understood to mean such a matter as might have formed the subject of a separate suit independently of the special provisions of the Civil Procedure Code, such as s. 45, which enables this plaintiff to unite several causes of action in one and the same suit. Adopting this interpretation, it was clear that the two bonds which were the subject of the former suit could not be allowed to form the subject of litigation again. As to the other two bonds, which were not the subject-matter of the former suit, they did not, in the former suit, constitute a "matter directly and substantially in issue" within the meaning of s. 13, and, even if they were 'directly and substantially in issue,' the decision in the former suit would not support the plea of *res judicata*, because the Court which tried that suit was not a Court of jurisdiction competent to try the subsequent suit in which the plea was raised. SHEORAJ RAI *v.* KASHI NATH . . . I. L. R., 7 All., 247

301. ——— **Issue as to validity of mortgage**—*Suit for possession—Civil Procedure Code, 1877, s. 13, expls. I and II.*—*H*, the proprietor of a one-third share of a certain undivided estate, made a gift of such share to *P*. He subsequently, in February 1875, gave a mortgage of such share, in his capacity as *P*'s guardian, to *N* and *S*, the two other co-sharers of such estate. In March 1878 *P*, having attained his age of majority, brought a suit as a co-sharer of such estate, under such gift, agains[t] *N* and *S* for possession of certain land appertainin[g] to such estate, on the ground that they were usi[ng] such land as if they were the sole proprietors there[of]. The lower Appellate Court, observing that su[ch] land was the property of the three co-sharers, t[hat] the mortgage of *P*'s right to *N* and *S* did [not] affect those rights as such, and that *N* and *S* were [not] justified in using such land as if they were [the] exclusive proprietors thereof, gave *P* a decre[e for] possession of one-third share of such land. *N* [and *S*] appealed to the High Court on the ground t[hat *P*] should not have been awarded possession, a[s they] were in possession of such land as mortgagees. [The] High Court remanded the cases for the determ[ination] of the issue thus raised by *N* and *S* [. The] lower Appellate Court found that *N* and *S* [were] [mo]rtgagees of *P*'s share of such estate as mo[rtgaged] [by *H*] above [...] possession of *P*'s share of such estate as mo[...] under the mortgage made by *H* above [...] *P* did not tak[e] [ob]jection to this finding; and it was adop[ted by the] High Court and embodied in its final decree. [In ...] ber 1879 *P* sued *N* for possession of his sh[are of such] estate, claiming under the gift from *H* a[...] that the mortgage of such share by *H* to *N* [...] *Held* that, inasmuch as such mortgage [was] substantially in issue in the former sui[t ...] in issue in the second suit was *res ju[dicata]* [...] of Act X of 18[77,] expls. I and II, s. 13 of Act X of 18[77 ...] SINGH *v.* PHULMAN SINGH . I. L. R[...]

302. ——— **Issue as to** [...] **instalment bond**—*Civil Procedu[re Code ...] s. 13—"Subject-matter" of suit.*—T[...] bond payable by instalments sued [...] four instalments, claiming, with [...] terms of such bond, interest on such [...] the date of such bond. The oblig[...] that suit that, on the proper co[...] bond, the interest on such insta[lments ...] calculated from the dates of def[ault ...] obtained the decree for interest [...] obligee subsequently again sued t[...] instalments, again claiming inter[est ...] ments from the date of such [...] contended again in the secon[d ...] should only be calculated from [...] *Held* that the question as to [...] interest due on the defaulting [...] gible under the terms of such [...] It is the "matter in issue," not [...]

RES JUDICATA—*continued*

7 MATTERS IN ISSUE—*continued*

of the suit, that forms the essential test of *res judicata* in s 13 of Act X of 1877. PAHLWAN SINGH *v.* RISAL SINGH I. L. R, 4 All., 55

303 ——— Issue as to right to property—*Civil Procedure Code, s. 13, expl I—Issue previously determined*—*N* sued *W* for a

kiln belonged to *W*, which the Court of first instance decided in *N*'s favour *N* eventually obtained a

WILAITI BEGAM *v.* NUR KHAN [I. L. R., 5 All., 514

304. ——— Issue as to possession—*Suit for recovery of produce of land—Civil Procedure Code 1877, s 12—Matter in issue in former suit*—Pending the final hearing in appeal of a suit for

the recovery of the produce, was not barred by the previous suit. BISSESSUR SINGH *v* GUNPUT SINGH [8 C. L. R., 113

305. ——— Issue of law erroneously

does not prevent a Court from deciding the same question, arising between the same parties in a subsequent suit, according to law. In a suit in 1850 between the Tenkalais and Vadakalais, rival religious sects, represented by the plaintiffs and defendants respectively, the Vadakalais having endeavoured to open a temple for public worship in a certain public street, were, by the decree of the Sudder Court, prohibited from erecting a temple or instituting public worship on the spot of ground objected to by the Tenkalais and which lay within the range of the Tenkalai temple, *i.e.*, within the usual range of the processions conducted in connection with the temple worship In 1879 the Vadakalais opened a temple for public worship on another site, their private property, in the same street.

RES JUDICATA—*continued.*

7 MATTERS IN ISSUE—*continued*

Held that the decree of the Sudder Court in the former suit was no bar to the action of the Vadakalais PARTHASARADI *v* CHINNAKRISHNA [I. L. R., 5 Mad., 304

Dissented from in RAI CHURN GHOSE *v* KUMUD MOHUN DUTTA CHAUDHARI 1 C. W. N., 687

Same case in review I. L. R., 25 Calc., 571 [2 C. W. N., 297

306 ——— Point of law decided in previous suit between same parties—A point of law, though decided in a suit between the same parties, can never be *res judicata* CHAMAN LAL *v* BAPUBHAI I. L. R., 22 Bom., 669

307. ——— Issue as to validity of grant—*Issue not decided in former suit.*—In a suit to recover, with mesne profits and other incidents a jerayati village alleged by the plaintiff to form part of the zamindari, and to be wrongfully held by defendant by virtue of the execution of a decree of the late Commissioner of the Northern Circars passed in 1844, the defendant pleaded that he held on a permanent lease subject to a fixed quit rent, that he and his ancestors had held on that tenure since and previously to the permanent settlement and

308 ——— Issue as to proprietorship of land—*Civil Procedure Code, 1877, s 13—Suit to recover land under rental agreement—Subsequent suit for ejectment*—In 1874 *V* sued *P* to recover

309. ——— Issue as to tenancy—*Civil Procedure Code, 1882 s 13—Question decided by decree*—A landlord, having tendered a pottah at a

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

had been proved by the tenants. The suit was dismissed on the ground that the pottah tendered was not one which the tenants were bound to accept under Act VIII of 1865 (Madras). The landlord then sued in the Revenue Court to compel the tenants to accept a pottah for Fasli 1291 (1881-82), and the tenants again put forward the same plea. *Held* that the question whether the tenants were entitled to hold permanently at a lighter rate without exchange of pottah and muchalka was not *res judicata* by virtue of the decree in the former suit. MUTHUKUMARAPPA REDDI *v.* ARUMUGA PILLAI I. L. R., 7 Mad., 145

310. ——— Issue as to transferability of tenure—*Estoppel—Civil Procedure Code, 1877, s. 13.*—Plaintiff having brought a suit to recover damages for the removal by the defendants of certain crops, alleging (1) that he was transferee of the jote upon which the crops were, and (2) that he had purchased the crops, it was objected that the transfer to the plaintiff was invalid. It being found that the crops in question had been purchased by the plaintiff as alleged by him, he obtained a decree for damages for their removal. The plaintiff now brought a second suit as transferee of the jote to recover possession of it from the defendants, who again pleaded that the transfer was invalid. *Held*, reversing the decision of FIELD, J., that the defendants were not estopped, under s. 13, expl. II, of the Civil Procedure Code, from setting up that defence, inasmuch as the question of the transferability of the jote was immaterial in the first suit and had not in fact been determined, and the question of estoppel was not raised by the parties themselves. CHURN MANJEE *v.* ISHAN CHUNDER DHUR . 9 C. L. R., 474

311. ——— Issue as to right of pre-emption—*Civil Procedure Code, 1882, ss. 562, 588 (28)—Second appeal—Civil Procedure Code, ss. 565, 566—Determination of case by High Court.*—In a suit for pre-emption, based on the wajib-ul-urz of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village. The lower Appellate Court, dissenting from this opinion, reversed the first Court's decree, and remanded the case under s. 562 of the Civil Procedure Code for a decision on the remaining question of fact, *viz.*, the amount of the consideration for the sale. On appeal from the order of remand, the High Court, on the 3rd January 1884, observed that it was not disposed to interfere with the finding of fact that the plaintiffs had a right of pre-emption, and accordingly dismissed the appeal, but added that the Judge was in error in remanding the case under s. 562 of the Code, that his order must so far be set aside, and that he should proceed under s. 565 or s. 566, as might be applicable. The Judge, on receipt of this order, replaced the case on his file, remitted an issue to the Court of first instance, under s. 566, as to the amount of consideration, and, accepting the first Court's finding upon that issue, decreed the plaintiff's claim. In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs had never asserted, inasmuch as he had treated the right of pre-emption which was in issue as one arising from custom, and not, as alleged by the plaintiffs, as arising from a contract between the ancestors of the parties. All the evidence necessary to the determination of the case was on the record. *Held* by the Full Bench that the defendants were not prevented by the operation of the High Court's order of the 3rd January 1884 from disputing the right of pre-emption, inasmuch as that order was a decision of a merely interlocutory character passed in the same suit, and the questions of fact involved therein were decided only so far as was necessary for the purpose of passing the order, and it could not be regarded as determining the main question in the suit which was still open, and must be decided in the final decree in the suit. *Per* STRAIGHT, J., that the jurisdiction of the High Court in appeal under s. 588 of the Code from the Judge's order of remand was, like the jurisdiction of the Judge in passing the order, limited by the terms of s. 562; and hence the remark made in the High Court's order, dealing with the plaintiffs' right of pre-emption, could only be regarded as an *obiter dictum*, and not as determining any question as to the pre-emptive right. DEOKISHEN *v.* BANSI [I. L. R., 8 All., 172

312. ——— Question of title—*Question collaterally in issue.*—A suit to have a declaration of right and to set aside a thakbust proceeding in respect to certain lands is not barred by s. 2, Act VIII of 1859, by reason of the decision in a previous suit for the value of fruit growing on that land in which the question of title to the land came collaterally in issue. MAHIMA CHANDRA CHUCKERBUTTY *v.* RAJKUMAR CHUCKERBUTTY [1 B. L. R., A. C., 1: 10 W. R., 22

313. ——— *Incidental decision of title—Suit afterwards for possession.*—*A*, alleging himself the owner of a certain garden, brought a suit for damages against *B* and *C* for forcibly carrying off fruit grown in such garden. In this suit the question whether *A* was exclusively in possession of the garden was incidentally raised and decided against *A*. Thereupon *A*, who in the meantime had been ousted from possession, brought a subsequent suit in which *B* and *C* together with others were co-defendants, in which he claimed an undivided share in the same garden. *Held* that under the circumstances the doctrine of *res judicata* did not apply, and that such suit was maintainable. DOORGA RAM PAL *v.* KALLY KRISTO PAUL [3 C. L. R., 549

314. ——— *Civil Procedure Code, 1877, s. 13—Former suit on different cause of action for same land.*—In 1878 plaintiff sued to recover certain land from defendant on the ground that she, being the owner, had made an oral lease of the land to the defendant in 1876. Issues were framed both as to title and as to the letting, but the Munsif, without trying the question of title, dismissed the suit on the ground that the oral lease was

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued*

not proved *Held* that a fresh suit to recover possession of the land on the ground of title was not barred as being *res judicata* Expl. (3) of s 13 of the Code of Civil Procedure refers to relief applied for which the Court is bound to grant with *reference to the matters directly and substantially in issue. Rheeka Lall* v *Bhuggoo Lall, I L R, 3 Calc, 23,* and *Denobundhoo Chowdry* v *Kristomonee Dossee, I L R, 2 Calc, 152,* dissented from THYILA KANDI UMMATHA v THYILA KANDI CHERIA KUNHAMED

[I L R, 4 Mad., 308

315.—————— *Civil Procedure Code, 1859, s 2—Collateral decision on title*—K died leaving a widow, *M*, as his heir *M* also died leaving a will in favour of *B*, who accordingly applied for letters of administration with the will annexed This application was refused by the [illegible] under Act [illegible] sought his [illegible] udge, who [illegible] husband, the widow's will passed nothing to plaintiff, and that, although the evidence in favour of *G* was [illegible]

Judge operated as a bar to the questioning of his title,—*Held* that the principle of *res judicata* did not apply GOOROO CHURN SIRCAR v BRIJA NATH DHUR 24 W. R., 111

316.—————— *Issue incidentally raised—Suit for possession*—In 1852 *T* ac[illegible]

agent of *X* to *G* In 1869 *G* sued *T* to recover possession of [illegible] as being part of plot [illegible] and [illegible] decree against which *T* appealed to the [illegible]

was put up for sale, and purchased by the present respondent In 1872, the respondent, who was unable to get possession of his purchase, obtained *leave to be admitted a party* respondent in the appeal to the Privy Council, and filed a case averring that the interests of the original respondents had ceased, and that he was pending the appeal, precluded from enforcing his rights The Privy Council held that the plaintiff *G* had not proved that plot Y included plot X, but they stated that they did not adjudicate upon any question of title between the respondents on that appeal, or *X* or any other person's interest in plot Y The present respondent subsequently sued *T*'s representative for possession of plot X as being parcel of plot Y. *Held*, reversing the judgment of the High Court, that the respondent's claim was *res judicata* by reason of the previous judgment of the Privy Council BELCHAMBERS v. ASHOOTOSH DHUR 7 C. L. R., 308

RES JUDICATA—*continued*

7. MATTERS IN ISSUE—*continued*

317. —————— *Order of remand—Decision of question of title—Suit for possession*—In 1814 litigation commenced between a zamindar and his tenants by reason of his having dispossessed them of lands held under a jote tenure, and a decree having been obtained by the tenants the zamindar assessed the jote lands at a certain rent. Subsequently this rent fell into arrear and under a decree the jote lands were in 1836 sold in satisfaction of the arrears to *J*, who was put in possession in 1839 Another suit, which was pending between the tenants and their mortgagee, in which a question arose whether these jote lands were included in the mortgage, was decided in favour of the mortgagee in 1841 *J*, the then jote tenant, was no party to that suit, and continued in possession of his jote lands. Disputes arose, and by an order of the Sudder Court in 1845 the jote lands were directed to be put in possession of the mortgagee In 1856 a suit was brought by *J's representative to set aside that order* and to recover possession of the jote lands. The Privy Council held that, as *J* the jote tenant was not a party to the suit under which the decree was made in 1841, the decree was not binding upon him or those deriving title through him and remanded the case in order that the issue whether the land was parcel of the jote or not might be tried. *Held* that this order of remand was conclusive that the question of the title of the representatives of *J* to the jote lands could not be re-opened. JUGGODUMBA DOSSEE v TARAKANT BANERJEE 6 C L. R., 121

318 —————— *Suit for possession dismissed on ground of want of title in vendor—Suit for recovery of purchase-money in which title set up as a defence*—On 8th February 1889 the defendant sold to the plaintiff, under a registered conveyance containing no express covenant for title, land of which he was not in possession and the purchase-money was paid. The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title The plaintiff now sued on 7th February 1895 to recover with interest the purchase-money and the amount of costs incurred by him in the previous litigation *Held* that the defendant was not entitled to give evidence of his alleged title, and that the plaintiff was entitled to the relief sought by him KRISHNAN NAMBIAR v KANNAN I. L R, 21 Mad., 8

319 —————— *Civil Procedure Code, 1882 s. 13—Suit for right to malikana and for registration of names—Decision in previous suit—Court of competent jurisdiction*—Previous to 1825 dearah X accreted to mouzah Y, and some time before 1860 the maliks of Y executed two conveyances in favour of *A* and *B* respectively. In 1860 *A* sued *B* in the Munsif's Court for possession [illegible]

mouzah itself, whether [illegible] acquired the right to the share in X, which he

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

claimed. In 1866 the Collector refused to recognize *B*'s right to malikana payable in respect of the share in X which had been the subject of the suit in 1860 or to register his name in respect thereof, but *acknowledged A's right thereto, relying on the* decision of the Civil Court in the suit between *A* and *B*. Subsequently *B*'s representatives, *C* and *D*, in 1876 sought to have their names registered in respect of the same malikana, but they were opposed by *E*, who alleged that *A* had been acting throughout as his benamidar. Their application was eventually disallowed on reference by the Collector to the Civil Court. *C* and *D* thereupon instituted the present suit against *E* in the Court of the Subordinate Judge for a declaration of their right to the malikana and for a reversal of the order refusing to allow their names to be registered in respect thereof. *Held* that the suit was barred as *res judicata*, on the ground that the right to malikana was substantially the same question as the proprietary right to the share in the dearah, and that this issue had been tried and decided in the suit in 1860 in favour of *A*, who must be taken to be *E*. In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed, and when the question of the proprietary right has been decided in a previous suit between the same parties, a subsequent suit for malikana will be barred as *res judicata*. GOPI NATH CHOBEY *v.* BHUGWAT PERSHAD

[I. L. R., 10 Calc., 697

320.— ———————— *Finality of decision—Suit for possession—Civil Procedure Code (Act X of 1877), s. 13.*—In a suit to recover possession of certain land, where it appeared that there had been a previous suit between the same parties with respect to the same land, in which the then plaintiffs sought to have their possession confirmed, and that in that suit the lower Courts had decided the case both on the question of title and of possession, but on special appeal the High Court had dealt only with the question of possession, and in dismissing the appeal had not gone into the question of title, and the defendant in that suit subsequently sued to recover possession of the land,—*Held* that the question of title was still open between the parties, and had not been heard and finally decided by a Court of competent jurisdiction in a former suit within the meaning of s. 13 of Act X of 1877. GUNGABISHEN BHUGUT *v.* ROGHOONATH OJHA

[I. L. R., 7 Calc., 381: 9 C. L. R., 34

321. ———————— *Landlord and tenant—Suit for ejectment—Issue previously heard and determined—Estoppel—Civil Procedure Code, 1882, s. 13.*—In a suit by a landlord against his tenant for ejectment the defences were (1) no notice to quit had been served; and (2) the tenure was a permanent one. The suit was dismissed on the first ground, the Court holding at the same time that the tenure was not a permanent one. In a subsequent suit for ejectment from the same holding brought by the same plaintiff against the same defendant the defences were: (1) the tenure was permanent; and (2) the plaintiff was estopped by the conduct of his predecessor in title from asserting as against the defendant that the tenure was not a permanent one. The lower Appellate Court found the question of estoppel in favour of the defendant and dismissed the suit. On appeal to the High Court,—*Held* that the decision was right, and must be affirmed. *Semble*—That where a former suit between the same parties in respect of the same subject-matter has been dismissed on a preliminary point, a finding in that suit on the merits in the plaintiff's favour will not bar the defendant from putting forward the same defence on the merits in a subsequent suit by the same plaintiff against the same defendant. *Semble*—That the case of *Niamut Khan v. Phadu Buldia, I. L. R., 6 Calc., 319,* has been impliedly overruled by the case of *Run Bahadoor Singh v. Lucho Koer, L. R., 12 I. A., 23 : I. L. R., 11 Calc., 301.* NUNDO LALL BHUTTACHARJEE *v.* BIDHOO MOOKHY DEBEE

[I. L. R., 13 Calc., 17

322. ———————— *Suit for ejectment—Plea of right of occupancy—Issue not finally decided.*—*A* as ticcadar brought a suit to eject *B* from certain lands which he claimed as majhes land or land which is ordinarily cultivated by the landlord himself or by the ticcadar. *B* pleaded his right of occupancy. The Court found that the land was majhes land, but dismissed the suit on the ground that *A* had failed to prove notice to quit. Afterwards *A* brought a suit against *B* for ejectment from the same land. *B* again pleaded his right of occupancy. *Held* that *B* was not precluded from raising the same plea, inasmuch as the finding in the previous suit upon the issue whether *B* was an occupancy tenant was not conclusive against him: nor could that issue be said to have been "finally decided" in that suit within the meaning of s. 13 of the Civil Procedure Code. *Ran Bahadur Singh v. Lucho Koer, I. L. R., 11 Calc., 301,* and *Nundo Lall Bhuttacharjee v. Bidhoo Mookhy Debee, I. L. R., 13 Calc., 17,* relied on. THAKUR MAGUNDEO *v.* THAKUR MAHADEO SINGH . . I. L. R., 18 Calc., 647

323. ———————— *Civil Procedure Code, Act X of 1877, s. 13—Matters directly and substantially in issue in a suit.*—Where a decree awarding to one of the parties money deposited in a treasury by a third party as the compensation for land taken by the latter for railway purposes, was based upon the right to the land, the question of title having been directly and substantially in issue between the parties,—*Held* that the contest of title was conclusive between them under s. 13 of Act X of 1877. In a suit brought by a ghatwal to resume, as determinable at will, an under-tenure granted by one of his ancestors of land, part of the ghatwali mehal, it was alleged for the defence that the under-tenure was permanent. A prior judgment upon conflicting claims made by the ghatwal and the under-tenure-holders to receive the above-mentioned compensation-money, which had been paid in respect of lands in part comprised in the under-tenure, determined that the ghatwal was entitled to the money being founded on the under-tenure holders having been in possession of it by the mere sufferance of the ghatwal who could put an end to it

RES JUDICATA—*continued.*

7 MATTERS IN ISSUE—*continued*

at any time *Held* that the question whether the ... hav no been directly

324. ———————— *Question incidentally decided—Boundary dispute* —Where, in a suit for some land, a Judge had considered it necessary to find out the boundary between two villages, and had given a decision in favour of one of the parties, who in a second suit of the same kind but with reference to some other land, brought in the former decision to show that the land in dispute in the second suit must be his if the finding as to the village boundary in the former suit was correct, *Held* that the finding as to the village boundary in the former suit was conclusive only as to the land in dispute in the former case, but did not make the former decision conclusive as to the boundary line itself MONI ROY *v* RAJBUNSEE KOOER [25 W. R., 393

325 ———— Defence not raised in previous suit—*Civil Procedure Code (Act X of 1877), s 13, expl (ii)—Estoppel*—Expl (ii) of s. 13 of Act X of 1877 was meant to apply to a case where the defendant has a defence which, if he had so pleased, he might, and ought to, have brought ... forward the suit ... ircum- ... adverse decree as if he ... he is equally estopped from setting up that defence, in any ... suit under similar circumstances The expla...

which it was not necessary, for the purposes of ... suit, to decide at all. GHURSOBHIT AHIR *v* RAMDUT SINGH I. L R, 5 Calc, 923. 6 C. L. R., 537

326 ———————— *Party raising only one defence, having others—Civil Procedure Code 1859, s 2*—When a plaintiff claims an estate and the defendant, being in possession and knowing ... only one

Where therefore the defendants ... in the plaintiff's possession and sued him to recover *possession of it, and the plaintiff resisted the suit* merely on the ground that he was the auction purchaser of it, and the defendants obtained a decree and the plaintiff then sued claiming a right of pre-... which he ... —*Held* ... e such ... All, 75

JADU LAL *v* RAM GHOLAM [I. L. R., 1 All, 316

RES JUDICATA—*continued*

7 MATTERS IN ISSUE—*continued*

327. ———————— *Civil Procedure Code, 1859, s 2, and 1877, s 13—Omission to raise defence—Subsequent suit*—In a suit for rent and for ejectment, the defendant pleaded that his tenure was transferable and istemrari, and consequently protected by the rent law In a former suit for arrears of previous years in which the defendant pleaded that his tenure was istemrari the plaintiff obtained a ... of rent ... in

issue, have urged that his tenure was ... able and istemrari he could not in the present suit be allowed to alter his defence and rely upon the tenure being transferable *Woomatara Debia v Unnopoorna Dassee, 11 B L R 158*, cited and followed DINOMOYI DABIA CHOWDHRAIN *v* ANUNGO MOYI [4 C. L. R., 599

328 ———————— *Civil Procedure Code, 1859 s 2*—If the plaintiff's cause of action might and ought properly to have been made a ground of defence in a former suit, brought against him by the defendant his suit is barred by s 2 of Act VIII of 1859 The father of *A* and *B* having died *A*, alleging that his father's assets amounted in value to R12 000 and admitting that he (*A*) had received R1 000, part thereof, in 1866 sued *B*, whom he alleged to be in possession of the rest of the property, for R5 000 as the residue of *A's* share and obtained a decree for a half share in immoveable property of their father of the value of about R700 and no more In 1871 *B* sued *A* for a *moiety of* the R1 000 which *A*, in his suit in 1866 had admitted to be in his possession *Held* that such a suit could not be maintained, as the claim on which it was founded must be deemed a *res judicata* in *A's* suit in 1866 MAKTUM VALAD MOHIDIN *v* IMAM VALAD MOHIDIN 10 Bom, 293

329 ———————— *Suit to enforce rights not raised*—Where a party claiming certain land by right of pre-emption failed to set up her rights in a suit in which the purchaser of that land sued her for possession and obtained a decree, it was held that she was not entitled to bring a fresh suit to enforce the same rights. ASGUR MAHOMED *v* NUZEEMA BIBEE . . 14 W. R., 372

330 ———————— *Former suit deciding right of lien for dower*—Where a widow who had taken possession of her husband's property was ejected by means of a suit in which her defence raised no right of lien for dower, in which suit an absolute decree of right was given to his heirs the right of lien, as between her and them is a *res adjudicata* WAJEAH *v* SAHEEBA 8 W R., 307

Contra JANEE KHANUM *v* AMATOOL FATIMA KHANUM . . . 8 W. R, 51

331 — *Code of Civil Procedure, s 13—Omission to bring forward in a*

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

prior suit what then would have been a defence—Accounts between mortgagor and mortgagee.—A mortgage between parties who had accounts together, comprised lands which also were leased by the mortgagors to the mortgagees, who in 1878 obtained a decree upon the mortgage, although at the time they owed to the mortgagors a considerable sum for rents. The mortgagors did not then set up the defence that they were entitled to have a general account taken and to have the mortgagee's decree limited to such balance as might be found to exist in favour of the latter. But the mortgagors alleged a specific agreement, which they failed to prove, that the rents were to be set off against the mortgage-debt; and they also stated their intention to sue separately for the rents due. No deduction was made in the decree upon the mortgage on account of these rents, for which, moreover, afterwards the mortgagors did obtain a decree. But the mortgagees executed their decree upon the mortgage, notwithstanding objections (which were disallowed in 1882), and, having obtained leave to bid at the judicial sale, purchased the property. In the present suit brought by the mortgagors to have the judicial sale set aside, and to have the mortgage-debt extinguished, by having set off against it the rents which had already accrued, or might afterwards accrue, and for possession of the lands on the expiry of the lease,—*Held* that, although an equity had been raised in favour of the mortgagors, that an account would have been taken, and that the rents payable should have been credited against the sums due by them, yet this equity could not be enforced in this suit. The proper occasion for enforcing it would have been in defence of the suit upon the mortgage; the present claim was within the meaning of s. 13 of the Code of Civil Procedure; and the plaintiffs were now barred from insisting on it, *exceptione res judicatæ*. MAHABIR PERSHAD SINGH *v.* MACNAGHTEN . . **I. L. R., 16 Calc., 682**
[L. R., 16 I. A., 107

332. ——— *Civil Procedure Code (Act XIV of 1882), s. 13, expl. II—Suit for dower debt after previous suit for partition amongst heirs—Omission to bring forward defence in former suit.*—Two of the daughters of a deceased Mahomedan sued the remaining heirs for partition of the inheritance, and a decree for partition was made, which was confirmed on appeal by the High Court. Pending the appeal to the High Court, two other daughters of the deceased, who had been parties defendants in the suit for partition, brought a suit by which they claimed a large share in the estate of the deceased as part of the dower debt due to their mother. In this suit they impleaded as defendants all the surviving descendants of their deceased father. *Held* that the claim for dower should have been made a ground of defence in the former suit by the plaintiffs who had been defendants in the suit for partition, and that, as no such defence had been set up in that suit, the claim in respect of the dower debt fell within the purview of expl. II to s. 13 of the Code of Civil Procedure, and the suit was barred, not only as against the plaintiffs to the former suit, but as against the other defendants to that suit. DOST MUHAMMAD KHAN *v.* SAID BEGAM
[I. L. R., 20 All., 81

333. ——— *Civil Procedure Code (Act XIV of 1882), s. 13, expl. II—Matter which might and ought to have been made ground of defence in a former suit—Mortgage—Prior and subsequent mortgagees.*—*Held* that the holder of three prior mortgages over the same property, who, in answer to suits brought by the holders of other mortgages over that property of dates subsequent to his, had pleaded his rights under one only of the mortgages held by him, was barred by reason of expl. II to s. 13 of the Code of Civil Procedure from afterwards bringing a suit for sale upon one of the remaining mortgages, which he might and ought to have pleaded as an answer *pro tanto* to the suits of the other mortgagees. *Mahabir Prasad Singh* v. *Macnaghten, I. L. R., 16 Calc., 682: L. R., 16 I. A., 107; Kameswar Parshad* v. *Raj Kumari Ruttan Kuar, I. L. R., 20 Calc., 79 L. R., 19 I. A., 234; Kailash Mondul* v. *Baroda Sundari Dasi, I. L. R., 24 Calc., 711; Sheosagar Singh* v. *Sita Ram Singh, I. L. R., 24 Calc., 616;* and *Mata Din Kasodhan* v. *Kazim Husain, I. L. R., 13 All., 432,* referred to. SRI GOPAL *v.* PIRTHI SINGH
[I. L. R., 20 All., 110

334. ——— *Civil Procedure Code (Act X of 1877), s. 13—Ancestral property—Partition—Omission to insist on property being brought into hotchpot—Property out of the jurisdiction—Subsequent suit for partition.*—The three defendants, *G, R,* and *K,* and their brother *M,* the grandfather of the plaintiff, were members of one family possessing undivided ancestral property consisting of the villages of B, P, and S, the two former being situated in the Poona Zillah and the latter in the Satára Zillah. In 1866 the three defendants (each in a separate suit) sued *M* in the Poona Courts for partition of the villages of B and P. They in their plaints alluded to the village of S, stating that it was their own and not subject to partition. *M* in his answer contented himself with denying the right to partition of the villages of B and P, and made no claim, in the alternative, to a share in the ownership of S. The plaintiff, the grandson of *M,* now sued the defendants in the Satara Courts for partition of the village of S, contending that he was not concluded from so doing by the former proceedings in the Poona Courts. *Held* that the plaintiff's claim was *res judicata,* and that his suit was concluded under the provisions of the Civil Procedure Code (Act X of 1877), s. 13, expls. I and II. A member of an undivided family, suing his co-parceners for partition of family property, is bound to bring into hotchpot any undivided property in his own possession, in order that there may be a complete and final partition, and cannot claim to withhold any such property on the ground that it is situated within another jurisdiction. That being so, the plaintiff's grandfather *M* having neglected in the previous suit to make the exception of the village of S a ground of defence,

RES JUDICATA—*continued*

7 MATTERS IN ISSUE—*continued*

the judgment which followed involved the decision of every claim of title upon the cause of action, and must be taken between the parties as amounting to a positive adjudication of all such claims including the claim to the village of S HARI NARAYAN BRAHME v GANPATRAV DAJI

[I L R, 7 Bom, 272

335 ———————— *Civil Procedure Code, 1877, s 13*—S and B jointly sued N for the redemption of a mortgage of an 8 anna share of a village, B suing as the purchaser from the mortgagor of a moiety of such share N did not in defence of such suit assert a right of pre emption in respect of such moiety, although such right had accrued to him on its sale by the mortgagor to B S and B obtained a decree in such suit and the mortgage was redeemed N subsequently sued B and his vendor to enforce his right of pre emption in respect of such moiety *Held* that it was incumbent upon N in the former suit to have asserted in defence his right of pre emption in respect of such [illegible]

was barred by the provisions of s 13 of Act X of 1877, expl II NARAIN DAT v BHAIRO BUKHSHPAL

[I L R, 3 All., 189

336 ———————— *Civil Procedure Code 1877, s 13*—B, who held a decree for money against I, caused certain property to be attached in execution of such decree as the property of his judgment debtor M, the wife of I, objected to such attachment, claiming such property as her own Her objection was disallowed and she consequently brought a suit against B to establish her right to such property She died while that suit was pending, leaving by will such property to her sons That suit proceeded in the names of her sons who claimed such property under such will The lower Courts only decided in that suit that such property belonged to M, and not to I, and it was therefore not liable to be sold in execution of B's decree against the latter They did not consider the question whether M's sons were entitled to such property under their mother's will In second appeal in that suit B contended that I, as heir to M, was entitled to a fourth share of such property, and such share was liable to be sold in execution of such decree M's sons did not contend before the High Court that they were entitled to the whole of such property under their mother's will to the exclusion of I The High Court allowed B's contention B brought a fourth share of such property to sale in execution of his decree and purchased it himself Thereupon M's sons sued him for such share, claiming it under their mother's will *Held* that their mother's will was a matter which should have been made a ground of defence by M's sons in the course of the trial of the second appeal in the former suit between them and B, and that, not having been so made, it was *res judicata* in the sense of s 13, expl II, Act X of 1877 SULTAN AHMAD v MAULA BAKHSH

I L R, 4 All, 21

337. ———— **Relinquishment of part of claim**—*Civil Procedure Code 1882, ss 13 and 43—Dekkhan Agriculturists' Relief Act XVII of 1879—Mortgagor—Mortgagee—Suit for account merely—Subsequent suit for possession*—Where there has been a suit between an agriculturist mortgagor and his mortgagee for an account merely a subsequent suit for possession on payment of the money declared to be due is barred under either s. 13 or s 43 of the Code of Civil Procedure BHAU BALAJI v HARI NILKANTHRAV

[I. L. R, 7 Bom, 377

338 ———————— *Civil Procedure Code, 1877, ss 13 and 43—Right of karnavan to recover tarwad property in possession of anandravan*—A karnavan of a Malabar tarwad having the right at any time to demand restoration of the property of the tarwad in the hands of the anandravan is not debarred by s 13 or s 43 of the Code of Civil Procedure from bringing a second suit to recover lands in the wrongful possession of an anandravan either by the fact that in a former suit between the same parties the karnavan only laid claim to some of the lands sued for, or by the fact that the former suit was dismissed upon the joint petition of the parties alleging a compromise and a surrender of the lands *which as a fact, were not surrendered but wrongfully retained by the anandravan* URAMKUMARATH KANNAN NAYAR v URAMKUMARATH KENJU NAYAR

[I L. R, 5 Mad 1

339 ———— **Question not decided**—*Hindu widow, Power of, to bind reversioners—Char land—Junglebari tenure* R a Hindu widow granted a junglebari tenure to certain tenants in respect of a char belonging to her husband's estate An amulnama was granted to the tenant signed by a karpardaz of K in respect of the tenure I died in January 1861, and was succeeded by J and P, two daughters, the last of whom died on the 31st December 1880 On her death the grandsons succeeded to the estate On R's death J and P got possession of all estate papers and amongst them a dowl granted by the tenants in return for the amulnama In 1865 proceedings were taken by the tenants to obtain kabulyats on the footing of those documents which proceedings came to an end in 1868 In 1873 J and P instituted suits against the tenants alleging the amulnama and dowl to be forgeries and seeking to enlarge the rents payable to them as well as to have it declared that K's acts did not bind them In these suits it was found that J and P had all along been aware of the claim made by the tenants that they held a permanent tenure, and the suits were dismissed on the ground that it was too late for J and P, after the lapse of twelve years from K's death, to raise the question In 1884 D, a receiver instituted a suit in the names of the grandsons to eject the tenants on amongst other grounds that the grandsons (reversioners) were not bound

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

by *R*'s acts, and that the jungleburi tenure was not binding on them; that the tenants were middlemen and had no right of occupancy; that at all events the plaintiffs were entitled to rent on the area of land then held by the defendants, as there had been large accretions to the amount covered by the amulnama and dowl. The defendant, amongst other things, pleaded *res judicata*, and that *R* had the power to grant the jungleburi tenure so as to bind the reversioners. *Held* that the suit was not barred by *res judicata*, as in the suits brought by *J* and *P* the question of whether *R*'s acts bound the reversioners was never decided. DROBOMOYI GUPTA *v.* DAVIS

[I. L. R., 14 Calc., 323

340. ———— **Specific performance**—*Decree in favour of plaintiff—Rectification of decree on application of defendant—Motion to set aside decree dismissed—Subsequent application to rectify decree.*—The plaintiff sued in 1877 for specific performance of an agreement, dated 27th September 1871, by which certain landed properties were to be divided, as specified in the agreement, between them and the defendants. The case came on for hearing on the 13th September 1878. The defendant did not appear, and a decree *ex-parte* was made, which declared that the plaintiffs were entitled to have the agreement of the 27th September 1871 specifically performed, and referred the suit to the Commissioner for the preparation of conveyances, etc. The decree was sealed on the 9th October 1878. No further steps were taken by any of the parties for six years, and in September 1884 the matter was first brought before the Commissioner. He then directed the defendants to lodge with him all the title-deeds of the properties which by the agreement were to go to the plaintiffs as their share. The defendants thereupon applied that the plaintiffs should be directed to lodge the title-deeds of the properties which by the agreement were to go to them, but the Commissioner refused to make this order, being of opinion that he was not authorized to do so under the decree, which contained no direction to him in respect thereof. The defendants on the 10th November 1884 gave notice to the plaintiffs that they would apply to the Court—(1) "to set aside or vary its order of the 13th September 1878 so far as it related to the lodging of title-deeds, etc.; (2) to appoint a receiver of certain properties mentioned in the agreement; (3) to order the plaintiffs to deliver up to the defendants the properties which belonged to their share under the agreement; (4) to order certain accounts to be taken." This motion was not brought on until the 10th September 1885, on which day it was dismissed with costs, the Judge holding that the defendants had not shown sufficient cause to justify the setting aside of the decree under s. 108 of the Civil Procedure Code (Act XIV of 1882). The plaintiffs having still kept possession of certain of the properties which by the agreement were to go to the defendants, notice was given by the defendants to the plaintiffs on the 28th April 1887 that they would apply to the Court for an order that the plaintiffs should perform their part of the agreement of the 27th September 1871, so far as it remained unperformed by them, by giving up to the defendants possession of certain properties and by accounting for the rents thereof, etc., etc. At the hearing of this motion, counsel for the defendants asked that the decree should be rectified by directing that the agreement should be specifically performed by the plaintiffs and defendants respectively. The defendants contended that the application was barred by lapse of time, and that the question was *res judicata* by the order of the 10th September 1885. *Held* also that the motion was not *res judicata* by reason of the previous order of the 10th September 1885. Although the notice of motion then served by the defendants on the plaintiffs included matters in respect of which the defendants sought relief by their present application, the Judge in making the order dealt with them as ancillary to the first and main point raised in that motion, *viz.*, the defendants' right to set aside the decree under s. 108 of the Civil Procedure Code (Act XIV of 1882). Having decided that point against them, he did not really consider the other points at all, and did not adjudicate upon them, and therefore the present application in respect of these matters was not *res judicata* KARIM MAHOMED JAMAL *v.* RAJOOMA . I. L. R., 12 Bom., 174

341. ———— **Suit for specific performance of a contract of sale and to execute a sale-deed**—*Civil Procedure Code (1882), s. 13, expl. 2—Sale-deed subsequently executed by the Court under s. 262 of the Civil Procedure Code —Suit on sale-deed to recover possession.*—The plaintiff, claiming specific performance of a contract of sale, sued the defendant to compel him to execute a deed of sale, alleging that he had paid the purchase-money to the defendant and had obtained possession, but was subsequently dispossessed. The plaintiff had claimed the value of the standing crop or damages for the same The Court found that the plaintiff had paid the purchase-money, but had not got possession, and ordered defendant to execute a deed of sale. On failure of the defendant to do so, the Court executed a deed of sale in plaintiff's favour under s. 262 of the Civil Procedure Code (Act XIV of 1882). The plaintiff thereupon brought the present suit to recover possession on the strength of the deed of sale. Defendant pleaded that this second suit was barred under s. 13 of the Civil Procedure Code. *Held* that the suit was not barred by s. 13, and that expl. 2 of that section was not applicable, because the object of that explanation would seem to be to compel the plaintiff to rely on all grounds which were open to him in support of the claim made by his plaint, which in the first suit was confined to obtaining a regular deed of sale. NATHU PANDU *v.* BUDHU BHIKA . I. L. R., 18 Bom., 537

342. ———— **Substantial matters in issue decided in a former suit**—*Civil Procedure Code, s. 13—Right of shebaitship of a family deb-sheba under a will.*—A testator, who

RES JUDICATA—*continued.*

7 MATTERS IN ISSUE—*continued.*

died leaving widows and a daughter also three sur viving brothers bequeathed all the residue, after certain legacies of his acquired estate, to maintain

managed the estate as shebaits and the survivor of

were invalid and illegal" She claimed possession and an account and also to be the shebait In a pre vious suit the present shebait had obtained a decree, to which the daughter now plaintiff was a party defendant affirming the validity of the will and the rights of the members of the family to be maintained under it *Held* that the question of the validity of all the provisions of the will having been sub stantially decided in the decree in the former suit, which pronounced that the will was wholly valid passing the entire estate of the testator to the deb sheba and maintaining the rights of members of the family under the will this suit was barred under s 13 of Act X of 1877 as to all but the claim to be shebait KAMINI DEBI v ASUTOSH MUKERJI ASUTOSH MUKERJI v KAMINI DEBI

[I L. R, 16 Calc., 103
L R., 15 I A, 159

343 ———— Estoppel by judgment—*Civil Procedure Code (Act XIV of 1882), s 13—Act IX of 1847—Alluvion*—To apply the law of estoppel by judgment, stated in s 6 of Act XII of 1879 and in s 13 of Act XIV of 1882 it must be seen what has been directly and substantially in issue in the suit and whether that has been heard and finally decided for which purpose the judgment

to land and for possession against two defendants who alleged their rights retrospectively The claim ant had previously obtained a decree against one of the defendants and in that decree the land now claimed had been excepted *Held* that the matter now in issue, not having been directly and substantially in issue in the prior suit, the present suit was not barred under s 13 Act XIV of 1882, Civil Procedure Code KALI KRISHNA TAGORE v SECRETARY OF STATE FOR INDIA

[I. L R, 16 Calc, 173
L. R., 15 I A, 186

344 ———— Reference to previous judgment to explain decree—*Title of near est reversioner*—In a prior suit a decree of the High Court awarded to the plaintiff the substantial relief claimed by him as reversionary heir entitled to inherit

RES JUDICATA—*continued*

7 MATTERS IN ISSUE—*continued*

In the present suit the same plaintiff as nearest re versioner claimed possession of the property from the daughter of the mother, the latter having died since the prior suit, the daughter alleging title through her.—*Held* that the judgment in the prior suit was admissible and ought to be examined in the present suit in order to see what that suit decided as to the reversioner's title *Kali Krishna Tagore v Secretary of State for India L R 15 I A 186 I L R 17 Calc 173* referred to and followed The judgment showed that the question whether the

INUGANTI RAJAGOPAL RAU

[I. L. R. 21 Mad, 344
L R., 25 I A, 102
2 C W N 337

345 ——— Suit for redemption—*Decree for redemption without proviso for fore closure of payment within a fixed time—subsequent suit by mortgagee for sale—Civil Procedure Code (Act XIV of 1882) s 13, expl II* A decree for redemption which does not provide for pay ment of the mortgage-debt within a fixed time or for foreclosure in case of default operates of itself as a foreclosure decree if not executed within three years. After such a decree is passed it is not open to the mortgagee to file a suit to recover the mort gage-money by sale of the mortgaged property his right of sale being barred under s 13 expl II, of the Code of Civil Procedure On 12th November 1883 *A* obtained a decree for redemption on pay-

matter directly and substantially in issue in the former suit and to have been in effect negatived by the judgment. MALOJI v SAGAJI

[I L R., 13 Bom, 567

346 ———— Rival suits for pre-emption—*Each pre emptor made defendant in the other's suit—Suits tried together but decided by separate decrees—Decree allowing pre-emption in one case only on condition of default by other pre emptors—Finality of decree in superior pre-emptor's*

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

preclude the plaintiff from setting it up in the present suit. FATMABAI *v.* AISHABAI [I. L. R., 13 Bom., 242

350. —— Claim in part included in former suit which was dismissed—*Civil Procedure Code, ss. 13, 42, 43, and 212—Reference to pleadings and judgment to explain decree—Omission of portion of claim in former suit—Mesne profits—Oudh Rent Act (XIV of 1868), s. 111.*—That a claim has been included in a previous suit, without its having been directly and substantially put in issue and decided, does not upon the dismissal of that suit preclude a subsequent suit upon it. A consent decree of 1873 decided that alluvial land belonged to the plaintiff's village Sipah. The area was judicially determined in 1876 on a map of 1874, but actual possession was not obtained from the defendant, who owned villages on the opposite side of the river. The decree-holder in 1877 included a claim for part of the same land in a suit for an accretion to another of his riparian villages, Khasapur, and the latter suit was wholly dismissed. To get possession of the land decreed in 1873, he then brought rent-suits against two tenants upon it, the defendant intervening under s. 111 of the Oudh Rent Act, 1868. Both the rent-suits were dismissed; and according to the right reserved in the latter section the plaintiff, to establish his title in a competent Court, brought the present suit, including in it the land which he had made part of his claim in the dismissed suit of 1877. *Held*, on the question whether the dismissal of the suit of 1877 precluded a further suit for that part of the land which had been included in it, that it did not, and that s. 13 of the Civil Procedure Code was inapplicable. The pleadings and judgment in the suit of 1877 were referred to, showing that what belonged to Sipah had not been in issue, and that nothing respecting it had been heard or decided. *Held* also, as to the rest of the land claimed in this suit, that there was no bar on account of its omission from the suit of 1877. As to mesne profits, it would have been open to the High Court to direct an enquiry under s. 212 of the Civil Procedure Code. JAGATJIT SINGH *v.* SARABJIT SINGH I. L. R., 19 Calc., 157 [L. R., 18 I. A., 165

351.— —— Suit for land identical with land given in previous decree—*Proof of identity where decree did not specify boundaries—Long possession.*—The proprietary possession of alluvial land was claimed upon the averment that, having been gained as an accretion to the plaintiff's village, it had been wrongly excluded from settlement with the latter, in consequence of a prior decree, which, however, had not decreed the land to the defendants, as they alleged it to have done. In pursuance of that decree, which was made in 1865, the land had been, according to the evidence, taken by the defendants, in whose possession it was in 1868; from which date till 1883, when the present suit was brought, that land had been treated, alike by the Government authorities and by the defendants, as belonging to the latter. Had the question been one of limitation, the possession of the defendants for a period of twelve years would not have been sufficient to exclude this claim by the plaintiff, the Government, to recover whatever could have been shown to be its property. The question, however, was not one of limitation; and the fact of the possession having been retained for so long a period was used by the defendants, not to make a title, but to define or identify the land which the decree of 1865 had awarded to them. Although the specification of the boundaries (which had been merely by reference to the plaint which mentioned adjoining villages) had been ineffectual, the acts of the parties had been such as to fix the meaning of the terms used; and it was established by the evidence that the land now claimed was identical with that which had been made over under the decree of 1865, to which it related. SECRETARY OF STATE FOR INDIA *v.* DURBIJOY SINGH [I. L. R., 19 Calc., 312 L. R., 19 I. A., 69

352. — —— Transfer of interest—*Civil Procedure Code, s. 13—Appointment of a creditor as agent to collect rents and appropriate part towards the debt.*—In a suit to redeem a kanom on certain land, the jenm of a devasom in Malabar, it appeared that the plaintiff held a melkanom in respect of the same land executed to him (subsequently to the date of the kanom sought to be redeemed), by defendant 3, the samudayam of the devasom Defendant 3 represented one *C*, in whose favour the uralers had in 1741 executed a document appointing him samudayam and stating that they had received from him a kanom of 18,000 fanams on the devasom properties, and providing that he should appropriate part of the rents towards the loan. It appeared that in a suit to eject tenants, the uralers had sued as co-plaintiffs with the samudayam; in subsequent suits, however, two of the uralers had sued other tenants for rent and the samudayam for an account; both of these suits were dismissed on second appeal, and in the judgments of the High Court the samudayam was described as a mortgagee in possession. *Held*, (1) on its appearing that no opinion was expressed in the former suits as to the construction of the document of 1741, that the former decisions had not the force of *res judicata*; (2) in view of the conduct of the parties and on the terms of the document of 1741, that the samudayam was not thereby constituted a mortgagee in possession, and that the melkanom set up by the plaintiff was invalid. KRISHNAN *v.* VELOO . . I. L. R., 14 Mad., 301

353. ———— Creditor of a devasom placed in possession as samudayam—*Civil Procedure Code, s. 13.*—In a suit brought by the uralers of a devason in Malabar to recover certain land in the possession of the defendant, it appeared that the defendant held under an instrument, dated 1741, whereby his predecessor in title was appointed samudayam, and was authorized to appropriate part of the rents of the devasom properties to the interest on a loan made by him to the uralers. Two of these uralers had brought a previous suit

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

against the defendant for an account of the rents received by him and for an injunction; that suit was dismissed on second appeal when the High Court described the defendant as a mortgagee in possession, but the question whether or not he was a mortgagee with or without possession was not then directly and substantially in issue *Held* that the status of the defendant was not *res judicata* by reason of the judgment in the previous suit. RAMAN v SHATHANATHAN . . . I. L. R., 14 Mad., 312

354. ———— Matter which should have been ground of attack in former suit—*Civil Procedure Code, ss 13, 43*—The widow daughter and divided brother of a deceased Hindu executed an instrument which provided for the distribution of his property, both moveable and immoveable, as to [illegible]

and daughter on the above instrument to recover his agreed share of the moveable property of the deceased The widow set up the will, which the [illegible]

VALLIAMMA . I. L. R., 15 Mad., 336

355 ———— Question as to whether decree is binding—*Decree amended after execution to conform with judgment—Decision in suit to set aside sale under amended decree*—In a suit for money against the karnavan and two anandravans of a Malabar tarwad, the judgment directed a "decree for the plaintiffs as prayed," but the decree ordered payment by one anandravan only Property of the tarwad was attached and sold The decree [illegible]

of the tarwad in further execution of the amended decree. *Held* that the members of the tarwad were not entitled to contend that the decree was not binding on them, that matter being *res judicata* CHATHAPPAN v. PYDEL . I. L. R., 15 Mad., 403

356 ———— Usufructuary mortgage—*Suit by mortgagee for possession—Decree for possession—Subsequent suit by mortgagor for redemption*—In 1864 the lands in dispute were mortgaged under an agreement that the mortgagee should hold the lands and apply the profits towards the satisfaction of the mortgage-debt In 1869, the mortgagor having obstructed the mortgagee, the latter filed a suit for removal of the obstruction and for confirmation of his possession He obtained a decree ordering that he should retain possession till the debt was paid off from the usufruct In 1885 the mortgagor filed a suit for redemption. The defence to this suit was that it was barred by the decree in the former suit *Held* that the suit was not so barred, the relative rights of mortgagor and mortgagee not having been adjudicated upon in the former suit NARSINHA MANOHAR v BHAGVANTRAV

[I. L. R., 14 Bom., 327

357. ———— Suit by purchaser against mortgagee for possession—*Issue raised by mortgagor impeaching bonâ fides of sale—Decree for plaintiff without recording finding on issue—Subsequent suit for redemption by mortgagor against mortgagees impeaching sale as fraudulent and void*—In 1874 the plaintiff mortgaged certain [illegible]

the purchaser of the premises *bonâ fide* and for [illegible]

against him He contended that in the former suit he did not intend to allege that the sale was not *bonâ fide*, but merely that it took place without due notice and was impeachable on that ground and he relied on the fact that there had been no finding on the issue *Held* that the present suit was barred by the issue and decree in the former suit In that suit the plaintiff (*K*) had given evidence that he was the *bonâ fide* purchaser of the property Though no actual finding on that issue was recorded, the decree passed for the plaintiff necessarily involved the finding of the issue in the affirmative RAMKRISNA JAGANNATH v VITHAL RAMJI

[I. L. R., 15 Bom., 89

358. ———— Cross appeals heard separately—*Civil Procedure Code, s 13*—The plaintiff and defendant in a suit each appealed separately and defendant's appeal first came on for hearing, and an issue as to whether the plaintiff or the defendant had title to the land in dispute was decided on the facts by the Appellate Court adversely to the defendant. Subsequently, the plaintiff's appeal, involving the same issue, came on for hearing before the same Court. *Held* that, although s 13 of the [illegible]

359 ———— Finding in judgment in conflict with terms of decree—*Civil Procedure Code, s 13—Immaterial issue in suit*,—The decree in a suit gave the plaintiff an unrestricted right to the property claimed by him, but in the judgment on which that decree was based it was stated, the finding

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

apparently not being a finding on any material issue in the suit, that the defendants were entitled to certain rights in respect of the property decreed to the plaintiff. No application was made to bring the decree into conformity with the judgment, and the decree as it stood was affirmed on appeal. *Held* that the defendants, as plaintiffs in a subsequent suit between the same parties relating to the same property, could not plead the finding in their favour in the judgment as constituting *res judicata* in the face of the clear wording of the decree. INDARJIT PRASAD *v.* RICHHA RAI . . . I. L. R., 15 All., 3

360. ———————— *Decree not in accordance with judgment—Civil Procedure Code, 1882, ss. 13, 214—Transfer of Property Act (IV of 1882), ss. 88, 89—Interpretation of decree.*—Where a mortgagee in suing upon his mortgage included in his plaint certain property which was not included in the mortgage-deed, and this fact was apparently overlooked by the defendant who defended the suit, and where, while the judgment declared "that a decree be given against the hypothecated estate," in the decree the property affected was described as "the property specified in the plaint." *Held* that the decree must be held to mean the hypothecated property mentioned in the plaint, and that neither s. 13 nor s. 214 of the Code of Civil Procedure concluded the defendant from subsequently suing to recover the property wrongly included in the plaint. RAM CHANDER *v.* KONDO

[I. L. R., 22 All., 442

361. ———— Contentions not raised by way of defence in former suit—*Civil Procedure Code, ss. 13, 43.*—In a suit to recover possession of the impartible zamindari of Sivaganga, it appeared that the istimrar zamindar died in 1829, and that after an interval of wrongful possession by his brother and his descendants, his daughter established her title to succeed him and was placed in possession in 1861. She died in 1877, leaving the present plaintiff, her son, and three daughters her surviving. A suit was then brought by the father of the present defendant, who was the son of her elder sister (deceased), against the present plaintiff and the daughters of the late Rani for possession of the zamindari, to which he claimed to be entitled by right of inheritance. A decree was passed for the plaintiff in that suit, under which he obtained possession of the zamindari and retained it until his death in 1883, when he was succeeded by the present defendant. The plaintiff now sued as above, claiming that the right to the zamindari had devolved on him, and not on the defendant, on the death of the plaintiff in the former suit. *Held* (1) that the defendant's father had not succeeded to a qualified heritage nor to a mere right of management of joint family property in which the plaintiff had a right of survivorship, but that he had succeeded to the estate as full owner and had therefore become a fresh stock of descent; (2) that accordingly nearness or remoteness of relationship to the istimrar zamindar was immaterial, and the defendant's right of succession was not affected by the fact that the whole class of the istimrar zamindar's daughters' sons had not been exhausted. *Held* also that the plaintiff was not precluded from raising the contentions to which the above rulings relate by reason of their not having been raised by way of defence to the suit brought against him by the defendant's father. MUTTUVADUGANATHA TEVAR *v.* PERIASAMI . . . I. L. R., 16 Mad., 11

362. ———— Execution-proceedings—*Civil Procedure Code, ss. 13, 272—Matter which ought to have been raised as a ground of defence.*—*A* and *B* obtained a decree against *X* and *Y*, on which about R9,000 was due. *Z* obtained a decree against *A* and *B*, on which about R9,400 was due, and in execution attached the first-mentioned decree. *A* and *B* first alleged in the matter of the execution of their decree for the first time that the suit against them had been instituted really by *X*, though in the name of his son *Z*, and consequently contended that the decree amount, which they paid into Court, was the property of *X* and so liable to satisfy their claim. The above allegation was substantiated, and *Z*'s claim on the money in Court was disallowed on appeal. *Held* (1) that *A* and *B* were not precluded from asserting their claim to the money in Court by reason of the above allegation not having been made by way of defence to the suit of *Z*; (2) that *A* and *B* were entitled to enforce any claim, which *X* might enforce, for the purpose of satisfying their decree, and accordingly that *Z*'s claim on the money in Court was rightly disallowed. ATCHAYYA *v.* BANGARAYYA . . . I. L. R., 16 Mad., 117

363. ———— Question substantially in issue in former suit—*Civil Procedure Code (Act XIV of 1882), s. 13, expl. 2—Reversioner.*—A widow purported to charge land which she held for her widow's estate with payment of a debt, and afterwards surrendered her estate to the next heir, or reversioner, on condition that he should pay all her debts, and a suit was brought by the creditor after the death of the widow against the reversioner to recover the debt. This suit had been preceded by another one brought by the creditor against both the widow, then alive, and the reversioner, the cause of action against the latter being that in his hands was the property chargeable. That suit was dismissed as against him, but decreed against the widow. In the present suit payment was claimed from him of a balance of the deceased widow's debt, on the ground that he had agreed, on taking the surrender of the estate from her, to become responsible for her debts. *Held* that this "might and ought to have been made ground of attack" in the former suit within the expl. 2 of s. 13 of the Civil Procedure Code, and must accordingly be deemed to have been directly and substantially in issue in the former suit, and therefore that this suit was barred. The Acts of 1877 and 1882 did not alter the previous state of

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

the law. KAMESWAR PERSHAD *v.* RAJKUMARI RUTTAN KOER . . I. L. R., 20 Calc., 79 [L. R., 19 I. A., 234

364. ———— Matter which might have been a ground of defence in a former suit —*Civil Procedure Code (1882), s. 13, expl. 2.* —A defendant in a suit for the recovery of possession of immoveable property pleaded only a right to the proprietary possession of the property in suit in himself. This defence failed, and a decree was given in favour of the plaintiff. Subsequently the ... so decreed to ... rought a suit ... suit must fail, inasmuch as the plaintiff's claim ... one which he might have made when defendant in the former suit ... alternative to his defence of title. *Moottoo* ...

SINGH ... I. L. ...

365. ———— Unnecessary issue—*Finding on an unnecessary issue inserted in decree—Civil Procedure Code (1882), s. 13.*—The plaintiff attached certain property in execution of a decree ... the widow of one *R.* ...

... obtained a decree ag...

was owner of the house ... former suit. It was argued that these ... id fraudulent ... t the defence ... *judicata.* *Held* ... The former suit had been ... t the property in question was not *J's*. The finding in that suit on the issue as to the sales to the defendant was not necessary for the determination of the suit. Where an issue is not necessary for the decision of the suit ... the decree couched in general ...

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

appeal from the decree, because such finding has been inserted in it. GHELA ICHHARAM *v.* SANKALCHAND JETHA . . I. L. R., 18 Bom., 597

366. ———— *Finding in judgment not embodied in decree and not essential to the making of the decree as framed—Civil Procedure ...*

1882 unless and until it is, or becomes, ...

desirable that the ... its finding or decision upon each separate issue which it had framed. The following cases were referred to: *Krishna Behari Roy v. Brojeswari Chowdranee, L. R., 2 I. A., 283; I. L. R., 1 Calc., 144; Soorjomonee Dayee v. Suddanand Mohapatter, 12 B. L. R., 304; L. R., I. A., Sup. Vol., 212; Run Bahadoor Singh v. Lachoo Koer, I. L. R., 11 Calc., 301; L. R., 12 I. A., 23; Radha Madhub Holdar* ... *L. R.,* ... *Calc., 819; Jaman* ... *I. L. R., 7 All., 606; Man Singh v. Narayan Das, I. L. R., 1 All., 480; Lachman Singh v. Mohan, I. L. R., 2 All., 497; Ram Gholam v. Sheetalal, I. L. R., 1 All., 265; Anantyalai v. Sakharam Pandurang, I. L. R., 7 Bom., 261; Dwarakanda* ...

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

Narasamma v. *Devakonda Kanaya, I. L. R., 4 Mad., 134; Ghela Ichharam* v. *Sankalchand Jetha, I. L. R, 18 Bom., 597; Tarakant Banerjee* v. *Puddomoney Dassee, 10 Moore's I. A., 476;* and *Robinson* v. *Dalip Singh, L. R., 11 Ch. D., 798.* SHIB CHARAN LAL *v.* RAGHU NATH

[I. L. R., 17 All., 174

367. ——— **Dismissal of suit for want of notice, and also upon the merits**—*Civil Procedure Code (1882), s. 13, expl. 2—Bengal Municipal Act (Beng. Act III of 1884), s. 363.*—In a suit brought by one *A* against *C* for damages for not removing certain offensive matter from his land, the questions raised were, whether there was notice, and whether the defendant was bound to remove the filth from the plaintiff's property. The Court having found that there was no notice, which in its opinion was a ground sufficient for dismissal of the suit under s. 363 of the Bengal Municipal Act and also upon the merits, having come to the conclusion that the defendant was not bound to remove the offensive matter from the plaintiff's land, dismissed the suit. In a subsequent suit between the same parties, the plaintiff claiming the same relief as in the previous suit, the defence was that the suit was barred as *res judicata*. *Held* that, inasmuch as the matter directly and substantially in issue in the subsequent suit was directly and substantially in issue in the previous suit, and as it was finally heard and decided between the same parties, notwithstanding the fact that the previous suit failed by reason of the decision of the Court upon some other matter as well, the subsequent suit was barred as *res judicata*. *Shib Charan Lal* v. *Raghu Nath, I. L. R., 17 All., 174,* distinguished. PEARY MOHUN MUKERJEE *v.* AMBICA CHURN BANDOPADHYA . . . I. L. R., 24 Calc., 900

368. ——— **Different subject-matter of suits**—*Code of Civil Procedure (1882), s. 13, expl. 2—Suit for declaration of baradari rights—Subsequent suit for assertion of khadimi rights.*—S. 13, expl. 2, of the Code of Civil Procedure, applies only to cases in which the plaintiff, having on a former occasion sued for certain relief on the strength of one title, afterwards claims the same relief on the ground of another title of which he might have availed himself in the former suit. It does not apply to cases where the subject-matters of the two suits are different. The plaintiffs, in the year 1881, instituted a suit for a declaration of private baradari rights in connection with the daily receipts and offerings at a certain Mahomedan place of worship, alleging that the defendants had dispossessed them on the 27th September 1881; but they did not assert any claim as khadims. The suit was decreed, but the decree was reversed on appeal. On the 7th March 1892, the plaintiffs instituted a suit for a declaration that they were the khadims of a certain durga and, as such, entitled to perform the duties attached to that office for 21 days in each month, and during that period to receive the offerings made by worshippers at the durga. They also claimed an injunction restraining the defendants from interfering with them in the exercise of that office. The plaintiffs claimed

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

their khadimi rights partly by inheritance and partly by purchase, a custom of transferability by sale having been long recognized. *Held* that the relief claimed in the second suit was not *res judicata*, the subject-matters of the two suits being distinct. *Denobundhoo Chowdhury* v. *Kristomonee Dossee, I. L. R., 2 Calc., 152; Woomatara Debi* v. *Unnapoorna Dassee, 11 B. L. R., 158; Kamesuar Pershad* v. *Rajkumari Ruttan Koer, I. L. R., 20 Calc., 79: L. R., 19 I. A., 234; Doorga Pershad Singh* v. *Doorga Konwari, I. L. R., 4 Calc., 190: L. R., 5 I. A., 149; Vijaya Raghanadha Bodha* v. *Katama Natchiar, 11 Moore's I. A., 50; Soorjoomonee Dayee* v. *Suddanund Mohapatter, 12 B. L. R., 304: L. R., I. A., Sup. Vol, 212;* and *Krishna Behari Roy* v. *Bunwari Lal Roy, I. L. R., 1 Calc., 144: L. R., 2 I. A., 283,* distinguished. SARKUM ABU TORAB ABDUL WAHEB *v.* RAHAMAN BUKSH

[I. L. R., 24 Calc., 83

369. ——— **Suit for rent**—*Code of Civil Procedure (1882), s. 13—Landlord and tenant—Question of title incidentally raised in a previous suit—Subsequent suit for declaration of title to land purchased.*—A suit was brought by *A* against *B* and others for rent; and the matter directly and substantially in issue was as to what the share was for which *A* was entitled to rent. The plaintiff obtained a decree for the whole rent. In a subsequent suit by *B* and others against *A* for declaration of title to land purchased by them in execution of their mortgage decree, the defence was that the former decree for rent operated as *res judicata*. *Held* that, as the issue in the rent suit was for what share the plaintiff was entitled to rent, and not to what share of the property was the plaintiff entitled as owner, the question of title could be said to have been in issue in that suit only incidentally and not directly, and it could not have been entertained in the form in which it was now raised; therefore the subsequent suit was not barred as *res judicata*. *Run Bahadur Singh* v. *Lucho Koer, I. L. R., 11 Calc., 301: L. R., 12 I. A., 23,* followed. *Radhamadhub Holdar* v. *Monohur Mukerji, I. L. R., 15 Calc., 756: L. R., 15 I. A., 97,* distinguished. *Nanack Chand* v. *Telukdye Koer, I. L. R., 5 Calc., 265,* and *Dirgopal Lal* v. *Bolakee, I. L. R., 5 Calc., 269,* referred to. SRIHARI BANERJEE *v.* KHITISH CHANDRA RAI

[I. L. R., 24 Calc., 569
1 C. W. N., 509

370. ——— *Code of Civil Procedure (1882), s. 13, expl. 2—Whether the question that the plaintiff was a mere benamidar could be raised in a subsequent suit for rent, it not having been raised in a suit previously brought by the same plaintiff against the same defendant.*—In a previous suit brought by the plaintiff for rent the defendant denied the relationship of landlord and tenant, but he did not plead that the plaintiff was a mere benamidar. The plaintiff obtained a decree. In a subsequent suit by the same plaintiff against the same defendant for rent for subsequent years, the defendant, *inter alia*, contended that the plaintiff was a mere benamidar. The plaintiff objected

RES JUDICATA—*continued*

7. MATTERS IN ISSUE—*continued*

that the previous decree was a bar to defendant's contention *Held* that, even if the matter in issue might and ought to have been made a defence in the former suit, yet as it was not finally heard and decided by the Court within the meaning of s 13 of the Code of Civil Procedure, the defendant was not precluded in this suit from raising the objection that the plaintiff was a mere benamidar. KAILASH MONDUL v BARODA SUNDARI DASI

[I. L. R., 24 Calc , 711
[1 C. W. N., 565

371. ——— **Matter which might have been made ground of attack in a former suit** —*Civil Procedure Code (1882), s 13, expl 2*— [illegible]

[illegible]

sion of the same property claim as mortgagee, inasmuch as his title as mortgagee might have formed an alternative ground of attack in the former suit *Amolak Ram* v *Champa Lal*, *Weekly Notes, All (1891)*, 132, *Mathura Prasad* v *Sambhar Singh*, *Weekly Notes, All , (1892)*, 224 *Hasan Ali* v *Siraj Husain*, *I. L R , 16 All* , 252; *Atchayya* v *Bangurayya*, *I. L. R., 16 Mad* , 117; and *Kameswar Pershad* v. *Rajkumari RattanKoer*, *I L R , 20 Calc* , 79: *L. R , 19 I A* , 234, referred to. IMAM KHAN v AYUB KHAN

[I. L. R., 19 All., 517

372. ——— **Suit for money**—*Civil Procedure Code (1882), s 12—Application by defendant for an account of dealings with plaintiff*— [illegible]

[illegible]

account during the pendency of the plaintiff's suit RAMALINGA CHETTI v. RAGHUNATHA RAU

[I. L. R., 20 Mad., 418

373 ——— **Suit for rent**—*Code of Civil Procedure (Act XIV of 1882), s 13—Landlord and tenant—Issue whether land was mâl or lakhiraj —Question raised in a rent suit, whether directly and substantially in issue in that suit—Subsequent suit for khas possession* —In a previous suit brought by the predecessor in title of the plaintiff against the defendants for rent, one of the questions raised [illegible]

[illegible]

the judgment in the previous suit operated as *res judicata* *Held* that, though the previous suit was one for rent, yet the issue upon the question whether the land was mal or lakhiraj was raised directly in that suit, and therefore the subsequent suit was barred as *res judicata* *Radhamadhub Holdar* v. *Monohur Mukerji*, *I L R , 15 Calc* , 756 *L R , 15 I. A* , 97, followed *Srihari Banerjee* v *Khitish Chandra Rai*, *I L R* , 24 *Calc* , 569, distinguished. KASISWAR MUKHOPADHYA v MOHENDRA NATH BHANDARI . I. L. R., 25 Calc., 136

374 ——— **Sanction to compromise a suit against a minor**—*Civil Procedure Code (Act XIV of 1892), s 13—Suit to set aside a* [illegible]

[illegible]

consent In 1882 the minor sued by his next friend to have the consent decree set aside on the ground [illegible]

[illegible]

the want of sanction might and ought to have been made a ground of attack in that suit. ARUNACHALAM CHETTY v MEYYAPPA CHETTY

[I. L. R., 21 Mad., 91

375. ——— **Right to a temple office and its endowments**—*Issue as to adverse possession —Civil Procedure Code (Act XIV of 1882), s 13, expl 2*—Certain offices in a temple and the endowments attached thereto were held jointly by the members of two branches of a family, represented respectively by the plaintiff and the defendant. Long previously to 1872, the defendant's branch got into sole possession, and in that year a family settlement was arrived at by which it was arranged that the offices should be held in rotation and the lands in equal shares; and in accordance with this settlement, a certain village forming part of the endowment was delivered to the plaintiff's branch of the family In 1889 the defendant brought a suit to recover a moiety of that village, and an issue was raised whether he enjoyed the offices and the landed property in his independent right or as a servant for wages. His suit was dismissed on the ground that the offices [illegible]

[illegible]

suit a title by adverse possession as that had been made a ground of attack, though not the basis of his claim in the former suit. ALAGIRISAMI NAICKAR v SUNDARESWARA AYYAR I. L. R , 21 Mad., 278

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*continued.*

376. ———— **Suits by different partners for specific sums of money on adjustment of accounts**—*Partnership—Accounts adjusted by Ameen appointed in previous suits—Civil Procedure Code, s. 13, expls. 2 and 3, and s. 43—Contract Act, s. 265.*—After dissolution of a certain partnership, two separate suits were brought in 1889 by different partners for specific sums of money due to them, and, in the alternative, for such other amount as might be found due on an adjustment of accounts. Objections were raised against these suits on the grounds, *inter alia*, (1) that the suits were barred by the provisions of s. 265 of the Indian Contract Act; (2) that separate suits for the same matter were not maintainable; (3) that the suits would not lie in the Munsif's Court; and (4) that, accounts having been already adjusted, there was no cause of action. The Munsif overruled the first three objections, and held, as regards the fourth, that the adjustment pleaded had been ratified by the plaintiffs; he appointed an Ameen, who examined the accounts and ascertained the respective claims of the partners, and the plaintiffs in those suits obtained decrees on the basis of the Ameen's adjustment of account. The present suits were brought in 1891 by certain other partners, who were defendants in the suits of 1889, on the allegation that the partnership account had been already adjusted by the Ameen appointed in the suits of 1889, and that the debts and dues of all parties had been determined by the Court. The plaintiffs prayed for recovery of the amount due to them under the Ameen's adjustment, and, in the alternative, for such other relief as might be deemed proper by the Court to grant them against any of the defendants. *Held* by NORRIS and BANERJEE, *JJ.* (RAMPINI, *J.*, dissenting).—That neither s. 13 nor s. 43 of the Civil Procedure Code was a bar to the present suits, the issue now in suit not having been determined in the former suits. *Held* by RAMPINI, *J.*—That there was ground for contending that, under expls. 2 and 3 to s. 13 of the Civil Procedure Code, the present suits were barred. DHANI RAM SHAHA *v.* BHAGIRATH SHAHA

[I. L. R., 22 Calc., 692

377. ———— **Ground of defence not raised in previous suit**—*Civil Procedure Code (1882), s. 43—Relief not asked for in previous suit—Circumstances giving right to such relief not known at date of previous suit—Constructive notice of possession.*—The plaintiffs, who were the junior members of a Malabar edom, of which defendants Nos. 3 to 5 were the senior members, sued to recover with mesne profits possession of certain property offering to pay the amount of a kanom advanced by defendant No. 1. It appeared that the land had been the subject of a kanom demise in 1865, and that defendant No. 3, the then karnavan, had obtained in 1878 a decree for its redemption, the right to execute which he assigned to a stranger, who executed it, and took possession of the property, taking from the karnavan a new kanom deed. Subsequently defendants Nos. 4 and 5 obtained a decree for possession and the cancellation of both the assignment and the kanom deed; but this decree was attached in execution proceedings in another suit and purchased by defendant No. 1, who executed it, purchased the property, deposited the kanom amount, and took possession on the 8th March 1884. The plaintiffs, who had meanwhile taken abortive proceedings to defeat the first defendant's title, instituted a suit in August 1884, praying for a decree that the sale to him be set aside without praying for possession. It was now found that the plaintiffs at that time were not aware that defendant No. 1 was in possession, and he did not plead that fact as a defence to the suit for a declaration merely. *Held* that the plaintiffs were not affected by constructive notice of the defendant's possession in 1884 by reason of the fact that their karnavan, with whom they were not acting, was aware of the defendant's previous application for execution, and that the suit was not barred by the Civil Procedure Code, s. 43. *Semble*—That apart from the question of the plaintiffs' notice of the first defendant's possession, since he had not pleaded possession in the suit of 1884, he could not fall back upon the fact that his possession dated from March 1884, as a ground of defence to the present action. SANKARAN *v.* PARVATHI

[I. L. R., 19 Mad., 145

378. ———— **Incidents of tenancy, Application to determine**—*Civil Procedure Code (Act XIV of 1882), s. 13—Bengal Tenancy Act (VIII of 1885), s. 158—Dispute as to tenancy—Landlord and tenant.*—The object of s. 158 of the Bengal Tenancy Act is merely to provide a summary procedure for settling disputes between landlord and tenant in regard to the particulars referred to in cls. (*a*), (*c*), and (*d*) of the section. Though cl. (*b*) does authorize the Court to determine the name and description of the tenant, this was not intended to and does not authorize the Court to decide conclusively disputes as to the right to possession of the land. An issue therefore regarding a dispute as to the existence of the relation of landlord and tenant between the parties in a proceeding under s. 158 can only be decided collaterally, and does not arise between the parties in such a manner as to make the decision upon it *res judicata* between them in a subsequent regular suit. *Bhopendra Narayan Dutt* v. *Nemy Chand Mondul, I. L. R., 15 Calc., 627,* and *Debendra Kumar Bundopadhya* v. *Bhupendro Narain Dutt, I. L. R., 19 Calc., 182,* referred to. PEARY MOHUN MUKERJI *v.* ALI SHEIKH

[I. L. R., 20 Calc., 249

379. ———— **Decision as to genuineness of deed.**—In a suit to establish the plaintiff's right to a standing crop on the basis of his title to the land, it was held that, where the plaintiff's title depended upon the genuineness of a kobala in respect of the land, a finding with regard to such genuineness is binding as *res judicata* in a subsequent suit between the same parties with regard to the title to the same land, although no issue was distinctly raised in the former suit on the question of genuineness. *Soorjomonee Dayee* v. *Suddanand Mohapatter, 12 B. L.*

RES JUDICATA—*continued.*

7. MATTERS IN ISSUE—*concluded.*

R., 304; L. R., I. A., Sup. Vol., 212, referred to DAKHYANI DEBEA v. DOLEGOBIND CHOWDHRY [I. L. R., 21 Calc., 430

8 PARTIES.

(a) SAME PARTIES OR THEIR REPRESENTATIVES

380. ———— Judgment not inter partes —*Questions of fact*—A judgment *inter partes* between *A* and *B* cannot be considered to conclude *A* in a suit between *A* and *C*, and is not admissible in the second suit as evidence of the truth of the facts adjudicated in the former one. BALAJI VISHVANATH JOSHI v. DHARMA 2 Bom., 385: 2nd Ed., 363

381. ———— Judgment inter partes—*Point decided in former suit.*—In a foreclosure suit in which *A* was plaintiff and *B, C,* and *D* were defendants,—*Held* that a verdict on the point in issue in an ejectment suit in which *C* and *D* were plaintiffs and *A* was defendant, was a bar to the suit. MOHIDIN v. MUHAMMAD IBRAHIM 1 Mad., 245

NUND KISHORE SINGH v. HUREE PERSHAD MUNDUL . . . . 13 W. R., 84

382. ———— *Suit to recover purchase money of the decree of ejectment from purchase.*—Where the plaintiff purchased land from *A*

no party—was not a *res judicata.* *Ram Ranjan Chuckerbutty v. Ram Narain Singh, I. L. R., 22 Calc., 533,* and *Rilto Kunwar v. Kisho Pershad, I. L. R., 19 All., 277,* referred to. GOOL KHAN v. TETAR GOALA . . . . 4 C. W. N., 63

383. ———— *Judgment in rem—Decree obtained by fraud—Civil Procedure Code, 1577, s. 13—Evidence Act, s. 44.*—Where a decree in a suit has been honestly obtained without fraud, it cannot be subsequently disputed by the par-

with regard to persons who are strangers to the suit. Where a decree has been obtained by the fraud and

may, in any subsequent proceeding, whether as plaintiff or defendant, treat the previous judgment as obtained by fraud and collusion as a mere nullity provided the fraud and collusion be clearly established. The same rule applies with regard to strangers where the previous judgment is a judgment *in rem.* S. 13 of the Civil Procedure Code (Act X of 1877) is not exhaustive as to the effect of *res judicata.* It does not deal with the case of judgments *in rem,* nor with that of parties represented by, though not claiming under, the parties to a former suit. *Quære*—As to the proper construction of s. 44 of the Evidence Act. AHMEDBHOY HUBIBBHOY v. VULLEEBHOY CASSUMBHOY [I. L. R., 6 Bom., 703

384. ———— Decree against Hindu widow—*Fraud—Reversioner.*—Upon the death of *R,* a Hindu, who was separate from his brother *S,* his widow *G* became life-tenant of his estate, and his daughter *B* became entitled to succeed after *G's* death. In 1882 a suit was brought by *S* and *G* against *V* to recover the value of a branch of a mangoe tree wrongfully taken by the defendant, and for

her rights. *Held* that, if the suit of 1882 was a genuine suit and was properly contested by the then plaintiffs, though *S* might have been improperly joined as plaintiff, any decision then passed against

[I. L. R., 8 All., 4..

385. ———— *Reversioners—Effect on successors in estate to widow of decree against her—Bonâ fides.*—The rule whereby decrees obtained against a Hindu widow succeeding to her husband's estate as heir are binding by way of *res judicata* against all who in the order of succession came after her, and in that sense may be dealt with as her representatives, is limited to decrees fairly obtained against the widow in a contested and *bonâ fide* litigation, and would not apply to a compromise which could scarcely be regarded as on a higher footing than an alienation which the widow in possession of her husband's divided estate might have made, and

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

which the plaintiff distinctly alleged had not been fairly obtained. *Anund Koer* v. *Court of Wards, I. L. R., 6 Calc., 764; Nand Kumar* v. *Radha Kuari, I. L. R., 1 All., 282;* and *Katama Natchiar's case, 9 Moore's I. A., 539,* referred to. Also that *M's* withdrawal of her suit was not a bar to the suit of the plaintiff. SANT KUMAR *v.* DEO SARAN [I. L. R., 8 All., 365

386. ——— *Reversioner.*—On her husband's death, a Hindu widow obtained possession of his estate as his heir, and, in a suit against her for possession thereof by certain persons claiming to succeed to the estate as rightful heirs, a decree was obtained by them. *Held* that such decree was a bar to a new suit against those persons by the daughter claiming the estate in succession to the widow, the decree having been fairly and properly obtained against the widow. NAND KUMAR *v.* RADHA KUARI . . . . I. L. R., 1 All., 282

387. ——— **Decree in suit by Hindu widow** — *Reversioners, Suit by —Alienation by life-tenant—Adverse possession.*—A daughter succeeded to a share of her father's estate, and transferred it in full property by a formal instrument or ikrarnama, dated March 1849, to her granddaughter, expressly naming her and treating her as her heiress, —the transfer being in the nature of a release, reserving maintenance and other advantages to the donor. Upon the application of the granddaughter before the Collector for the mutation of names according to the terms of the ikrarnama, the reversioners (collateral heirs of the father) affected to contest the unauthorized nature of the alienation, but dropped their opposition. In 1857 the diaras, or alluvial lands attached to the estate, were perpetually settled with the granddaughter. The alienor quarrelled with her granddaughter, and in 1857 brought a suit against her to set aside the ikrarnama, upon the ground of the non-performance of a condition subsequent. The plaintiff succeeded in the first Court, but the judgment was reversed (October 1858) on appeal to the Zillah Judge. Pending the appeal, the plaintiff died (February 1858), and reversioners applied to be, and were, admitted as her heirs to conduct the appeal. The granddaughter remained in possession from the date of transfer until 1866, when she died. In April 1867 the present suit was brought by the surviving reversioner, who claimed to be entitled to recover possession of the property by right of inheritance from the alienor's father. He was one of the reversioners who had been admitted to conduct the appeal in the former suit upon the death of the alienor. *Held* (on special appeal and review) there had been no adverse possession; the instrument enured as a transfer of the donor's life-interest only; the judgment in the former suit brought to set it aside did not bind or affect the reversioners, who in that suit merely represented the interest of their predecessors, the life-tenant. RAJ KUNWAR *v.* INDURJIT KUNWAR [5 B. L. R., 585 : 13 W. R., 52

388. ——— *Suit against remote reversioner—Subsequent suit for possession by reversioner.*—A Hindu widow and her son, the then presumptive heir to property claimed by the widow, obtained a decree against a more remote reversionary heir. The son predeceased his mother, and the person against whom the decree had been obtained became the next reversionary heir. *Held,* in a suit for possession by him, that the decree in the previous suit did not operate as a *res judicata.* RAM CHUNDER PODDAR *v.* HARI DAS SEN I. L. R., 9 Calc., 463

389. ——— **Reversioners entitled to succeed successively on death of Hindu widow**—*Suit by some of such reversioners to set aside alienations made by widow in possession—Similar suit afterwards brought by others.*—Where there are several reversioners successively entitled to succeed to property for the time being in the possession of a Hindu female, a decree in a suit by some of such reversioners seeking to set aside alienations made by the female in possession will not constitute *res judicata* in respect of a similar suit brought by other reversioners. *Bhagwanta* v. *Sukhi, I. L. R., 22 All, 33; Jumoona Dassya Chowdhrani* v. *Bamasoonderai Dassya Chowdhrani, L. R., 3 I. A., 72;* and *Isri Dut Koer* v. *Mussamat Hansbutti Koerain, L. R., 10 I. A., 150,* referred to. CHHIDDU SINGH *v.* DURGA DEI . . I. L. R., 22 All., 382

390. ——— **Decree against member of joint family**—*Civil Procedure Code, 1859, s. 2—Former suit by one of several parties who afterwards sue through a receiver.*—A previous decision against one member of a family suing to recover his own share of certain property is no bar, under s. 2, Act VIII of 1859, to a suit by the receiver in the name of the whole family to recover the whole property. JUGGUNNATH PERSHAD DUTT *v.* HOGG [12 W. R., 117

391. **Decree in suit by manager of joint family**—*Manager of joint family as representative of other members—Subsequent suit by another member on same cause of action.*—A Hindu family is regarded as a corporation whose interests are necessarily centred in the manager, the presumption being that the manager is acting for the family, unless the contrary is shown. Before the introduction of the Civil Procedure Code, this was so equally with regard to litigation as to other transactions, and it was not then obligatory, or even customary, for a Hindu manager to set forth that he sued in a representative character (as now required by the Code, s. 50), or to add the co-owners as parties to the suit (as required by English law). A suit therefore brought in 1856 by the manager of a joint Hindu family consisting of himself and the plaintiff, and no fraud or collusion being alleged, bound the plaintiff, though then a minor, and he could not afterwards bring a second suit on the same cause of action. GAN SAVANT BAL SAVANT *v.* NARAYAN DHOND SAVANT . . I. L. R., 7 Bom., 467

392. ——— **Decree against manager of joint family**—*Civil Procedure Code, 1877, s. 13—Karnavan of Malabar tarwad, Decree against.*—A decree against a karnavan of a Malabar

RES JUDICATA—*continued*

8 PARTIES—*continued*

tarwad as such, is binding upon the members of that tarwad though not parties to the suit in the absence of fraud or collusion Expl 5 of s 13, Civil Procedure Code, is not limited to the case of a suit under s 30 The members of a tarwad claim under a karnavan, suing as such within the meaning of expl 5 of s 13 VARANAKOT NARAYANAN NAMBURI v VARANAKOT NARAYANAN NAMBURI I L R, 2 Mad, 328

393 ———— *Karnavan of Malabar tarwad, Decree against* —A decree against a person who happens to be the karnavan of a Malabar tarwad is not necessarily binding on the tarwad in the absence of fraud ELAYACHANIDATHIL KOMBI ACHEN v KENATUMKORA LAKSHMI AMMA [I L R, 5 Mad., 201

394. ———— *Decree against karnavan of Malabar tarwad—Necessary parties to suits against property of Malabar families—Malabar law—Nambudri family Status of—Civil Procedure Code 1877, s 13 expl 5 s 30* —The plaintiff, a member of a Malabar Nambudri family, sued for certain land, claiming it as the property of his family the Vadasheri illam. He had been dispossessed by the defendants under a decree declaring their title to the land against the plaintiff's elder brother, who claimed it on behalf of the Vadasheri illam *Held* that the plaintiff was not estopped by the former decree from recovering the ... ree ... or ... the family is purely one of procedure The dictum in *Varanakot Narayanan Namburi v Varanakot* ... vans of the tarwad is not warranted by any provision of the Code of Civil Procedure Every member of the tarwad is entitled to be made a party, or to have notice under s 30 of the Code of Civil Procedure, in any suit the object of which is to affect the tarwad property Expl 5 of s 13 of the Code of Civil Procedure does not refer to *bona fide* defences but to *bona fide* claims and does not make a decree binding on a person not a party to it where the actual defendant was jointly interested with such person in the subject matter of the suit and defended the suit *bona fide* *Hazir Gazi v Sonamonee Dassee, I L R 6 Calc, 31*, approved KUNNATH ILLATH VASUDEVAN NAMBUDRI v NARAYANAN NAMBUDRI I L R, 6 Mad., 121

395 ———— *Effect of decree on other members though not parties to the suit* —In 1870 *A* sued *B* for a piece of land, and obtained a decree against him in the original suit and appeal. ... of the former suit, and that he (*B*) was the manager of the family and assisted by his nephews *C* and *D*, in defending the former suit *C* and *D* made no allegation in their plaint that they were minors at the time of the former suit nor did they assign any reason for not asking to have been made co-defendants in it Their allegation of collusion between *A* and *B* was not proved *Held* that the plaintiff's suit, under those circumstances was barred by the former suit under s. 2 of Act VIII of 1859 *Jogendro Deb Furkut v Funindro Deb Furkut, 11 B L R 244* and *Mayaram Sevaram v Jaywant Pandurang I L R, 5 Bom, 657 note* referred to. NARAYAN GOP HABBU v PANDURANG GANU [I L R, 5 Bom, 685

396 ———— *Civil Procedure Code, s 13 expl 5—Joint Hindu family—Suit against two members—Second suit against third member* —The plaintiff sued the father and brother of the defendant for trespass to a wall His right to ... this claim was registered as a suit under s 331 of the Code of Civil Procedure The plaintiff contended that the defendant was concluded by the decree obtained against the father and brother *Held* that a Hindu son in a joint family becomes entitled by reason of his birth and in his own right, a right which he can enforce against his father, he does not claim under his father ... of *Narayan Gop Habbu v Pandurang Ganu, I L R, 5 Bom 685* distinguished RAM NARAIN v BISHESHAR PRASAD I L. R., 10 All., 411

397 ———— *Sale in execution of decree — Mitakshara law — Alienation voluntary and involuntary, by the members of a family governed by the Mitakshara law* —*A*, a Hindu governed by the Mitakshara law, after the attachment of a property, part of his ancestral estate to which he and his minor son *B* were jointly entitled as members of a joint Hindu family, conveyed by a deed of gift the whole of his interest in the ancestral property, including the property under attachment, to *B* Five days after the execution of the ... 1859 to set it aside on the ground of irregularity. These proceedings were afterwards continued in the name of *A*, but virtually on behalf of the minor *B*, under the control and direction of the Collector, who had taken charge of his estate and appointed a manager under Act XL of 1858. These proceedings terminated in 1874 by the application to set aside the sale being dismissed, and the sale was therefore

confirmed, and *C* took possession of the property. In 1877 a suit was instituted on behalf of *D* by the manager appointed by the Collector against *C* and *A* to recover possession of the property, on the grounds —(1) that when it was sold it was not the property of *A*, the judgment-debtor; and (2) that the property of a joint Hindu family could not be sold or alienated by, or taken in execution of, a decree against a single member of that family. *Held* that the fact that the plaintiff, through his guardian, had actively intervened in the proceedings under s. 256 of Act VIII of 1859, was no bar to the institution of the present suit on his behalf. COLLECTOR OF MONGHYR *v.* HURDAI NARAIN SHAHAI

[I. L. R., 5 Calc., 425

S. C. RUDER PERKASH MISSER *v.* HURDAI NARAIN SAHU . . . . 5 C. L. R., 112

398. – **Decree against member of joint family as representing minor son**—*Alienation made without consent of co-sharers—Civil Procedure Code, 1877, s. 13—"Same parties."*—*G* sold an estate nominally to the minor son of *K*, but in reality to *K*. *H* brought a suit in his minor son's name against *N*, the mortgagee of such estate, to redeem the same. *N* set up as a defence to such suit that such sale was invalid under Hindu law, as such estate was a share of certain undivided property of which he was a co-sharer, and had been made without his consent. It was finally decided in that suit that such estate was a share of such undivided property and not the separate property of *G*, and that such sale was invalid, having been made without the consent of *N*, a co-sharer of such undivided property. *G* subsequently redeemed such estate, and, having done so, sold it a second time to *K*. *N* thereupon sued *K* to set aside such sale on the same ground as that on which he had defended the former suit. *Held* that the issue in such suit whether such estate was a share of undivided property or the separate property of *G* was *res judicata*, inasmuch as *K*, though not in name, yet in fact, was a "party" to the former suit in which such issue was raised and finally decided. KHUB CHAND *v.* NARAIN SINGH

[I. L. R., 3 All., 812

399. ———— **Dismissal of former suit to have property declared joint**—*Subsequent suit for partition.*—Where a plaintiff's claim to have a property declared ijmali had been dismissed in a former suit, his suit for a partition of the same property was held to be barred against a defendant who had been a party to that suit, as well as against defendants who were not in possession. BESHARUTOOLLAH *v.* AJOO . . 14 W. R., 195

400. ———— **Suit against defendants as principals**—*Civil Procedure Code, 1859, s. 2—Subsequent suit against them as agents.*—A previous suit in which the plaintiff elected to sue the defendants as principals bars a second suit on the same contract in which the defendants are charged as responsible agents under a trade usage. DEVRAV KRISHNA *v.* HALAMBHAI I. L. R., 1 Bom., 87

401. ———— **Suit not between same parties.**—*Held*, on the facts, suit not barred by s. 2, Act VIII of 1859, not being between the same parties. UMES CHANDRA ROY *v.* NABIN CHANDRA MAZUMDAR . . . 5 B. L. R., 327 note

S. C. WOOMESH CHUNDER ROY *v.* NOBIN CHUNDER MOZOOMDAR . . . 10 W. R., 457

ABDOOL GUFFOOR KHAN CHOWDHRY *v.* GOLAM NUJUF . . . . . . 16 W. R., 298

402. ———— *Decision as to validity of will.*—*S* died in 1865, leaving two sons, *N* and *G*. *M* took possession of the property of *S* under a will alleged by her to have been executed by *S*. In 1867 *G* brought his suit, as one of the heirs of *S*, to set aside the will, and made his brother *N* a co-defendant. The Principal Sudder Ameen dismissed the suit, finding on the evidence that the will was genuine. In 1869 *N* brought this suit for his share as heir of *S* against *M*. The first Court found that the will was a forgery, and gave the plaintiff a decree. On appeal, the Judge held that *N*'s claim was barred by the decision in the former suit brought by his brother, and reversed the decision of the first Court. *Held*, on special appeal, that it was not barred by the finding of the Court in *G*'s suit, as *N* was no party to that suit, and he could not in any manner have availed himself of a decree in that suit to enforce a claim to his share. NABIN CHANDRA MAZUMDAR *v.* MUKTA SUNDARI DEBI

[7 C. L. R., Ap., 38 : 15 W. R., 309

403. ———— *Former suits on ikrar between several parties.*—Five brothers, *A*, *B*, *C*, *D*, and *E*, executed an ikrar, by which talukh N and others were to remain in their possession and under the management of *A*. On refusal to give his brothers their shares of the profits, they sued separately and obtained decrees against him for the amount due to them. In a suit by *A*'s son against *B* for the sums which his father was compelled under the ikrar to pay his other brothers, on the [illegible] *B* alone was in possession of talukh N [illegible] the rents wrongfully,—*Held* that the suit was not barred by the former suits under the ikrar, except so far as *B*'s share in talukh N was concerned. KHETTRO NATH DEY *v.* GOSSAIN DOSS DEY . . . 7 W. R., 188

404. ———— **Decree declaring impartibility**—*Subsequent suit for partition.*—The plaintiff's mirasidars of a village, held on pungavaly tenure, sued their co-mirasidars, the owners of the remaining shares, and others, occupants of land in the village, for a partition of the common lands of the village and an allotment to the plaintiffs of specific parts thereof proportionate to the shares which they represented. In a former suit, to which all the present mirasidars were parties, either actually or as privies to those through whom they claim, it was decided that no right existed in any individual shareholder of the village to have allowed to him a distinct portion of the common lands in proportion to his share or shares. *Held* that the former decree

RES JUDICATA—*continued*

8 PARTIES—*continued*

declaring the impartibility of the common land of the village was conclusive in the present suit between the present shareholders upon the same question of right SITARAMAIYAR v. ALAGIRY IYER [4 Mad., 285

405 ——— Decree in suit to establish right—*Subsequent suit for possession—Civil Procedure Code, 1859, s 2—Suit between same parties*—The plaintiff sued to recover possession of certain houses and grounds as belonging to his zamindari setting forth that the premises in question had been occupied by his paternal grandmother, on whose death the defendants had taken wrongful possession The defendants claimed to be legally entitled to the premises in question and contended that the plaintiff's suit was barred under s 2 Act VIII of 1859, by reason that the plaintiff had already, during h[illegible] lifetime, brought a suit against [illegible]

that the co-defendant [illegible] reversing the decisions of the lower Court that under the circumstances the decision in the former suit was not a decision in a suit between the same parties or parties under whom they claimed and that the cause of action in the present suit was not determined in the former suit *Held* also that the [illegible] plea of limitation could not be deter[illegible] the plaintiff's [illegible] riod of limita [illegible] laintiff's leave, [illegible] ITTAPURAM v [illegible], 2 Mad., 23 [illegible], 5 I A., 200

S C RAMA RAO v SURIYA RAO 3 C L. R., 265

Reversing the decision of the High Court in RAMA RAO v SURIYA RAO . I L. R., 1 Mad., 84

406 ——— Decree in suit by first mortgagee for sale of mortgaged property—*Second mortgagee not made a party—Subsequent* [illegible] *mortgagee on mortgage—Civil Proce-* [illegible] on the [illegible] le into eight shares, [illegible] upon *A*, one upon each of his five daughters and one upon his widow, *B* The name of *B* only was recorded in the revenue registers in respect of the zamindari property left by *G* In 1876 *A* and *B* gave to *X* a deed of simple mortgage of 2½ biswas out of a 5 biswas share of a village included in the said property

In 1878 *A* and *B* gave to *S* a deed of simple mortgage of the 5 biswas, which were described in the deed as the widow's "own" property In 1882 *X* obtained a decree upon his mortgage for the sale of the mortgaged property and it was put up for sale and purchased by *X* himself in January 1884. In February and November 1884 the daughters of *G* obtained *ex parte* decrees against *A* and *B* in suits brought by them to recover their shares by inheritance in the 5 biswas In 1885 *S* brought a suit upon his mortgage of 1878 claiming the amount due thereon and the sale of the whole 5 biswas To this suit he made defendants *A* and *B* *G*'s daughters and [illegible] the decrees of February and Novem[illegible]

upon the deed of 1876 [illegible] bound by any of the proceedings taken thereon or consequent thereto On behalf of the daughters it was contended (*inter alia*) that the decrees obtained by them against *A* and *B* in February 1884 were conclusive by way of *res judicata*, against the plaintiff who, as mortgagee from *A* and *B*, claimed under a title derived from them. *Held* that there being no evidence to show that the decrees of February and November 1884 were fraudulently and collusively obtained, the Court of first instance was right in exempting the shares of the daughters from the lien sought to be enforced by the plaintiff; and that, inasmuch as the deed of 1876 was prior in date to the plaintiff's deed of 1878 and there was no allegation of fraud or collusion in regard to it the decree and sale in enforcement of the former deed would defeat the rights of the plaintiff under the latter *Khub Chand v Kalian Das I L R., 1 All 240*, and *Ali Hasan v Dhirja I L R., 4 All., 518* referred to. *Per* MAHMOOD J—The decrees of February and November 1884 did not operate as *res judicata* against the plaintiff inasmuch as a mortgagee cannot be bound by a decision relating to the mortgaged property in a suit instituted *after his* mortgage and to which he was not a party After a mortgage has been duly created the mortgagor, in whom the equity of redemption is vested no longer possesses any such estate as would entitle him to represent the rights and interests of the mortgagee in a subsequent litigation so as to render the result of such litigation binding upon and conclusive against such mortgagee The plaintiff in the present suit could not be treated as a party claiming under his mortgagors within the meaning of s. 13 of the Civil Procedure Code and that section must be interpreted as if, after the words "under whom they or any of them claim" the words "by a title arising subsequently to the commencement of the former suit" had been inserted. *Doma Sahu v Jeewatram Lall, 3 B L R., A C., 477; 12 W R., 362* and *Denomalee Roy v Koylash Chander Dey, I L R., 4 Calc., 692* referred to. *Ostram v Morewood, 3 East., 616, Bonkubehari Chatterjee v Ameeroonissa Khatoon 2 W R., 191; Katama Natchiar v. Moottoo Vijaya Ragunadha, 9 Moore's I A., 539;*

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

and *Ram Coomar Sein* v. *Prosunno Coomar Sein, W. R., 1864, 375,* distinguished. The principles of the rule *res judicata,* as part of the law of civil procedure properly so called, and those of the rule of estoppel, as part of the law of evidence, explained and distinguished. SITA RAM *v.* AMIR BEGAM

[I. L. R., 8 All., 324

407. ——— Illegitimacy, Question of —*Execution of decree—Act XXIII of 1861, s. 11.* —The questions which, under s. 11, Act XXIII of 1861, may be determined by a Court executing a decree, must be between parties to the suit in which the decree was passed, and must relate to the execution of the decree. A person who was not on the record when the decree was made does not constitute himself a party to the suit by applying for execution, and a question as to his legitimacy is consequently not one which the Court executing the decree is competent to entertain. A declaration by a Court in execution proceedings, that a person not a party to the suit applying for execution is legitimate, since it is made without jurisdiction, cannot, under s. 2, Act VIII of 1859, be pleaded as a bar to a regular suit in which it is sought to establish the illegitimacy of the applicant. ABIDUNNISSA KHATUN *v.* AMIRUNNISSA KHATUN . . . I. L. R., 2 Calc., 327

[L. R., 4 I. A., 66

408 ——— *Suits in right of inheritance.*—*M,* in 1866, brought a suit against *A,* her son *S, B,* and *C,* who, like her, all claimed a right to inherit the estate of *K,* deceased, for her share by inheritance in *K*'s estate, alleging that she had been lawfully married to him. She only denied *A*'s right to inherit, who claimed as *K*'s adopted son; admitting the right of *S,* who claimed as her lawful son by *K,* and that of *B* and *C,* who claimed as wife and daughter respectively of *K. S* supported his mother's claim. *A, B,* and *C* denied that *M* had been lawfully married to *K,* and alleged that *S* was the son of *M,* not by *K,* but by another person. It was decided in that suit that *M* had been lawfully married to *K;* that *S* was the lawful son of *K* by *M;* and that *A* was not the adopted son of *K.* In 1880 *S* sued *A* for possession of *C*'s share in such estate, *C* having died, claiming as *C*'s step brother and heir. *A* set up as a defence that *M* was not *K*'s wife, nor was *S K*'s son. *Held* that, inasmuch as, although in the former suit *A* and *S* stood together in the same array, they were in fact opposed to each other, *S* being on the side and supporting the case of his mother, and *A* being the true defendant, such suit was one between the same parties as the second, and the matter of *S*'s legitimacy, having been raised and finally decided in the former suit by a competent Court, was *res judicata,* and could not be again raised in the second suit. SHADAL KHAN *v.* AMIN-ULLA KHAN

[I. L. R., 4 All., 92

409. ——— Party as representative —*Civil Procedure Code, 1877, ss. 13, 244.*—In 1872 *A* brought a suit on a mortgage against the mortgagor, a Hindu widow, who died pending the suit. *A* then applied that the suit should be revived against *B* as the representative of the defendant. *B* denied that he was such representative but the Judge refused to go into the question, made *B* a party, and gave *A* a decree for the sale of the mortgaged property. *B* subsequently brought a suit to have it declared, *inter aliâ,* that the mortgage and decree only covered the widow's life-interest. *Held* that the suit was not barred either as *res judicata* or under the provisions of s. 244 of the Code of Civil Procedure. KANAI LALL KHAN *v.* SASHI BHUSON BISWAS

[I. L. R., 6 Calc., 777 : 8 C. L. R., 117

410. ——— *Mortgage—Purchaser of mortgagor's interest—Sale in execution of decree—Omission to revive suit.*—A mortgagee brought a suit on his mortgage against his mortgagor and against *A,* a person who had purchased the right, title, and interest of the mortgagor in execution of a money-decree obtained against him subsequently to the mortgage. Pending the mortgage-suit and before decree, *A* died, but the suit was not revived against his representatives. The usual mortgage-decree was passed in favour of the mortgagee, who, in execution thereof, sold a portion of the mortgaged property to *B.* In a suit brought by *B* against the representatives of *A* for the property purchased and for general relief,—*Held* that the decree in the mortgage-suit was not binding on the representatives of *A;* nor, under the provisions of Act VIII of 1859, did the failure to revive such mortgage-suit prevent *B* from [illegible] d suit against *A*'s representatives. [illegible] DOPADHYA *v.* BROJONATH MOOKHOPADYA

[I. L. R., 8 Calc., 357

411. ——— *Suit for ejectment—Lessor and lessee.*—An ejectment suit by *B*'s tenant against the defendant having been dismissed, a second ejectment suit was subsequently, after *B*'s death, brought in respect of the same land against the defendant by the successor in title of *B. Held* that, inasmuch as a lessor cannot be considered as claiming under his own lessee, the principle of *res judicata* did not apply. RAMBROMO CHUCKERBUTTY *v.* BUNSI KURMOKAR . 11 C. L. R., 122

412. ——— Former decree declaring status of occupiers of holding—*Suit not between same parties.*—An attempt having formerly, on the cessation of the services rendered by some palki-bearers, been made to oust them from certain chakran lands which they had held for many years, and which they had claimed to hold rent-free for the future; and it having been held on that occasion that, though theirs was not a rent-free tenure or an uninterrupted tenure from the time of the decennial settlement, yet they had clearly acquired a right of occupancy,—*Held,* on a suit being brought by the zamindar against the same bearers for recovery of rent, that, although the former suit had not been brought by the zamindar personally, but by the persons to whom he had attempted to transfer the lands, yet the decision in that suit clearly established, as

RES JUDICATA—*continued*

8 PARTIES—*continued*

between the zamindar and the palki bearers a relation of landlord and tenant which empowered him to recover arrears of rent from them SUROOP SIRDAR v BEER CHUNDER MANIKHYA [25 W R, 370

413 ——— Suits between representatives—*Document found conclusive*—Where *A* sued *B* for moneys alleged to be due under certain documents, and *B* pleaded that the demands had been included in a settlement of accounts, embodied in a document [illegible] the suit was [illegible] included in th[illegible] existed as cau[illegible]

414 ——— Purchaser from party to suit—*Civil Procedure Code, 1882, s 13—Vendor and purchaser—Purchase pendente lite*—Certain persons, claiming by right of inheritance to *C*, sued *B*, *N*, *A*, *K*, and others for possession of certain immoveable property, and on appeal to the High Court in August 1876 their claim was decreed in full In the [illegible] that decree, [illegible] perty from *B*, [illegible] dispossessed of [illegible] decree of August 1876 He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited it from *D*, that the figures of the total of *C*'s property given in the plaint in the former suit were erroneous, that the property now in suit was not affected by that decree; and that he had been improperly dispossessed of it It appeared that there was in fact, a mistake in the total of the extent of *C*'s property as stated in the plaint in the former suit *Held* that the [illegible] former suit having been decreed in full the property now in suit was then decreed to the present defendants, and that the claim of the plaintiff to go behind that decree could not be entertained HUKM SINGH v ZAUKI LAL I L. R., 6 All, 506

415 ——— Suit by son not claiming through his father—*Gift to Hindu widow—Separate property*—*C*, a Hindu, subject to the Mitakshara law, died leaving a widow, *R*, but no issue In his lifetime he had transferred to *R* by gift mouzah R, a portion of his real estate After his death, *J* and *P*, his brothers, sued *R* for the posse[illegible] was [illegible] being [illegible] was [illegible] entitled to succeed by inheritance The Sudder Court determined that *R* had acquired mouzah R by gift from *C*, and that *R* took under the gift a life-interest in the property only *J* and *P* having died, *R* made a gift of mouzah R to her agent as a reward for his faithful services. *N*, the son of *J* sued as the heir of his uncle *C*, to set aside this gift to the agent as illegal *Held* that the decision in the former suit did not make the question as to the interest *R* took under the gift from her husband *res judicata*, inasmuch as *N* did not claim through his father when suing as heir to his uncle RUDI NARAIN SINGH v RUP KUAR [I L R, 1 All, 734

416 ——— Representation of the es[illegible] cession to a talukhdari estate, had been decided in a former suit, in which an order of Her Majesty in Council declared who had the right to succeed *Held* that a claimant, whose interest was such as would vest in him only upon the death of the widow of the last talukhdar, was bound by the order so made, on the [illegible] whereby a power to appoint a successor in the talukhdari had been given to the widow had been revoked, and determined the right to succeed as upon an intestacy The person whom the widow had appointed by her will, now contending that he was not bound by the order, having been when the former suit was instituted a minor, without any duly appointed guardian, it was held that, whether he had, or had not by acts after attaining full age (having been nominally a party), become estopped from setting up the above, he was, at all events bound by the order, on the ground that the widow, holding an estate at least as large as that of the Hindu widow in her husband's property, was the full representative of the estate in the former suit, the appointment made by her being such as would operate only on her death *Held* also that, although a manager of the estate had been appointed under the provisions of Act XXIV of 1870 (the Oudh Talukhdars' Relief Act) but had not been made a party to the suit, this omission did not, under s. 2[illegible], affect the validity of the decree between the parties PERTABNARAIN SINGH v. TRILOKINATH SINGH [I. L. R., 11 Calc, 186: L R., 11 I. A., 197

417. ——— Benami proceedings—*Decision in former suit*—In execution of a decree of the Revenue Court in a suit brought by *A* for arrears of rent of a certain patni, the patni was put up for sale and purchased in the name of *G* The rent having again fallen into arrear, *A* took proceedings against *G* under Bengal Regulation VIII of 1819 for the sale of the patni, but the arrears having been paid the patni was not sold. In a suit for arrears of rent of the same patni subsequently brought by *K* against *G*, *P*, and *B* (the wife of *P*) jointly, on the allegation that the patni had been

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

and *Ram Coomar Sein* v. *Prosunno Coomar Sein,* *W. R.*, 1864, 375, distinguished. The principles of the rule *res judicata*, as part of the law of civil procedure properly so called, and those of the rule of estoppel, as part of the law of evidence, explained and distinguished. SITA RAM *v.* AMIR BEGAM

[I. L. R., 8 All., 324

407. ———— Illegitimacy, Question of —*Execution of decree—Act XXIII of 1861, s. 11.* —The questions which, under s. 11, Act XXIII of 1861, may be determined by a Court executing a decree, must be between parties to the suit in which the decree was passed, and must relate to the execution of the decree. A person who was not on the record when the decree was made does not constitute himself a party to the suit by applying for execution, and a question as to his legitimacy is consequently not one which the Court executing the decree is competent to entertain. A declaration by a Court in execution proceedings, that a person not a party to the suit applying for execution is legitimate, since it is made without jurisdiction, cannot, under s. 2, Act VIII of 1859, be pleaded as a bar to a regular suit in which it is sought to establish the illegitimacy of the applicant. ABIDUNNISSA KHATUN *v.* AMIRUNNISSA KHATUN . . . I. L. R., 2 Calc., 327

[L. R., 4 I. A., 66

408 ———— *Suits in right of inheritance.*—*M*, in 1866, brought a suit against *A*, her son *S*, *B*, and *C*, who, like her, all claimed a right to inherit the estate of *K*, deceased, for her share by inheritance in *K*'s estate, alleging that she had been lawfully married to him. She only denied *A*'s right to inherit, who claimed as *K*'s adopted son; admitting the right of *S*, who claimed as her lawful son by *K*, and that of *B* and *C*, who claimed as wife and daughter respectively of *K*. *S* supported his mother's claim. *A*, *B*, and *C* denied that *M* had been lawfully married to *K*, and alleged that *S* was the son of *M*, not by *K*, but by another person. It was decided in that suit that *M* had been lawfully married to *K*; that *S* was the lawful son of *K* by *M*; and that *A* was not the adopted son of *K*. In 1880 *S* sued *A* for possession of *C*'s share in such estate, *C* having died, claiming as *C*'s step brother and heir. *A* set up as a defence that *M* was not *K*'s wife, nor was *S* *K*'s son. *Held* that, inasmuch as, although in the former suit *A* and *S* stood together in the same array, they were in fact opposed to each other, *S* being on the side and supporting the case of his mother, and *A* being the true defendant, such suit was one between the same parties as the second, and the matter of *S*'s legitimacy, having been raised and finally decided in the former suit by a competent Court, was *res judicata*, and could not be again raised in the second suit. SHADAL KHAN *v.* AMIN-ULLA KHAN

[I. L. R., 4 All., 92

409. ———— Party as representative —*Civil Procedure Code, 1877, ss. 13, 244.*—In 1872 *A* brought a suit on a mortgage against the mortgagor, a Hindu widow, who died pending the suit. *A* then applied that the suit should be revived against *B* as the representative of the defendant. *B* denied that he was such representative but the Judge refused to go into the question, made *B* a party, and gave *A* a decree for the sale of the mortgaged property. *B* subsequently brought a suit to have it declared, *inter alia*, that the mortgage and decree only covered the widow's life-interest. *Held* that the suit was not barred either as *res judicata* or under the provisions of s. 244 of the Code of Civil Procedure. KANAI LALL KHAN *v.* SASHI BHUSON BISWAS

[I. L. R., 6 Calc., 777: 8 C. L. R., 117

410. ———— *Mortgage—Purchaser of mortgagor's interest—Sale in execution of decree—Omission to revive suit.*—A mortgagee brought a suit on his mortgage against his mortgagor and against *A*, a person who had purchased the right, title, and interest of the mortgagor in execution of a money-decree obtained against him subsequently to the mortgage. Pending the mortgage-suit and before decree, *A* died, but the suit was not revived against his representatives. The usual mortgage-decree was passed in favour of the mortgagee, who, in execution thereof, sold a portion of the mortgaged property to *B*. In a suit brought by *B* against the representatives of *A* for the property purchased and for general relief,—*Held* that the decree in the mortgage-suit was not binding on the representatives of *A*; nor, under the provisions of Act VIII of 1859, did the failure to revive such mortgage-suit prevent *B* from bringing the second suit against *A*'s representatives. BEHINEEHARI BUNDOPADHYA *v.* BROJONATH MOOKHOPADHYA

[I. L. R., 8 Calc., 357

411. ———— *Suit for ejectment—Lessor and lessee.*—An ejectment suit by *B*'s tenant against the defendant having been dismissed, a second ejectment suit was subsequently, after *B*'s death, brought in respect of the same land against the defendant by the successor in title of *B*. *Held* that, inasmuch as a lessor cannot be considered as claiming under his own lessee, the principle of *res judicata* did not apply. RAMBROHO CHUCKERBUTTY *v.* BUNSI KURMOKAR . 11 C. L. R., 122

412. ———— Former decree declaring status of occupiers of holding—*Suit not between same parties.*—An attempt having formerly, on the cessation of the services rendered by some palki-bearers, been made to oust them from certain chakran lands which they had held for many years, and which they had claimed to hold rent-free for the future; and it having been held on that occasion that, though theirs was not a rent-free tenure or an uninterrupted tenure from the time of the decennial settlement, yet they had clearly acquired a right of occupancy,—*Held*, on a suit being brought by the zamindar against the same bearers for recovery of rent, that, although the former suit had not been brought by the zamindar personally, but by the persons to whom he had attempted to transfer the lands, yet the decision in that suit clearly established, as

RES JUDICATA—*continued.*

8 PARTIES—*continued.*

between the zamindar and the palki bearers, a relation of landlord and tenant which empowered him to recover arrears of rent from them SUROOP SIRDAR *v.* BEER CHUNDER MANIKHYA

[25 W. R., 370

413 ———— Suits between representatives—*Document found conclusive*—Where *A* sued *B* for moneys alleged to be due under certain documents, and *B* pleaded that the demands had been included in a settlement of accounts, embodied in a document which he set forth in his answer, and the suit was dismissed, on the ground that, being included in the settlement, the demands no longer existed as causes of action,—*Held* that *A*'s repre- [illegible]

PINGALA SUNKARA RAU . . 1 Mad., 312

414. ———— Purchaser from party to suit—*Civil Procedure Code, 1882, s 13—Vendor and purchaser—Purchase pendente lite*—Certain persons, claiming by right of inheritance to *C*, sued *B, N, A, K,* and others for possession of certain immoveable property, and on appeal to the High Court in August 1876 their claim was decreed in full In the course of the litigation which ended in that decree, *Z* purchased certain immoveable property from *B, N, A,* and *K* *Z* was subsequently dispossessed of such property in execution of the decree of August 1876 He thereupon sued the holders of that decree for possession of the same, alleging that his vendors had inherited it from *D*, that the figures of the total of *C*'s property given in the plaint in the former suit were erroneous, that the property now in suit was not affected by that decree, and that he had been improperly dispossessed of it It appeared that there was, in fact, a mistake in the total of the extent of *C*'s property as stated in the plaint in the former suit. *Held* that the [illegible] former suit having been decreed in full, the property now in suit was then decreed to the present defendants, and that the claim of the plaintiff to go behind that decree could not be entertained HUKM SINGH *v.* ZAUKI LAL . . I. L. R., 6 All, 506

415. ———— Suit by son not claiming through his father—*Gift to Hindu widow—Separate property*—*C*, a Hindu, subject to the Mitakshara law, died leaving a widow, *R*, but no issue In his lifetime he had transferred to *R* by gift mouzah R, a portion of his real estate After his death, *J* and *P*, his brothers sued *R* for the possession of *C*'s real estate, on the ground that it was ancestral property. This suit was dismissed, it being held by the Sudder Court that *C*'s real estate was separate property, to which his widow would be entitled to succeed by inheritance The Sudder Court determined that *R* had acquired mouzah R by gift from *C*, and that *R* took under the gift a life-interest in the property only *J* and *P* having died, *R* made a gift of mouzah R to her agent as a reward for his faithful services. *N*, the son of *J*, sued as the heir of his uncle *C*, to set aside this gift to the agent as illegal *Held* that the decision in the former suit did not make the question as to the interest *R* took under the gift from her husband *res judicata*, inasmuch as *N* did not claim through his father when suing as heir to his uncle RUDI NARAIN SINGH *v.* RUP KUAR

[I L R., 1 All, 734

416. ———— Representation of the estate of a Hindu talukhdar by his widow in a suit for the succession—*Act I of 1869—Act XXIV of 1870, s 25.*—Issues substantially the same as those raised in the present suit, relating to the succession to a talukhdari estate, had been decided in a former suit, in which an order of Her Majesty in [illegible] declared that a will made by the last talukhdar, whereby a power to appoint a successor in the talukhdari had been given to the widow, had been revoked, and determined the right to succeed as upon an intestacy The person whom the widow had appointed by her will, now contending that he was not bound by the order, having been when the former suit was instituted, a minor, without any duly appointed guardian, it was held that, whether he had, or had not, by acts after attaining full age (having been nominally a party), become estopped from setting up the above, he was, at all events bound by the order, on the ground that the widow, holding an estate at least as large as that of the Hindu widow in her husband's property, was the full representative of the estate in the former suit; the appointment made by her being such as would operate only on her death *Held* also that, although a manager of the estate had been appointed under the provisions of Act XXIV of 1870 (the Oudh Talukhdars' Relief Act), but had not been made a party to the suit, this omission did not, under s. 25, affect the validity of the decree between the parties PERTABNARAIN SINGH *v.* TRILOKINATH SINGH

[I. L. R., 11 Calc, 186: L. R., 11 I. A., 197

417. ———— Benami proceedings—*Decision in former suit*—In execution of a decree of the Revenue Court in a suit brought by *K* for arrears of rent of a certain patni, the patni was put up for sale and purchased in the name of *G* The rent having again fallen into arrear, *K* took proceedings against *G* under Bengal Regulation VIII of 1819 for the sale of the patni, but the arrears having been paid the patni was not sold. In a suit for arrears of rent of the same patni subsequently brought by *K* against *G*, *P*, and *B* (the wife of *P*) jointly, on the allegation that the patni had been

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

purchased by *G* benami for *P* and *B*,—*Held* that the suit was not barred by the former proceedings instituted by *K* against *G* under Regulation VIII of 1819. PROSONNO COOMAR PAL CHOWDRY *v.* KOYLASH CHUNDER PAL CHOWDRY

[B. L. R., Sup. Vol., 759
2 Ind. Jur., N. S., 327: 8 W. R., 428

418. ——— *Suit for confirmation of possession and declaration of title.*—*A* brought a suit for a debt against *B*, obtained a decree, and attached certain land in execution. *C* intervened, claiming the property as his, but on the 28th March 1868 his claim was disallowed, on the ground that in two suits previously brought against *C* and others for possession of the same property, on the 30th December 1863, by *X* and *Y*, whose interest had, pending the suit, been purchased by *B*, it had been decreed that the land belonged to *B*. The decrees in these suits were dated 13th and 19th January 1864; they were in favour of *B*, and ran in his name alone. *C* had purchased a moiety of the property at an auction sale on the 7th March 1859; *X* and *Y* claimed under a pre-existing mortgage over the same property, the equity of redemption under which had been foreclosed. *C* now brought a suit against *A* and *B* for confirmation of his possession and a declaration of his title to the property. He alleged that *B* was his servant, and had purchased the interest of *X* and *Y* in the property benami for him; that he (*C*) had made the purchase with his own money in the name of *B*; that the suits originally brought by *X* and *Y* had really been compromised; that while the decrees of the 13th and 19th January 1864 were nominally in favour of *B*, they were really in his (*C's*) favour; and that the suit brought by *X* and *Y* had been allowed to proceed in *B's* name, in order that *C's* title might be strengthened by a decree in his favour, *B* being only nominally the decree-holder. *C* also stated that, since his purchase on 7th March 1859, he had always been in possession, and he dated his cause of action from the 28th March 1868, when his claim to the property which had been attached by *A* in his suit against *B* was disallowed. The Subordinate Judge gave a decree in favour of the plaintiff C. *B* alone appealed to the High Court. *Held* that *C*, not having been disturbed in his possession, and seeking a declaration of his title only and no relief, should have stated clearly and precisely what that title was; that as against *A*, who had not appealed, the decision of the Subordinate Judge was final; that as between *B* and *C* the matter was *res adjudicata*; that *C* could not go behind the decrees of the 13th and 19th January 1864 which had been passed in favour of *B*, and show that the purchase by *B* and subsequent decrees were really benami for *C* and in his favour. BHAWABAL SINGH *v.* RAJENDRA PRATAP SAHOY

[5 B. L. R., 321: 13 W. R., 157

419. ——— *Civil Procedure Code, s. 13—Suit by benamidar.*—In a suit to recover a parcel of land, the plaintiff's case was that it had been purchased by him benami in the name of his brother, who had sued the present defendants to obtain possession in 1887, but had been negligent in the conduct of the suit, which was consequently dismissed. It was found that there had been no negligence in the conduct of the suit, and that it had been instituted with the plaintiff's knowledge. *Held* that the plaintiff was bound by the decree in the former suit, and could not recover on his secret title. SHANGARA *v.* KRISHNAN . I. L. R., 15 Mad., 267

420. ——— Suit for share of estate of Mahomedan—*Lien for dower.*—A Mahomedan died, leaving among others a widow and a sister entitled to shares in his estate. The widow got possession of the whole. The sister died, and after her death her husband, on behalf of himself and grandson, sued the widow to obtain the shares to which the deceased sister was entitled, and obtained a decree for payment of the same, after satisfaction of the widow's lien for dower, in certain proportions to himself and grandson. The husband's interest in the decree was subsequently confiscated by Government for having taken part with the enemy in the Mutiny. He subsequently died leaving his grandson. The widow died during the Mutiny, and her brother was put into possession of the property by the Government as her heir. The grandson now sued the widow's brother to recover his own and his grandfather's share, alleging that the lien for dower had been satisfied. *Held* the suit was not barred by Act VIII of 1859, s. 2. MAHOMED AMEENOODEN KHAN *v.* MOZUFFER HOSSEIN KHAN

[5 B. L. R., 570: 14 W. R., P. C., 5

421. ——— Auction-purchaser—"*Representative.*"—A purchaser at an execution-sale is not as such the representative of the judgment-debtor within the meaning of s. 115 of the Evidence Act. A Hindu, governed by the Mitakshara School of Law, died on the 12th May 1867, leaving him surviving a widow *B* and a brother *R*, who was admittedly the next reversioner. In July 1867 *B* purported to adopt a son *D* to *A*, and subsequently in September 1867 obtained a certificate under Act XL of 1858. In 1872 *B* obtained a loan from the plaintiff *M* of R9,000, and to secure its repayment executed a mortgage of seven mouzahs in favour of *M* as guardian of *D*. The money was advanced and mortgage executed at the instigation of *R* and with his consent, and upon his representation that *D* was the duly adopted son of *A*, and it was admitted that the money was specifically advanced for, as well as applied towards, the payment of decrees obtained against *A* in his lifetime and against his estate after his death. *B* died in 1878. On the 14th August 1880 *M* instituted a suit against *D* upon his mortgage, and in that suit he made *S* a party-defendant as being the purchaser of the mortgagor's interest in one of the mouzahs included in his mortgage. On the 26th June 1882 *M* obtained a decree declaring that he was entitled to recover the amount due by sale of the mortgaged mouzahs. In the proceedings taken in execution of that decree *M* was opposed by *L*, who was afterwards held to be a benamidar for *S*, who claimed that he had on the 8th November 1880 purchased

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

S was merely a party to M's original suit as pur-

decree was in no way binding against R, and therefore S was not barred by *res judicata* from setting up the interest of R in the five mouzahs so acquired by him LALA PARBHU LAL v. MYLNE

[I. L. R., 14 Calc., 401

422. ———— Suit by a judgment-cre-

property.—A judgment-creditor of the plaintiff, having obtained a decree against the plaintiff, attached the house in dispute. The defendant intervened in 1878, and set up a previous purchase of the house by himself from the plaintiff. The attach-

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appear. The defendant appeared and produced a sale-deed, which the Court found proved, and dismissed the judgment-creditor's suit. The plaintiff

holding that the suit was not barred. On appeal by the defendant to the High Court,—*Held*, confirming the lower Court's decree, that the dismissal of the former suit did not operate as *res judicata* in the

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

absence of any evidence to show that the judgment-creditor, in point of fact, represented the plaintiff so as to constitute him a party to the suit. SHIVAPA v. DOD NAGAYA

[I. L. R., 11 Bom., 114

423. ———— Party to proceedings in execution—*Civil Procedure Code, 1882, ss. 13, 283—Order in execution—Estoppel.*—A claim in execution to a house which had been attached was dismissed, and the claimant then sued the decree-holder to establish her title to it. It appeared that the house had been previously attached in execution of another decree obtained by A against the same judgment-debtor and his father (since deceased); that the present plaintiff had then preferred a claim, which was allowed, that the judgment-debtor had taken no steps to have the order allowing the claim set aside, and that a suit filed by A with that object had been dismissed. *Held* that the plaintiff's claim was not *res judicata*, although she had been a party to the former proceedings, and the defendant, not having been a party to the former proceedings, was not estopped from contesting it. GNANAMBAL v. PARVATHI . . I. L. R., 15 Mad., 477

424. ———— Suit against de facto manager or trustee by de jure trustees—*Dismissal of such suit as barred by limitation—Subsequent suit against same defendant with sanction of Advocate General—Civil Procedure Code (Act XIV of*

perty as his own and refused to perform the trusts. They prayed that trustees might be appointed and the property made over to such trustees. The de-

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

from their office. The *de jure* managers and trustees of a public charity losing their right by limitation to oust the *de facto* trustee does not confer on the latter immunity from suit on the part of the Advocate General or the temple. LAKSHMANDAS RAGHUNATH-DAS *v.* JUGALKISHORE . I. L. R., 22 Bom., 216

425. ——— Suit brought by one of several trustees after dismissal of suit brought by the others—*Civil Procedure Code, s. 13, expl. V.*—Where the uraima right over a certain devasam was vested in five trustees representing different illams, and a suit was brought by one of the trustees to recover certain property alleged to have been illegally alienated by three other trustees to a stranger and dismissed,—*Held* that the decree in such suit was a bar to a second suit brought for the same purpose by the fifth trustee, who had not been a party to the former suit, on the ground that he must be deemed to claim under the plaintiffs in the former suit within the meaning of s. 13, expl. V, of the Code of Civil Procedure. MADHUVAN *v.* KESHAVAN . I. L. R., 11 Mad., 191

426. ——— Representation of minor by manager of estate—*Madras Boundary Act, 1860, s. 25—Mad. Reg. V of 1840—Decision of boundary officer, Effect of, if not contested by suit.*—A survey officer in 1875 held an enquiry under the Boundary Act, 1860, and demarcated certain land out of a zamindari. At that time the zamindar was a minor under the Court of Wards, and he was represented at the enquiry by the manager of his estate appointed under s. 8 of Regulation V of 1804. In a suit brought by the zamindar to recover the land it was contended that the decision of the survey officer was not binding on the zamindar because he was not properly represented by his guardian at the enquiry. *Held* that the decision of the survey officer was binding on the zamindar, and that the matter in dispute was *res judicata*, no appeal by way of suit as provided by the Boundary Act, 1860, s. 25, having been brought. KAMARAJU *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 11 Mad., 309

427. ——— Decree in suit by a karnam, Effect of, as regards his successor—*Civil Procedure Code, s. 13.*—The karnam in a certain mitta sued to recover certain land as part of the mirasi property attached to his office. It appeared that the plaintiff's father and predecessor in office had sued by virtue of his office to recover the same land, and that his suit had been dismissed. *Held* that the plaintiff's claim was *res judicata*. VENKAYYA *v.* SUBAMMA . I. L. R., 12 Mad., 235

428. ——— Suits not between same parties—*Suit for declaration of right to office, Dismissal of.*—Certain land was attached and sold in execution of a decree against the dharmakarta of a devasthanom. One claiming to be the lawful successor in office of the judgment-debtor now sued the purchaser for a declaration that the sale was invalid. *Held* the suit should not be dismissed on proof that the plaintiff had failed to obtain a declaration of his right to the dharmakartaship against another claimant to the office, in a suit to which the present defendant was not a party. RAMALINGAM *v.* THIRUGNANA SAMMANDHA

[I. L. R., 12 Mad., 312

429. ——— *Civil Procedure Code, s. 13.*—One *N* brought a suit against a lambardar for her share in the profits of a certain mehal, her claim being based upon an assignment executed in her favour on the 29th of July 1889 by one B as heir to one *M*, deceased. Prior to that assignment, namely, on the 3rd of June 1887, a suit had been commenced by the lambardar against *B* and one *K* for possession of other property alleged to have belonged to *M* in her lifetime, and in this suit it was ultimately found, but subsequently to the abovementioned assignment in favour of *N*, that *K*, and not *B*, was the heir to *M*. *Held* that the suit commenced on the 3rd of June 1887 did not operate as *res judicata* in respect of the present plaintiff *N*'s claim under her assignment from *B*. *Foster v. Earl of Derby, 1 Ad. & E., 790*, referred to. NIAZ-ULLAH KHAN *v.* NAZIR BEGAM

[I. L. R., 15 All., 108

430. ——— Party for purpose of discovery only—*Civil Procedure Code, 1882, ss. 13, 43—Joint wrong-doers, Judgment against one of several—Contract Act, s. 43.*—Prior to and in the year 1865 the defendant's brother *B* carried on an extensive business in Bombay and China. The defendant and another brother *A* carried on a separate business under the name of *A H*. In December 1866 *B* became insolvent, and his property vested in the official assignee. The present suit was brought in 1887 against the defendant by the official assignee to recover certain property which he alleged belonged to the insolvent, and ought to be distributed amongst his creditors. The plaintiff alleged that in 1865 the insolvent was possessed of a very large amount of property, and that, being unwilling to meet his liabilities, he and his son and his two brothers; *viz.*, *A* and the defendant *R*, fraudulently concealed his property from his creditors, and in September 1866 he himself went to Damar beyond British jurisdiction. In 1881 the plaintiff, having obtained information that some of the insolvent's property was in the possession of his brother *A*, filed a suit (473 of 1881) against *A* to recover it. That suit was referred to arbitration, and the plaintiff obtained a decree for R3,60,000. The plaintiff now alleged that, shortly before the hearing of that suit, and subsequently, he had obtained information which led him to believe that the defendant had obtained some of the insolvent's property for which he was accountable. The defendant had been made a party to the former suit (473 of 1881) for the purpose of discovery only, and it was in the course of such discovery being given that some of the above information had been obtained. The plaint then set forth, in detail, the various items of claim in respect of which the plaintiff sought to make the defendant liable. The defendant pleaded that the said claims had been in issue in the former suit (473 of 1881), and were adjudicated upon, and that this suit was therefore barred by s. 13 of the Civil Procedure Code; that the plaintiff was barred by s. 43 of the

RES JUDICATA—*continued*

8 PARTIES—*continued*

Civil Procedure Code, the plaintiff having omitted to include these claims in the former suit, to which

cedure Code The defendant was made a party to the former suit for certain limited purposes only. No relief was asked from him, no decree was made

remedy for the joint debt, and is a bar to an action against a co-debtor upon the joint liability; and, similarly, in a matter of *tort-feasance*, a judgment against one of several wrong doers is a bar to an action on the same matter against the others. Such of the wrongs therefore alleged in the present suit as were of a joint character, and were adjudicated upon the previous suit, were extinguished by the former judgment. Applying the above rule, the

BHOY HUBIBBHOY v. TURNER [I. L. R., 14 Bom., 408

431.———— *Civil Procedure Code (Act XIV of 1882), ss 13, 43—Account*—In a suit brought by the official assignee it was held that the defendant having been "made a party," but only "for the purpose of discovery," to a prior suit brought by the plaintiff, according to an order in that suit, in which, however, there was no decree against him as a

the defendant should account to the official assignee for the assets received by him from the insolvent after the date of the insolvency was affirmed RAHIMBHOY HABIBBHOY v. TURNER

[I. L. R., 17 Bom, 341
L. R., 20 I. A., 1

432. ———— **Estoppel**—*Civil Procedure Code (1882), s 13—Privity between execution-creditor and purchaser at sale in execution of decree.*—Where all the conditions prescribed by s. 13 of the Code of Civil Procedure as necessary to bar the trial in a subsequent suit of an issue adjudicated upon in a previous suit exist, the fact that in the first suit the defendant was an execution creditor, and in the second he is a purchaser at an execution-sale, makes no difference as to the second suit being *res judicata*. A privity exists between an execution-creditor and a purchaser at a Court sale, the latter

representing the former in so far as he had a right to bring the property to sale in execution of his decree Thus, when the plea of estoppel is available to a decree-holder, it is likewise available to the purchaser at the execution sale, as his representative or as one claiming under him. *Sarat Chunder Dey v. Gopal Chunder Laha, I L R., 20 Calc., 296; L R, 19 I. A, 203,* followed KRISHNABHUPATI DEVU v VIKRAMA DEVU I. L. R., 18 Mad., 13

433. ———— **Decree holders in case of claim to attached property**—*Civil Procedure*

Civil Procedure does not enure for the benefit of other decree holders who are not parties to the proceedings under s. 278 *Badri Prasad v Muhammad Yusuf, I L R, 1 All, 382,* referred to JAGAN NATH v. GANESH I. L. R, 18 All., 413

(*b*) INTERVENORS.

434. ———— **Intervenor added in former suit**—*Suit against other parties*—A suit to

venor TUKHRA v DEO NARAIN SINGH [24 W. R., 248

435 ———— *Reservation of intervenor's rights—Civil Procedure Code, 1859, s 2*—In a former suit against a party and his vendor, in which an intervenor was made a defendant, plaintiffs obtained a decree with a reservation of intervenor's rights The decree was not a *res judicata* in a subsequent suit by a purchaser from the intervenor against the said vendee, the reservation being a mere *obiter dictum* LUKSH ALI v NITTYANUND DOSS . . 5 W R., 227

436. ———— *Suit for rent*—*Enjoyment of and receipt of rent, Proof of.*—Plaintiff sued for rent of land alleged to be a 3 annas 15 gundahs share held by him on a defined right. De-

parently the subject matter to be that of this suit, the principle laid down in the case of *Syud Ahmed Reza, 5th August 1863,* did not apply; and that, as it did not clearly adjudicate against the plaintiff's right, the principle laid down in the case of *Tarinee v. Bamundoss Mookhef, 1 W. R, 331,* had no bearing. Accordingly the intervenor was bound to show actual and *bona fide* receipt of rent as required by s. 77, Act X of 1859 GOOROO CHURDRA CHUCKERBUTTY v AJMUL ALI . . . 11 W. R., 91

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

437. ——— *Civil Procedure Code, 1859, s. 2—Suit for rent.*—*A* sued *B* and *C* in the Civil Court to recover possession of certain lands, of which he alleged that they had dispossessed him, under a decree obtained by them in a suit in which he had previously sued *B* in the Civil Court, before Act X of 1859 had been passed, for rent, in which suit *C* had been added as a party, and had proved his title to the land against *A*. *Held* that *A*'s suit must fail, on the ground that it involved a material issue of fact which had already been determined by a Court of concurrent jurisdiction in the former suit, which was between the same parties, and which issue disposed of the present suit. CHOWDHARI NILKANTH PRASAD SINGH *v.* DIGNARAYAN SINGH

[1 B. L. R., A. C., 30 : 10 W. R., 75

438. ——— *Judgment in suit for rent.*—In a suit by plaintiff for arrears of rent against one set of tenants defendant intervened, claiming a moiety of the whole estate. His claim was dismissed in lower Courts, and the case came up on special appeal. Meanwhile plaintiff brought suits against another set of tenants on the same estate, in which defendant again intervened on the same ground as before. *Held* that the decision in the former set of cases, unless and until set aside in special appeal, was binding on the intervenor, even though the estate was of such value that the Court which passed the decrees in the rent suits would not have jurisdiction to try the title which was in dispute. PRAN NATH SANDYAL *v.* RAM COOMAR SANDYAL

[2 C. L. R., 33

439. ——— *Civil Procedure Code, 1859, s. 2—Suit for rent.*—The plaintiffs brought this suit to establish, as against the defendants, their title to certain land in the occupation of a tenant. In a previous suit instituted by one of the present defendants against the tenant for rent, one of the present plaintiffs (representing the right now claimed by all of them) intervened as a defendant, on the ground that he was the person entitled to the rent, and failed to establish his claim. *Held*, following the Full Bench case of *Hurri Sunker Mookerjee* v. *Muktaram Patro, 13 B. L. R., 238*, that the plaintiffs in this suit were barred by the judgment in the former suit. When once it is made clear that the self-same right and title is substantially in issue in two suits, the precise form in which either suit was brought, or the fact that the plaintiff in the one case was the defendant in the other, becomes immaterial. GOBIND CHUNDER KOONDOO *v.* TARUCK CHUNDER BOSE . I. L. R., 3 Calc., 145 : 1 C. L. R., 35

440. ——— *Rights under partition under Beng. Reg. XIX of 1806—Suit for arrears of rent.*—*A* sued *B* to establish his rights of possession to certain lands allotted him under a batwara made in accordance with the provisions of Regulation XIX of 1806. In a previous suit by *B* instituted after the batwâra against a tenant for arrears of rent due for a portion of the lands now in dispute, *A* intervened and was made a defendant on the sole ground that he was the person entitled to the rent, but failed to establish his claim. *Held*, following the Full Bench case of *Gobind Chunder Koondoo* v. *Taruck Chunder Bose, I. L. R., 3 Calc., 145*, that *A*'s present suit was barred by the judgment in the former suit. BEMOLASOONDURY CHOWDHRAIN *v.* PUNCHANUN CHOWDHRY

[I. L. R., 3 Calc., 705

441. ——— *Rights as between original defendant and intervenors—Suit for possession.*—Where a plaintiff claimed certain property, and two persons intervened and were allowed to put in their claim to a portion of it, which claim, at the hearing, the intervenors, however, refrained from pressing, and the suit was decided in favour of the plaintiff, the original defendant alone appealing (unsuccessfully) against the decree,—*Held* that it was not open to the intervenors to institute any fresh proceedings to obtain the property against the original defendant, the decree in the suit in which they intervened being conclusive as between them and such defendant. *Siragnana Terar* v. *Periasami, I. L. R., 1 Mad., 312*, distinguished. SHEO CHURN SINGH *v.* FAKERA DOOBAY

[I. L. R., 6 Calc., 91 : 7 C. L. R., 69

The principle of this case was held applicable in UMBICA CHURN BHUTTACHARJEE *v.* PROSONNO COOMAR SEN . . . . 9 C. L. R., 365

442. ——— *Want of jurisdiction as to valuation of suit—Subsequent suit between the same parties—Competent Court—Rent suits.*—A judgment of a Court not competent to try the case in which the judgment is pleaded as *res judicata* must nevertheless be held to be the judgment of a Court of competent jurisdiction within the rule as laid down in the maxim *Nemo debet bis vexari pro eâdem causâ* and s. 13 of Act X of 1877; more especially where the first suit is tried, decided, and affirmed on regular appeal by a Subordinate Judge who would have been competent to decide the suit (had it been brought before him) in which the judgment was pleaded. The rule of *res judicata* ought to be held to apply to judgments in rent suits, at least until interventions in such suits are authoritatively prohibited. RUN BAHADUR SINGH *v.* LUCHO KOER

[I. L. R., 6 Calc., 406 : 7 C. L. R., 251

Reversed on this point by the Privy Council in RUN BAHADUR SINGH *v.* LUCHO KOER

[I. L. R., 11 Calc., 301
L. R., 12 I. A., 27

See PURBHOO TEWAREE *v.* RAMJEEAWUN PATUCK

[1 N. W., 65 : Ed. 1873, 119

443. ——— *Rent suit—Civil Procedure Code (Act X of 1877), s. 13.*—*A* sued *B* for rent in the Court of the Deputy Collector of Tipperah under the provisions of Act X of 1859. *C* intervened, claiming that the land in respect of which the rent was claimed was his property, and the suit was dismissed. On appeal, the District Judge of Tipperah reversed this decision and decreed the claim, on the ground that *C* had no right whatever to the land. In a subsequent suit brought by *C* against *A*

RES JUDICATA—*continued*

8 PARTIES—*continued*

and *B* for possession of the same land.—*Held* that

444. ———————— *Suit for possession—Co-defendants—Civil Procedure Code (Act X of 1877), s. 13.*—*A* leased lands to *B* who sued *C* for possession of a certain mouzah alleging it to be a portion of the lands leased. *A* was made a defendant and supported the case of the plaintiff, who obtained a decree. *C* appealed making *A* and *B* respondents when the decree was reversed and the suit dismissed on the ground that the mouzah sued for was the property of *C*, and that ruling was upheld on special appeal to the High Court. Subsequently *A* brought a suit against *C* for the same mouzah making *B* a defendant. *Held* that the title to the mouzah was *res judicata* between *A* and *C*, and that the suit would not lie. *Gobind Chunder Koondoo v. Taruck Chunder Bose, I. L. R. 3 Calc., 145* followed. BISSORUP GOSSAMY *v.* GORACHAND GOSSAMY I. L. R., 9 Calc., 120

445. ———— ————— *Rent suit—Dismissal for default—Questions of title—Issues—Code of Civil Procedure, 1882, s. 13.*—In a suit for arrears of rent and possession of certain property a person intervened and was made defendant on his alleging that he was entitled to an 8 annas share of the property in question and that the plaintiffs were not entitled to any portion thereof. Issues were

(c) PARTY ERRONEOUSLY IN DECREE

446. ———— Party ordered to be struck out of suit—*Civil Procedure Code, 1859, s. 2—Mistake in decree.*—S. 2, Act VIII of 1859, was

defendant to show how that happened and that the former suit was decided in her presence. KALEE COOMAR DUTT ROY *v.* PRAN KISHOREE CHOWDHRAIN 18 W. R., 29

(d) PRO FORMÂ DEFENDANTS

447. ——— Parties made defendants by way of caution—*Effect of former decree.*—A decree made in favour of a plaintiff in a suit is binding upon the defendants collectively and severally notwithstanding any of them was made a defendant only ikhteatun, *i.e.*, by way of precaution. DEOKEE NUNDUN ROY *v.* KALEE PERSHAD [8 W. R., 366

448. ———— Nominal party—*Suit against surety of defaulting tenant.*—A landlord sued his tenants and his tenants' surety in the Collector's Court for arrears of rent, the surety being merely treated as a nominal party, and the decree being given against the tenants. He afterwards sued the surety in the Civil Court on the bond given by him and in the lower Court obtained a decree not only for the arrears of rent, but also for the costs in the Act X suit. *Held* on special appeal that the suit was as regards the arrears of rent not barred by s. 2, Act VIII of 1859, but that the costs in the Collector's Court could not be recovered. RAMTANU ACHARJI *v.* KOMAL LOCHAN ROY 3 B. L. R., Ap., 37

S. C. RAM TANOO ACHARJEE *v.* RADHA GOBIND [11 W. R., 407

449. ———— Party added as landlord in a suit between tenants—*Subsequent suit for possession by landlord—Civil Procedure Code (Act XIV of 1882), s. 13.*—*A* brought a suit against *B*, claiming certain property as tenant of *C*, who was also made a defendant in the suit; this suit was on the merits decided in favour of *B*. *C* then brought a suit against *B* for possession of the same property. *Held* that such suit was not barred by s. 13 of the Civil Procedure Code. BROJO BEHARI MITTER *v.* KEDAR NATH MOZUMDAR [I. L. R., 12 Calc., 580

(e) CO-DEFENDANTS

450. ———— Decision in former suit, Effect of, as between co-defendants.—A decision in a former suit cannot operate as an estoppel as between co-defendants in that suit or parties claiming under them. MODHOO MOKEE DABEE *v.* GUNGA GOBIND MUNDLE W. R., 1864, 299

RAM CHAND SOMADDAR *v.* KALA CHAND CHUCKERBUTTY 1 W. R., 287

MADHOO PERSHAD *v.* LALLJEE SHAHOO [9 W. R., 567

KHELUT CHUNDER GHOSE *v.* KISHEN GOBIND DEB . . . . . 16 W. R., 128

NUBIN CHUNDER DOSS *v.* NIM CHAND DOSS [17 W. R., 101

RAMESSUR GHOSE *v.* AZEEM JOARDAR [17 W. R., 373

AIN ALI *v.* JUGGUT CHUNDER ROY CHOWDHRY [25 W. R., 416

OBHOY CHURN NUNDEE *v.* BHOOBUN MOJOOMDAR [12 W. R., 524

KALLY PERSAD SEIN CHOWDHRY *v.* MOHESH CHUNDER BHUTTACHARJEE . . 1 Hay, 430

RES JUDICATA—*continued.*

8. PARTIES—*continued.*

451. ———————— *Finding on unnecessary issue between co-defendants.*—A finding between co-defendants unnecessary for the determination of the suit, or the rights of the parties involved in the suit, is not *res judicata.* BAPU *v.* BHABANI . . . I. L. R., 22 Bom., 245

452. ———————— *Decision when binding between co-defendants.*—Where an adjudication between the defendants is necessary to give the appropriate relief to the plaintiff, the adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendants. But for this effect to arise, there must be a conflict of interest between the defendants and a judgment defining the real rights and obligations of the defendants *inter se.* Without necessity, a judgment will not be *res judicata* amongst defendants, nor will it be *res judicata* amongst them by mere inference from the fact that they have been collectively defeated in resisting a claim to a share made against them as a group. RAMCHANDRA NARAYAN *v.* NARAYAN MAHADEV . . . I. L. R., 11 Bom., 216

453. ———————— A suit which was brought by *A* against *B* and *C*, and dismissed, cannot be pleaded as *res judicata* in a subsequent suit brought by *B* against *C.* HURO MONEE DEBIA *v.* TUMEEZOODEEN CHOWDHRY

[7 W. R., 181

454. ———————— *Civil Procedure Code, 1882, s. 13.*—Two-thirds of a village were sold by *T, P,* and *B.* *B* was the widow of *S,* her name being recorded in respect of the property formerly recorded in his name, and what she sold was his one-third share in the village, the other one-third being sold by *T* and *P.* The vendors having refused to give possession of the property, the purchasers sued them for possession of it and joined as defendants to the suit *C, D,* and *M,* to whom belonged the remaining one-third share in the village. These latter persons contended, *inter aliá,* that the family was a joint one, and that *B* was not competent to alienate her deceased husband's share in the village. The Court decided that the family was joint. After *B*'s death, her daughter *K,* whose name had been recorded in place of her mother's, made a usufructuary mortgage of another village in which her deceased father had formerly owned a share. A suit was brought by certain persons who had purchased the right in the same village of the representatives in interest of *C, D,* and *M* against *K,* her mortgagee, and their vendors, to set aside the mortgage and recover the interest which they had purchased. They contended that the family was joint, and that the question whether it was joint or divided was *res judicata* by reason of the decision in the former litigation. *Held* that the question whether the family was joint or divided had not, in the former suit, been determined among the defendants *inter se,* but simply as against the plaintiff, and could only be *res judicata* against him or parties claiming under the same title; and the decree in that suit was therefore not binding against *K* in the hands of the present plaintiffs, who were not the assignees of the plaintiff in the former suit, but of persons who were arrayed in it as defendants along with *B, K*'s mother, and on the same side. *Shadal Khan* v. *Amin-ullah Khan, I. L. R., 4 All., 92,* referred to by STRAIGHT, *J.,* and distinguished by TYRRELL, *J.* *Narain Kuar* v. *Durjan Kuar, I. L. R., 2 All., 738,* referred to by STRAIGHT, *J.* BHAGWANT SINGH *v.* TEJ KUAR . . I. L. R., 8 All., 91

455. ———————— *Suit for pre-emption.*—*M* sued *K* and *J* to enforce a right of pre-emption in respect of property which he alleged *K* had sold to *J.* *K* denied that she had sold such property to *J.* *J* set up as a defence that *M* had waived his right of pre-emption. The suit was dismissed on the ground that the sale had never taken place. *Held* that the finding as to the alleged sale was one between the plaintiff and the defendants in the suit, and not between the defendant-vendor and the defendant-vendee, who were not litigating, and would not bar adjudication of the matter in issue between them in a suit brought by the latter for the establishment of the sale. JUMNA SINGH *v.* KAMARUN-NISA

[I. L. R., 3 All., 152

456. ———————— *Civil Procedure Code, s. 13—Issue decided in former suit, in which parties were rival defendants claiming under different titles.*—B sued *L N* and *P V* to recover certain property claimed under a nuncupative will of his father *N.* *P V* denied the will, and alleged that the property was ancestral and had vested in him by survivorship. *L N* set up title to the property under a will in writing executed by *N* and denied the title both of *B* and of *P V.* The question whether *P V* was divided or not from *N* was tried. It was found that the will in writing was valid, that *P V* was divided, and that *B*'s title was not proved. In a suit by *L N* against *P V* to recover certain land granted to her by the will executed by *N,*—*Held* that the question whether *P V* was divided from *N* was *res judicata* under s. 13 of the Code of Civil Procedure by reason of the decision in the former suit, although in that suit *P V* and *L N* were both defendants. VENKAYYA *v.* NARASAMMA

[I. L. R., 11 Mad., 204

457. ———————— *Civil Procedure Code, s. 13, expl. V—Suit for possession of a share in the property of a Mahomedan family.*—In a suit in 1882 between the members of a family following the Mahomedan law of inheritance, in which the plaintiffs sued as sharers for the recovery of their share in certain property, one of the defendants pleaded that a paramba, part of the property in dispute, was not subject to division, but this plea was unsuccessful, and a decree was passed for the plaintiffs. The present suit was brought by a mortgagee from one of the defendants in the former suit (against whom it had been decided *ex-parte*) to recover his share of the above-mentioned paramba, the subject-matter of his mortgage; the mortgagor was joined as defendant, among others, including the defendant who had

RES JUDICATA—*continued*

8 PARTIES—*continued.*

raised the plea above stated This plea was repeated by the same person *Held* that the claim that the paramba was not subject to division was *res judicata* by virtue of the Civil Procedure Code, s. 13, expl V. CHANDU *v* KUNHAMED

[I. L. R , 14 Mad., 324

As to the effect of a partition decree as constituting *res judicata* between co-defendants, *see* DOST MUHAMMAD KHAN *v* SAID BEGUM

[I. L R , 20 All., 81

458. ——— *Civil Procedure Code, s 13, expl V—Suit for possession of land.*—The plaintiff, a junior member of a Malabar tarwad, alleged that her karnavan had assigned to her his kuikanom right over certain land and that she had obtained a fresh demise from the jenmi and placed a tenant in possession The tenant was dispossessed by the present karnavan, and in 1886 sued him and the plaintiff to recover possession of part of the land. That suit was dismissed on the ground that the above allegations of the plaintiff were unfounded She now sued the present karnavan for possession of the entire land. *Held* that the claim of the plaintiff was *res judicata* so far as it related to the land in question in the former suit, but not as to the rest. MADHAVI *v* KELU

[I. L. R., 15 Mad., 264

459. ——— *Plea raised in former suit*—A Mapilla, alleging that certain "family property" had been enjoyed by herself and the defendants (who were her relations on the mother's side) in common till one year before suit, when she was excluded from possession, now sued to

[illegible]

it in a suit to which, among others, the plaintiff and the father of the present contesting defendants were parties as defendants, and that a plea then raised by the latter to the effect that the property had been acquired by him was overruled. The present claim was sought to be resisted on the same ground, which was the subject of the second issue; and it was held by the lower C[illegible]

[illegible]

cerned. *Held*, on second appeal without finding [illegible]

460 ——— *Plaintiff and defendants co-defendants in former suit decreed against them ex-parte*—In a suit to recover the plaintiff's share of lands appertaining to an agraharam the defendants pleaded that the lands in question were their own and were not subject to partition. It appeared that in a previous suit brought by a third party against the present plaintiff and defendants and others to recover his share of the agraharam lands it was held that the lands now in question formed part of the lands of the agraharam, and they [illegible]

that suit [illegible]

decreed [illegible]

precluded [illegible]

from raising the above plea. LATCHANNA *v* SARAVAYYA [I. L. R., 18 Mad , 164

461. ——— *Party through whom plaintiff claimed, and defendant, co-defendants in former suit*—In a suit for land the plaintiff claimed under a conveyance executed to him by defendant No 1 The property had previously belonged to the father, since deceased, of the first defendant's wife, and her sister defendant No. 2 Shortly after the father's death, a suit for maintenance was brought by his sister in law against his widow and two daughters in which the then defendants alleged that the property now in question had been given by him to the wife of the plaintiff's vendor, and the Court recorded a finding that the gift was valid. Defendant No. 2 now raised a plea that the gift to her sister had not been accompanied by possession and was invalid and she asserted title in herself under the will of her mother, under which title she had been in possession for ten years. *Held* that the second defendant was not precluded by the proceedings in the former suit, in which defendant No. 2 and the wife of defendant No 1 had been co-defendants, from raising the plea above referred to RAMANUJA AYYANGAR *v* NARAYANA AYYANGAR

[I. L. R., 18 Mad., 374

462 ——— *Parties to subsequent suit arrayed on the same side as co-defendants in previous suit—Necessary adjudication between co-defendants—Civil Procedure Code (1882), s 13*—Where an adjudication between the [illegible]

[illegible]

Narayan Mahadev, I L R., 11 Bom., 216, followed. *Cottingham v Earl of Shrewsbury, 3 Hare, 627*, referred to AHMAD ALI *v* NAJABAT KHAN

[I. L. R., 18 All., 65

463. ——— *Proceedings in former case not between same parties—Admissibility in evidence of finding in former case*—S granted to G and A a patni of a certain share in a zamindari, and thereupon P brought a suit against G, S, and A for specific performance of an agreement to grant to him (P) a patni of the same share. That

RES JUDICATA—*continued.*

8 PARTIES—*concluded.*

suit was decreed with costs, the whole of which were realized from *G*. In a suit for contribution brought by *G* against *S* and *A* the lower Appellate Court found that *G*, *S*, and *A* had conspired in setting up a false defence in the former suit in order to defeat *P*'s claim. The only evidence on which the lower Appellate Court had acted as establishing such collusion was the finding of the Court in the former suit (gathered from the grounds of appeal in that suit). *Held* that that finding was inadmissible in evidence, as laid down in *Surender Nath Pal Chowdhry* v. *Brojo Nath Pal Chowdhry, I. L. R., 13 Calc., 352,* being the finding in a case in which *G*, *S*, and *A* were all co-defendants, and a third party the plaintiff; and the case was remanded for the determination of the question whether *G*, *S*, and *A* were wrong-doers, and were as such held liable for the costs of the former suit. GOBIND CHUNDER NUNDY *v.* SRIGOBIND CHOWDHRY . . . **I. L. R., 24 Calc., 330**
[1 C. W. N., 179

464. ——————— *Under what circumstances a decision may be res judicata as between defendants.*—Where an adjudication between defendants is necessary to give the appropriate relief to the plaintiff, the adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendants. But for this effect to arise there must be a conflict of interest between the defendants and a judgment defining the real rights and obligations of the defendants *inter se*. Without necessity a judgment will not be *res judicata* amongst defendants, nor will it be *res judicata* amongst them by mere inference from the fact that they have been collectively defeated in resisting a claim to a share made against them as a group. *Ramchandra Narayan* v. *Narayan Mahadev, I. L. R., 11 Bom., 216; Ahmad Ali* v. *Najabat Khan, I. L. R., 18 All., 65;* and *Madhavi* v. *Kelu, I. L. R., 15 Mad., 264,* followed. *Bishnath Singh* v. *Bisheshar Singh, Weekly Notes, All., 1891, p. 34,* referred to. CHAJJU *v.* UMRAO SINGH
[I. L. R., 22 All., 386

9. COMPETENT COURT.

(*a*) GENERAL CASES.

465. — — **Court without jurisdiction**—*Civil Procedure Code (Act X of 1877), s. 13.*—The decision of a Court, in order to be conclusive in another Court, must have been that of a Court which would have had jurisdiction to decide the question raised in the subsequent suit in which the decision is given in evidence as conclusive. The words "Court of competent jurisdiction," used in s. 13 of the Court of Civil Procedure, include the meaning that the first Court must not have been precluded by the pecuniary limit of its jurisdiction from deciding the question raised in the other. The two Courts must exercise such concurrent jurisdiction in regard to the pecuniary limit of their powers that the subject-matter of the second suit would not have been beyond the powers of the Court which disposed of the prior one. The defence made to a suit on a bond for R12,000 and interest thereon, in a Court having no pecuniary limit of jurisdiction, was that in a prior suit for R1,665, balance of interest, brought in a Court with power to try suits not exceeding R5,000 in value, the principal sum due on that bond had been decided to be R4,790. *Held* that the issue as to the amount of principal due on the bond had not been heard and finally decided by a Court of competent jurisdiction within the meaning of s. 13. MISIR RAGHO BARDIAL *v.* SHEO BAKSH SINGH
[I. L. R., 9 Calc., 439: 12 C. L. R., 520
L. R., 9 I. A., 197

466. ——————— *Act VIII of 1859, s. 2—Act X of 1877, s. 13—Cross-appeal—Practice.*—The decision in a suit in order to be final and conclusive as *res judicata* upon an issue raised in another suit must be the decision of a Court which would have had jurisdiction to decide the question raised in the subsequent suit, in which the prior decision is given in evidence as conclusive. This proposition, stated in the judgment in *Edun* v. *Bechun, 8 W. R., 175,* and affirmed by the Judicial Committee in *Misir Raghobardial* v. *Sheo Bakh Singh, I. L. R., 9 Calc., 439,* is applicable equally to cases under Act VIII of 1859, s. 2 (as supplemented by the general law), and to cases under the more complete enactment in Act X of 1877, s. 13, which is not to be construed as having altered the former law. A suit was brought in the Court of a Subordinate Judge by a Hindu against the widow of a deceased brother, claiming his property by right of survivorship, the issue being whether, at the death of the latter, the ownership of the brothers was joint or separate. An order under Act XXVII of 1860, granting a certificate to the widow, did not, on the above issue, operate as *res judicata* in the widow's favour, being a proceeding of representation, and not otherwise of title. *Held* also that a decision of the same issue in a Munsif's Court in a rent suit brought by the widow, the surviving brother, on his application, having been made a party defendant under s. 73 of Act VIII of 1859, did not constitute *res judicata* in her favour. *Krishna Behari Roy* v. *Brajeswari Chowdhrani, L. R., 2 I. A., 283,* referred to and followed. *Held* also that the brother having appealed against a decree dismissing the suit as *res judicata* (the judgment which that decree followed having nevertheless found that the widow was disentitled by reason of the brothers having been in fact joint in estate), the widow could have supported the decree without filing a cross-appeal as to that finding, on the ground that the decree had been rightly made (though not for the reason given) in her favour. RUN BAHADUR SINGH *v.* LUCHO KOER
[I. L. R., 11 Calc., 301: L. R., 12 I. A., 23

Reversing, as far as the question of *res judicata* was concerned, the decision of the High Court in RUN BAHADUR SINGH *v.* LUCHO KOER
[I. L. R., 6 Calc., 406: 7 C. L. R., 251

RES JUDICATA—*continued*

9 COMPETENT COURT—*continued.*

467. ——— Courts without concurrent ... *not having jurisdiction to*
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Court not having jurisdiction to decide the question *of title to the property itself* cannot be regarded as amounting to *res judicata* in a subsequent suit ... of title to that pro-
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[10 C W. N., 202

468 ——— Court without power to make final decision—*Issue decided in a suit not subject to appeal—Same issue raised in a subsequent suit subject to appeal—Small Cause Court suit—Civil Procedure Code (Act XII of 1882), s 13—Meaning of the words "competent to try su h subsequent suit"*—In 187 the plaintiff brought a suit against the defendants to recover R119 which he alleged had been wrongfully exacted from him by the defendants as enhanced rent of certain land in his occupation He claimed to be owner of the land subject to a quit rent payable to the defendants The defendants denied his ownership, and asserted their right to levy the enhanced rent The lower Court held that the defendants were entitled to the enhanced rent, and dismissed the plaintiff's claim and the decree was confirmed on appeal by the District Court. The plaintiff appealed to the High Court, which held that the plaintiff's claim being for an amount less than R500 and within the cognizance of a Court of Small Causes, no second appeal lay In 188 the plaintiff brought the present suit in the ... to recover from the defendants the

...

appealed to ...
the material question in both suits was the same,—*viz.*, as to the defendant's right to enhance the plaintiff's rent,—yet the decision of the District Court ... point in the previous suit was not *res judi-*
... again raised
... n the former
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been for a larger amount, the decision of the District Court would have been subject to an appeal to the High Court It could not have been intended by ... that a decision should acquire a ... n-
...

decision was in one sense "competent to try" the second suit, and did try it, yet it was not competent
...
District Court ...
...

469. ——— *Court not of competent jurisdiction*—*A* brought a suit against *B* for R3,152, that is, for one instalment due under a bond The suit was heard and decided by a Subordinate Judge of second class who had been deputed to assist a Subordinate Judge of the first class *A* obtained a decree for the amount claimed A then brought a second suit against *B* in the Court of a Subordinate Judge of the first class to recover R6 525, being the amount of two instalments due under the bond. In this suit *B* raised the same contentions as in the former suit *Held* that the decision in the first suit did not operate as *res judicata* in the second suit, as the Court that tried ... e second suit
... Bom., 456
... erior Court
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possession of ... fore the Sub-
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having been framed on this point other issues were also framed as to the sanity of the plaintiff, his having had possession of the property, and evidence upon all the issues was gone into. The Subordinate *Judge dismissed the suit on the first issue, but expressed his opinion that the other issues ought also to have been decided against the plaintiff* In a subsequent suit by the plaintiff for the same relief in the Court of the Munsif. *Held* that the questions depending on the issues raised, other than the issues as to the valuation of the suit, were not *res judicata*
RAM GOBIND JHA *v.* MUNOAR RAM CHOWDHRY
[13 C L. R., 63

471. ——— Powers of Court deciding suit—*Decision on question of title—Civil Procedure Code (Act X of 1877), s 13*—When a question of title has to be, and is decided by a Court of competent jurisdiction with reference to the value of the subject matter in dispute such decision, or the ultimate decision upon the appeal from such decision, is final, and the question of title becomes a *res judicata* as between the parties to the suit although it may have the effect of determining the title to an estate or estates the value of which exceeds the jurisdiction of the Court in which the suit was instituted *Per* WHITE *J*—In considering, on the hearing of an appeal, the competency of a Court

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

for the purpose of deciding upon a question of *res judicata*, the powers of the Court in which the suit was instituted, and not those of the Court in which the suit was decided on appeal, must be looked to. TOPONIDHEE DHIRJ GIR GOSAIN *v.* SREEPUTTY SAHANEE

[I. L. R., 5 Calc., 832: 6 C. L. R., 305

472. ———— Civil Procedure *Code, 1882, s. 13—Decree of competent Court.*—In 1875 *P* sued in Munsif's Court to eject a tenant from a house and to recover arrears of rent. *S* intervened and claimed the house under a deed of gift. The value of the property comprised in the deed of gift exceeded the limit of the pecuniary jurisdiction of the Munsif's Court. The suit was dismissed, but on appeal the claim of *S* under the deed of gift was adjudicated upon and rejected, and *P* obtained a decree for the land. In 1882 *S* sued *P* to recover all the property comprised in the deed of gift. *Held* that *S* was estopped by the decree in the former suit from claiming the house. It was contended by *P* that the deed of gift was invalid. *Held* that, as to validity of the deed of gift, the decree of the Munsif's Court was not the decree of a competent Court within the meaning of s. 13 of the Code of Civil Procedure, 1882, and therefore that *S* was not estopped from showing that the deed was valid and claiming the rest of the property comprised therein. PATHUMA *v.* SALIMAMMA

[I. L. R., 8 Mad., 83

473. —— Jurisdiction of Court at time suit is brought—*Decision of Munsif—Civil Procedure Code, 1882, s. 13.*—In a suit for malikana the issue between the parties substantially raises the question of the proprietary right to the estate in respect of which the malikana is claimed; and when the question of the proprietary right has been decided in a previous suit between the same parties, a subsequent suit for malikana will be barred as *res judicata*. The fact that the previous suit had been brought in a Munsif's Court, whereas the present suit was brought before a Subordinate Judge, did not affect the question, inasmuch as the property was the same, and it was not shown that the present suit, if brought in 1860, would not have been within the jurisdiction of the Munsif, nor was it alleged that the suit in 1860 was beyond his jurisdiction. In s. 13 of Act XIV of 1882 the words "in a Court of jurisdiction competent to try such subsequent suit" refer to the jurisdiction of the Court at the time the first suit is brought. Thus, when the first suit is within the jurisdiction of a Munsif, and the subsequent suit, by reason of an increase in value of the property, is beyond his jurisdiction, such subsequent suit would nevertheless be barred, inasmuch as, if the subsequent suit had been brought at the time when the first suit was brought, the Munsif would have been competent to try it. GOPI NATH CHOBEY *v.* BHUGWAT PERSHAD . I. L. R., 10 Calc., 697

474. ———— Decision of Deputy Collector—*Civil Procedure Code, 1882, s. 13—Meaning of the words "Court of jurisdiction competent to try such subsequent suit."*—The words of s. 13 of the Civil Procedure Code, "in a Court of jurisdiction competent to try such subsequent suit," refer to the jurisdiction of the Court at the time when the first suit was brought. Where therefore a suit was brought and decided in 1867 in the Court of a Deputy Collector, that Court being at the time of suit the only Court competent to try suits of the nature of the one brought, and subsequently a second suit, regarding the same subject and between some of the same parties and the representatives of others, was brought in 1881 in the Court of a Munsif, which latter suit, if it had been brought in 1867, would have been cognizable by a Deputy Collector alone,—*Held* that the decision of the Deputy Collector was a bar to the second suit under s. 13 of the Civil Procedure Code. The principle in *Gopinath Chobey* v. *Bhaghwat Pershad, I. L. R., 10 Calc., 697,* approved. RUGHUNATH PANJAH *v.* ISSUR CHUNDER CHOWDHRY

[I. L. R., 11 Calc., 153

475. ———— Former judgment in Court without jurisdiction—*Property situate out of jurisdiction.*—*Held* that the judgment of the Lucknow Civil Court, in a suit for property situate within the jurisdiction of that Court, was no bar to a subsequent suit in respect to property situate at Allahabad. There was no splitting of the claim, inasmuch as the former suit was for the entire property situate in Lucknow and Allahabad, though leave was not obtained to sue in the Lucknow Court. THAKOOR PERSHAD *v.* KALIKA PERSHAD

[2 Agra, 104

476. ———— Property situate out of jurisdiction—*Suit for land.*—*A* brought a suit in the Court of S against *B* for certain land as being an accretion to an estate in the district of S. *B* claimed it as being part of his estate in the district of G, to which district he alleged the land had, in a former decision, been found to belong. The Court of S held that the land was an accretion to *A*'s estate in the district of S. In a subsequent suit brought by *B* in the Court of G against *A* for the land to which the subject of the former suit had been found to be an accretion,—*Held* that the holding in the former suit necessarily decided that the land claimed by *B* was in the district of S, and therefore that the Court of G, under Act VIII of 1859, s. 14, had no jurisdiction. PAHALWAN SINGH *v.* MAHESSUR BUKSH SINGH

[12 B. L. R., P. C., 391: 18 W. R., 182

477. ———— Decree in claim for rent—*—Subsequent suit to remove attachment—Decision by Court without jurisdiction.*—Where a Court, without jurisdiction, decreed a claim by a landholder for arrears of enhanced rent, and the tenant subsequently sued to remove an attachment based on the decree, it was held that the decree could not be regarded as binding on the parties, and the second suit should have been tried and disposed of on its merits. KALKA PARSHAD *v.* KANHAYA SINGH

[7 N. W., 99

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

478. ——— Court of Rajah of Independent Tipperah —*The Court of the Rajah of Inde-* [illegible]

479 ——— *Civil Procedure Code, 1859, s. 2—Competent Court* —The Tipperah Rajah's Court was a Court of competent jurisdiction within the meaning of s 2, Act VIII of 1859. [illegible] in respect of [illegible]

480.——— Agent to Governor General, Court of—*Beng Reg. XIII of 1833, s 2—Order of Agent previous to the Regulation.*—By Regulation XIII of 1833, s 2, the Courts of Dewanny Adawlut of Zillahs Ramghur and Jungle Mehals were abolished By the 4th section the administration of civil and criminal justice was vested in an officer appointed by the Governor General in Council, to be denominated Agent to the Governor General By the 5th section authority was conferred on the Governor General to determine in Council, *inter alia*, "to what extent the decision of the Agent in civil suits shall be final" In 1834, by an order of the Governor General, it was ordered that no appeal should lie from the orders of the Agent to the Sudder Court *Held* that an order of an Agent within the districts to which the Regulation applied, made previous to the passing of the Regulation, declaring *A to be the rightful heir of B*, was not affected by the Regulation, and was not judicial in its nature, and that therefore, in a subsequent suit relating to the inheritance to the same property, the heir of *A* could not set up the order as conclusive. BINODE KOOMAREE *v* PURDHAN GOPAL

[Marsh., 80: W. R., F. B., 28: 1 Hay, 148

481 ——— Joint contract—*Liability of partners — Joint liability — Judgment recovered against one partner—Judgment of a foreign Court —Civil Procedure Code (Act XIV of 1882), ss. 13 and 14—Consent decree* —The defendants were part- [illegible] name of Vishnuram Gopinath and [illegible] abad the first [illegible] for the pur- [illegible] of R10 000 and [illegible] firm On [illegible] agree- [illegible] was to [illegible] jointly [illegible] plaintiff [illegible] t defe- [illegible] 009 4-0, [illegible] vered a [illegible] his suit [illegible] udge at [illegible] 909-4-0, [illegible] 1 to 8) Defendants Nos. 6 to 8 [illegible] erritory, the rest in British India. Defendants Nos. 2, 3, and 4 defended the suit. The rest did not appear. The Subordinate Judge dismissed the suit, holding on the authority of *King v Hoare, 13 M. & W., 494*, that [illegible] against one partner [illegible] on over the [illegible]

482. ——— Foreign Court—*Judgment of a Native Court—Civil Procedure Code (Act XIV of 1882), s 13, expl VI—Meaning of the words "a Court of jurisdiction competent to try such subsequent suit"*—The words in s. 13 of the [illegible] (Act XIV of 1882) "a Court [illegible] subsequent [illegible] jurisdiction [illegible] whether as [illegible] sdiction, or the subject matter of the suit, to try it with conclusive effect Reading expl VI with the earlier part of s. 13 the term "Court of competent jurisdiction" includes a foreign competent Court The plaintiff sued as the adopted son of *O to recover* certain property in British territory The defendants disputed the plaintiff's adoption The plaintiff relied on a decree of a Native Court which he had obtained against defendant No. 2 in a suit for possession of certain other property belonging to *O* and situate within the territorial jurisdiction of the Native Court In that suit the question of plaintiff's adoption had been raised and decided in plaintiff's favour In the present suit both the lower Courts, without attaching any weight to this decree of the Native Court, held that the plaintiff's adoption was not proved and dismissed the suit. *Held, on second appeal* that the question of plaintiff's adoption was *res judicata* as between him and defendant No. 2, the judgment of the Native Court being one on the merits and conclusive between the parties within the territory of the Native State. BABABHAI *v* NARHARBHAI

[I. L. R., 13 Bom., 224

483. ——— Pecuniary valuation of suit—*Civil Procedure Code, s 13* —A suit for two declarations filed in a Subordinate Court was valued [illegible] pecuniary [illegible] was pleaded [illegible] *res judicata* by reason of decrees passed in District Munsifs' Courts No objection was taken in the Subordinate Court to the valuation of the suit. *Held* that the plea of *res judicata* failed. GANAPATI *v* CHATHU

[I. L. R., 12 Mad., 223

484. ——— Finality of order—*Civil Procedure Code, 1882, s 211* —S S brought a suit under a mortgage-bond, making *R S*, a subsequent incumbrancer, a defendant, and obtained a decree for

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

a sale of the whole of the mortgaged premises. After the decree, a compromise was effected between all the parties, with the exception of *R S*, by the terms of which, in consideration of the judgment-debtors (mortgagors) undertaking to do certain acts, *S S* promised to execute his decree against only a 3 annas 12 dams share of the mortgaged premises. The judgment-debtors (mortgagors) having failed to carry out the compromise, *S S* applied for a sale of the whole of the mortgaged premises, but on the petition of *R S* setting out the terms of the compromise to which he was no party, the Subordinate Judge, by an order of the 7th September 1885, held that under the agreement *S S* was entitled to sell only a 3 annas 12 dams share of the mortgaged premises, which was accordingly directed to be sold. That order was not appealed against, but subsequently in March 1886 *S S* made a fresh application for a sale of the remainder of the premises, *R S* objecting. *Held* that the order of the 7th September was one which the Court was competent to make under s. 244 of the Code of Civil Procedure and by reason of that order not being appealed it became final. BASUDEO NARAIN SINGH *v.* SEOLOJY SINGH

[I. L. R., 14 Calc., 640

485. ———— **Separate suit on disallowance of objection to execution**—*Evidence Act, s. 44.*—In execution of decree the defendant, who was sued as the representative of her deceased brother, objected under s. 244 of the Code of Civil Procedure to the attachment of certain lands to which she set up independent title. The objection was disallowed, and the land was sold. She then sued the execution-purchaser to set aside the Court-sale, and obtained a decree, against which no appeal was preferred. She now sued for possession. *Held* that, as against the execution-purchaser, the decree in the former suit was *res judicata* and therefore final. *Per Cur.*—The words "not competent" in s. 44 of the Evidence Act refer to a Court acting without jurisdiction. KETTILAMMA *v.* KELAPPAN

[I. L. R., 12 Mad., 228

486. ———— **"Court of competent jurisdiction"**—*Civil Procedure Code, ss. 13, 98, 103—Landlord and tenant—Suit for damages against lessor—Joinder of one of two co-lessees as defendant—Suit dismissed against such lessee.*—In 1883 *A*, the trustee of a certain charity, executed in favour of *X* and *Y* an agricultural lease for nine years and delivered over possession of the lands comprised in it, being part of the trust property. The lease contained a provision that it should be cancelled on default being made in payment of the rent and kist, and it contained no express covenant for quiet enjoyment. In 1887 default was made in payment of the rent and kist. *A* thereupon cancelled the lease and sued *X* and *Y* in a subordinate Court and obtained a decree for the arrear, the total amount of his claim being R2,807. In that suit *X* alleged that *Y* was merely a name lender for *A*, who desired to benefit himself at the expense of the charity, and also that certain raiyats setting up a false claim had evicted *X* from the lands demised at the instigation of *A*, who had subsequently sought unsuccessfully to obtain further advantages for himself. The Subordinate Judge framed an issue on each of these allegations and recorded findings in the negative. In the same year *X* filed a suit for damages for breach of contract against *A* and *Y* in the High Court, repeating in his plaint the above allegations. When that suit came on for hearing, it was dismissed for default, *Y* being the only party who appeared. *X* now sued *A* again on the same cause of action, making the same allegations. *Y* was subsequently brought on to the record as being a necessary party to the suit, being joined as second defendant, but he applied to be and was struck off the record on the ground that the dismissal of the former suit in the High Court was final as against him. *Held* that the matters put in issue in the subordinate Court were not *res judicata* by reason of the decision of that Court; and that the plaint disclosed a good cause of action against the lessor. VITHILINGA PADAYACHI *v.* VITHILINGA MUDALI . **I. L. R., 15 Mad., 111**

487. ———— *Civil Procedure Code (Act X of 1877), ss. 13, 433—Suit against a Sovereign Prince.*—A suit for a declaration of the title of the plaintiffs' tarwad to certain land was filed in a District Court against the Maharaja of Cochin and others, including the trustees of a devasom. It appeared that the same land was the subject of a suit instituted in a subordinate Court on the 6th August 1877, to which the representatives of both the plaintiffs' tarwad and the devasom were parties, and that the land was then found to be the property of the devasom, and a decree was passed accordingly. It was contended that the present claim was not *res judicata* by reason of that decree, because, under the provisions of Act X of 1877, s 433, which came into operation during the pendency of that suit, no Sovereign Prince could be sued in any Court subordinate to a District Court, and the Court which passed that decree was not therefore "a Court of jurisdiction competent to try" the present suit within the meaning of Civil Procedure Code, s. 13. *Held* that, although these words must be taken to refer to the jurisdiction of the Court at the time the suit was heard and determined, yet the present claim was *res judicata*, since the title to the land was a matter in issue within the cognizance of the Subordinate Judge and was adjudicated on by him. KUNJI AMMA *v.* RAMAN MENON

[I. L. R., 15 Mad., 494

488. ———— *Valuation of suit—Munsif, Jurisdiction of—Evidence Act, s. 44—Power of guardian to alienate land—Compromise of litigation.*—In 1882 the daughter of a deceased Hindu brought a suit in the Court of a District Munsif for a declaration that the defendant was not the adopted son of her father (deceased) as he claimed to be. It was found that the alleged adoption was valid, and the suit was dismissed. The then defendant now brought in 1889 a suit in the same Court to recover possession of land from the then plaintiff alleging that it had been wrongfully transferred to her by way of gift by his adoptive mother. The defendant

RES JUDICATA—*continued*

9. COMPETENT COURT—*continued*

[illegible]

fer to the defendant was apparently made to induce her to abandon her litigation as to the adoption *Held* that the defendant was not at liberty to question the plaintiff's adoption, that matter being *res judicata*, and that the Court should try whether the transfer was made *bond fide* by the plaintiff's mother as his guardian for his benefit. VENKATARAGHAVA *v* RANGAMMA . I. L. R., 15 Mad., 498

489 ———— *Decision in suit of the nature of Small Cause suit*—Decisions in previous suits which were in the nature of Small Cause suits, and in which there was no right of second appeal, *held* not to operate as *res judicata* *Bhola bhai v. Adesang I L R 9 Bom, 75*, followed GOVIND *v* DHONDBARAV I. L. R., 15 Bom., 104

490 ———— *Munsif, Jurisdiction of—Resistance to execution of decree for possession—Civil Procedure Code, ss 13, 331*—The plaintiff, having obtained a decree for possession of certain land, applied for execution by delivery of possession; whereupon a third party filed an objection in the Munsif's Court that he held a prior decree for possession of the same land, and that therefore the

[illegible]

no jurisdiction to act under s 331 and therefore his order was not a *res judicata* in the proceedings MAHABIR PRASAD *v* PARMA . I. L. R., 14 All., 417

491. ———— *Suit by a uralan against an agent of a devasom—Repudiation of agency—Civil Procedure Code (Act XIV of 1882), s 13—Munsif, Jurisdiction of*—In 1873 a predecessor of the plaintiff claiming to be the urala of a devasom brought a suit in a District Munsif's Court against the present defendant, whom he alleged to be

[illegible]

defendant, and the suit was dismissed in 1874 A suit was now brought in 1890 for a declaration of the plaintiff's title as uralan, and to recover from the defendant as such agent property of a value which exceeded the pecuniary limits of the jurisdiction of a District Munsif, the suit being therefore instituted in the Subordinate Judge's Court *Semble*—The decision in the prior suit did not constitute a bar to the present suit on the ground of *res judicata* SANKARAN *v* KRISHNA

[I. L. R., 16 Mad., 456

RES JUDICATA—*continued*

9 COMPETENT COURT—*continued*

492 ———— *Civil Procedure Code, ss 13 and 43—Suit by mortgagee for personal remedy in one Court—Subsequent suit against mortgaged property in another Court—Latter suit not within jurisdiction of former Court—Munsif, Jurisdiction of—Transfer of Property Act, s 99*—A bond, whereby certain immoveable property was hypothecated as security for a debt was executed at the place of residence of the obligor which was within the jurisdiction of a Court other than that within the jurisdiction of which the property hypothecated was situate The obligee brought a suit in the former Court to recover the principal and interest due on the bond against the obligor personally, on the covenant to pay contained in the bond and prayed also for sale of the property hypothecated. That Court dismissed that suit so far as it related to the property, and also so far as the claim for principal was concerned, but awarded the plaintiff the interest claimed against the defendant personally Subsequently the obligee brought a suit in the Court within the jurisdiction of which the property was situate for recovery of the principal money due on the bond by sale of the hypothecated property *Held* that the latter suit was not barred by reason of the former suit either under s 13 or under s 43 of the Civil Procedure Code NARASINGA RAU *v* VENKATANARAYANA

[I. L. R., 16 Mad., 481

493 ———— *Civil Procedure Code (1882), s 13* The term "competent jurisdiction" in s 13 of the Civil Procedure Code has regard to the pecuniary limit as well as to the subject-matter There is no authority for the general proposition that the competency of one Court as compared with another is affected by the circumstance that in the one case an appeal lies in the first instance to the District Court and in the other directly to the High Court. *Misir Ragho Bardial v. Sheo Baksh Singh, I L R, 9 Calc, 439*, cited and followed *Vithilinga Padiyachi v Vithilinga Mudali, I L R, 15 Mad, 111*, qualified SUBRAMMAL *v* HUDDLESTON

[I. L. R., 17 Mad., 273

494 ———— *Civil Procedure Code (1882), s 13—"Court of jurisdiction competent to try such subsequent suit"* The words "a Court of jurisdiction competent to try" as used in s 13 of the Code of Civil Procedure, mean a Court having jurisdiction not only as to the nature but also as to the amount of the suit *Misir Ragho bar Dial v. Sheo Baksh Singh, I L R, 9 Calc, 439 L. R., 9 I A., 197*, referred to. HARSU *v* RAM KUMAR SINGH I. L. R., 16 All., 183

495. ———— *Civil Procedure Code (1882), s 13—Jurisdiction of Munsif*—Defendants, against whom the District Munsif had wrongly passed a decree in 1877 in a suit in a

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

[illegible] Munsif has no jurisdiction [illegible] [illegible]

[I. L. R., 16 Mad., 287

496. [illegible] *Civil Procedure Code* [illegible] Held [illegible] *res judicata* [illegible] *Ram Kirpal Singh v. Rup Kuari, I. L. R., 11 All., 132 : L. R. 11 I. A., 37*, followed. *Misir Raghobardial v. Sheo Baksh Singh, I. L. R., 9 Calc., 439 : L. R. 9 I. A., 197* [illegible] [illegible]

[I. L. R., 23 Calc., 415

497. ——— *Code of Civil Procedure (Act XIV of 1882), s. 13—Issue decided in a previous suit not subject to second appeal—Same issue raised in a subsequent suit subject to appeal.*—In a previous suit for rent valued at less than R100 by the plaintiff against the defendants one of the questions raised was, in how many instalments the rent was payable, and it was held that it was not payable in instalments. In a subsequent suit for rent valued at more than R100 between the same parties, the question of instalment was again raised, as the plaintiffs claimed the rent to be payable in four instalments. The defendants *inter alia* pleaded that the question as to instalment was barred as *res judicata*. The Munsif held that it was so barred. On appeal the Subordinate Judge reversed the decision of the Munsif. On a second appeal to the High Court,—*Held* that the judgment in the previous suit operated as *res judicata*, notwithstanding that no second appeal was allowed by law in that suit. *Vythilinga Pandarasannadhi v. Vythilinga Mudali, I. L. R., 15 Mad., 111*, and *Bhola Bhai v. Adesang, I. L. R., 9 Bom., 75*, dissented from. *Misir Raghobardial v. Sheo Baksh Singh, I. L. R., 9 Calc., 439 : L. R., 9 I. A., 197 : Edun v. Bechun, 8 W. R., 175*, distinguished. *Dwarka Nath v. Grish Chunder Gupta, I. L. R., 9 Calc., 163*, referred to. DEBI CHARAN GHOSE v. KUMUD MOHUN DUTT CHOWDHRY . . I. L. R., 25 Calc., 571

[2 C. W. N., 297

(h) SMALL CAUSE COURT CASES.

498. **Question of title**—*Decree of Small Cause Court.*—A decree passed in a suit in Small Cause Court in which a question of title is incidentally dealt with is not a bar to a suit for a general declaration of title. KHANDU valad KHANU v. TATIA valad VITHOBA

[8 Bom., A. C., 23

499. ——— *Suit for rent of the nature cognizable in a Small Cause Court—Determination of title.*—The incidental determination of a question of title in a suit for rent of the nature cognizable in a Court of Small Causes does not finally estop the parties to such suit from raising the same point in a suit brought to try the title. INAYAT KHAN v. RAHMAT BIBI . . . I. L. R., 2 All., 97

CHUNDER NARAIN MOZOOMDAR v. PLITHANUND ADDY . . . . 12 W. R., 290

500. ——— *Civil Procedure Code, 1877, s. 13—Question of title.*—Per INNES, J.—The decree of a Small Cause Court in a case where a question of title is raised incidentally is no bar to a suit upon the title under s. 13, expl. II, of the Civil Procedure Code, because the Small Cause Court is not competent to pass a decree upon the title. MANAPPA MUDALI v. MCCARTHY

[I. L. R., 3 Mad., 192

501. ——— *Decree for money due on bond—Subsequent suit in which execution and bonâ fides of bond are contested.*—In a suit to enforce a lien created by a mortgage-bond on property which was sold by the mortgagor (*R*) ten months later to the defendant, the lower Appellate Court held that the defendant, as standing in his vendor's shoes, was concluded by a judgment obtained in the Small Cause Court by the plaintiff against *R* a month after the date of the bond. *Held* that, as the Small Cause Court could not have jurisdiction to decide as to the lien, its decree would only be relevant as showing that the defendants at the time owed the money to the plaintiff, and that it would be open to the defendant to question the execution and *bonâ fides* of the bond as affecting the property which he had taken by conveyance. POHOLI MULLICK v. FUKEER CHUNDER PATNAIK . . 22 W. R., 349

502. ——— *Suit for rent in Small Cause Court—Question of title.*—The plaintiff, in a suit to establish her lakhiraj right to lakhiraj land, stated in her plaint that she was in

RES JUDICATA—*continued*

9 COMPETENT COURT—*continued*.

possession of certain land by virtue of the will of her husband; that, while in possession of the land a suit was brought against her in the Small Cause Court for rent by the defendants who obtained a decree and that there being no appeal against the decision, the lakhiraj rights in respect of the lands were consequently injured, she therefore brought the present suit *Semble per* JACKSON J dismissing the suit that the plaintiff might if a fresh suit for rent be brought again raise the question of her lakhiraj [illegible]

503 ——— *Decree in suit* [illegible]

the office of archaka of a temple sued in 1889 for a declaration of his title and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them The defendants pleaded that the validity of the agreement was *res judicata* for the reason that they had brought a previous action upon it against the plaintiffs and had obtained a decree for R75. *Held* that the validity of the agreement was not *res judicata*, because the previous suit was of a Small Cause nature SRIRANGACHARIAR *v* RAMSAMI AYYANGAR

[I L R, 16 Mad, 189

NAMASIVAYA GURUKKAL *v* KADIR AMMAL

[I L R, 17 Mad, 168

504. ——— *Claim by mortgagor in execution proceedings in Small Cause Court—Civil Procedure Code (Act XIV of 1882) s 278—Presidency Small Cause Court Rules of Practice 49 50 51—Tiled huts— For the purposes of execution" Meaning of—Question of title—Presidency Towns Small Cause Courts Act (XV of 1882) ss 28 37*—An order made upon a claim to attached property filed in the Small Cause Court of Calcutta in a proceeding under s. 278 of the Civil Procedure Code is "an order made in a suit" within the meaning of s 37 of the Presidency Small Cause Court Act (XV of 1882) and is final subject only to the right to apply for a new trial *Ismail Solomon Bhamji v Mahomed Khan I L R 18 Calc 296* followed The words of s. 28 (Act XV of 1882) for the purpose of execution" must mean for all purposes of execution, inclusive of the purpose of determining objections made to attach [illegible] over attached property and that question is therefore *res judicata* DENO NATH BATABYAL *v* NUFFER CHUNDER NUNDY I. L. R., 26 Calc., 778

[3 C W. N., 590

This case was however reversed on appeal.

See DENO NATH BATABYAL *v* ADHOR CHUNDER SETT . 4 C W N., 470

(o) REVENUE COURTS

In early decisions it was held that a decision of a Revenue Court in a case under the Rent Act 1859 was in some circumstances binding in a Civil Court. WOOMESH CHUNDER SOOTER *v* RAM CHUNDER MOWREE . 4 W. R., Act X, 40

OOMA CHURN DUTT *v* BECKWITH

[5 W R., Act X, 3

FESHOOREE SINGH *v* HUNTER 2 N W., 53

505 — — Decision of Revenue Court —*Suit for rent—Jurisdiction of Collector*—The decision of the Collector in a suit for rent of certain land is conclusive in a subsequent suit between the same parties in a Civil Court for a declaration that the land is liable to pay rent MOHESH CHUNDER BUNDOPADHYA *v* JOYKISHEN MOOKERJEE [illegible]

[15 B L R., 248 note 22 W R., 362

506 ——— *Suit for resumption of invalid lakhiraj—Act X of 1859 s 23—Beng Reg II of 1819 s 30*—That a raiyat's holding was of a date prior to 1790 once decided in the zamindar's suit under s 23 Act X of 1859 must be considered as *res adjudicata* in a subsequent suit under s. 30 Regulation II of 1819 KALLEE PERSHAD HOLDAR *v* SOODHOORA BIBEE 1 W R., 218

Most of the later cases however decided that a decision of the Revenue Court was not conclusive on a matter of title in a subsequent suit in the Civil Court.

507 ——— — — *Decision of Collector on question of possession*—The decision of a Collector on a question of possession and of the right to receive the rent does not bar an action in the Civil Courts to try the title of the parties. KALIDASS GHOSE *v* CHANDRAMOHINI DASI

[8 W R., 68

508 ——— *Entry in revenue record under order of Collector—Suit in ejectment to determine title—N-W P Land Revenue Act (XIX of 1873) s 102*—An entry in a revenue record which is based solely on the fact of possession cannot operate as *res judicata* on a question of title subsequently raised in a civil suit *Dulhin Kunwar v Lakar Pande I L R 19 All 432* referred to KALIANI *v* DABBI PANDE

[I L R., 20 All, 520

509 ——— *Suit for declaration of title after suit for rent in Revenue Court*—A, suing B for arrears of rent on the allegation that B held an utbundee jote from him on certain lands of plaintiff's jote jumma, obtained a decree for rent for one year, the period for which he sued B then brought an action in the Civil Court for a declaration of his right to the jote jumma in question alleging that he held the land direct from the zamindar, and

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

was not *A*'s raiyat; *A* pleading that the Civil Court had no jurisdiction after the Revenue Court had declared *B* to be his raiyat. *Held* that the Revenue Court's decree was not conclusive as to the question of title, *i.e.*, as to whose right it was to have the particular jote jumma as his property. DHONAYE MUNDUL *v.* ARIF MUNDUL [9 W. R., 306

510. ———— *Decree of Revenue Court for arrears of rent—Suit for declaration of title as lakhirajdar.*—A decree of a Revenue Court awarding arrears of rent for a certain year under a kabuliat against a raiyat does not bar the jurisdiction of the Civil Courts in a suit brought by him for a declaration of his title as lakhirajdar in the same land. TARA CHAND MYTEE *v.* NILAMBUR MUNDUL [3 W. R., 227

511. ———— *Suit for possession after ejectment—Jurisdiction of Collector.*—In a suit to recover possession on the ground of illegal ejectment, a Collector has no jurisdiction to inquire into any matter having reference to the rights of the parties so as to bar a subsequent suit for them. SHEEB CHUNDER MAHNEEAH *v.* BROJONATH ADITYA . . . 14 W. R., 301

512. ———— *Suit in Revenue Court under s. 23, Act X of 1859—Title—Subsequent suit for possession.*—A decision in a suit to recover occupation where the plaintiff is found to have been illegally ejected under Act X of 1859, s. 33, cl. 6, does not bar a regular suit for possession by the defendant in the former suit grounding his claim on title, and in which the question of title is to be tried. SOORJEE KANTO ROY *v.* FORLONG [1 Ind. Jur., N. S., 382 : 6 W. R., Act X, 44

513. ———— *Decision of Deputy Collector in suit for ejectment.*—Where a Deputy Collector declined jurisdiction in a suit for ejectment under s. 28, Act X of 1859, and the appeal against this decision to the Judge was dismissed,—*Held* that that decision was no bar to a suit for ouster in the Civil Court, either in the way of *res judicata* or otherwise. BASER MAHOMED *v.* SUDDER GHAZEE . . . . . 7 W. R., 97

514. ———— *Possessory suit under Rent Act.*—A possessory suit under cl. 6 of s. 23 of the Rent Act, 1859, by a raiyat against his zamindar did not bar a suit for confirmation of title by the intervenor in that suit. TARA CHAND GHOSE *v.* RADHAMONEE DOSSEE . 7 W. R., 469

reversing on review . . 5 W. R., Act X, 9

515. ———— *Suit for rent—Jurisdiction of Collector.*—In a suit for rent under Act X of 1859, the Collector had no jurisdiction to decide a question of mokurari title otherwise than so far as it might be incidental to the determination of the amount of rent, if any, due; and his decision on such a question was therefore not binding in a subsequent suit to establish the mokurari right. BABUR ALI *v.* DOWLUT ALI [15 B. L. R., 242 : 19 W. R., 217

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

DOSS MONEE DOSSEE *v.* HURONATH ROY [4 W. R., 2

NEYPAL SINGH *v.* GUYADUT . 3 Agra, 311

516. ———— *Decision of Collector on reference from Deputy Collector.*—*Held* that reference to the Collector in a suit pending before the Deputy Collector was irregular, and his opinion and order on such reference had no weight at all, and could not amount to a decision which, not having been appealed against, would operate as a bar to the adjudication on the point referred. SAHIB SINGH *v.* PUT RAM . . . 1 Agra, Rev., 17

517. ———— *Same parties in different character.*—The decision in a suit under Act X of 1859 against the defendants as the plaintiff's tenants did not bar a suit brought in the Civil Court against the same defendants as the plaintiff's vendees, the parties being accidentally the same persons, but legally different persons, with different rights and interests. GOLAM AHMED *v.* SHAM SOONDUR ROY . . . 5 W. R., Act X, 9

518. ———— *Suit to assess or resume invalid lakhiraj land—Jurisdiction of Collector—Act X of 1859, s. 28.*—A suit by a zamindar to assess or resume land alleged to be invalid lakhiraj, under s. 28 of Act X of 1859, had to be brought in the Revenue Courts. GUNGA HURRY DHOBEY *v.* TRIPP . . . 1 W. R., 31

In such a suit a Collector had no jurisdiction to try whether a title under a grant made prior to the 1st of December 1790 was valid or not. MOOROOBBEE SAHOO *v.* LATOO COOMAR W. R., F. B., 70

519. ———— *Act X of 1859, s. 28—Jurisdiction of Collector.*—If it was established, in a suit under s. 28, Act X of 1859, that the defendant's lakhiraj tenure was created prior to 1790, it was immaterial whether it was within plaintiff's talukh or not. Therefore the finding upon the question of parcel or no parcel by a Deputy Collector in such a suit was not binding on the Civil Court in any suit which might thereafter be brought to resume the land as invalid lakhiraj created prior to 1790, or in any other suit. RAMNEEDHY BOYDE *v.* NEAMUT [Marsh., 355 : 2 Hay, 437

520. ———— *Suit for rent—Act X of 1859—Beng. Act VIII of 1869—Jurisdiction of Collector.*—*Held* (JACKSON, J., dissenting) that a judgment by a Collector, in a suit under Act X of 1859, declaring the plaintiff entitled to assess rent upon land alleged by the defendant to be lakhiraj, is not conclusive in a subsequent suit between the same parties for arrears of rent under Bengal Act VIII of 1869. *Per* JACKSON, J.—A decision in a previous and similar suit upon an issue raised substantially in the same manner by parties in a Revenue Court is binding upon them as evidence in a subsequent suit, which, but for the passing of Bengal Act VIII of 1869, would also have been brought in a Revenue Court. HURRI SUNKUR MOOKERJEE *v.* MUKTARAM PATRO [15 B. L. R., F. B., 238 : 24 W. R., 154

RES JUDICATA—*continued*

9 COMPETENT COURT—*continued*

521 ——— *Bengal Tenancy Act (VIII of 1885), s 106—Decision of a Revenue Officer under s 106*—A question heard and decided by a Revenue Officer under s 106 of the Bengal Tenancy Act, 1885 is *res judicata* between the same parties in a subsequent suit in a Civil Court *Hurri Sunker Mookerjee v Muktaram Patro 15 B L R* 238 not applied GOKHUL SAHU *v* JODU NUNDUN ROY GOBIND SAHU *v* LUCHMI NARAIN ROY

[I. L. R, 17 Calc, 721

522. ——— *Order of settlement officer fixing rate of rent—Bengal Tenancy Act (VIII of 1885), s 104 cls 2 and 3; and 3 s 107—Civil Procedure Code (1882) s 13—Objection—Dispute*—Where a settlement officer of [illegible] tiffs preferred an objection under s 105 cl 1 to [illegible] the proceedings of the settlement officer were of an executive rather than of a judicial character and did not operate either as a *res judicata* under s 13 of the Code of Civil Procedure or as a final decree under s. 107 of the Bengal Tenancy Act, estopping the plaintiffs from having the same matters tried by the regular Civil Court The words "objection" and "dispute" in ss 105 and 10 of the latter Act are not synonymous terms SECRETARY OF STATE FOR INDIA *v* KAJIMUDDY I L R., 23 Calc, 257

523 ——— *Bengal Tenancy Act (VIII of 1885) ss 103 106 107—Record of rights—Landlord and tenant—Cadastral survey*—The decision of a revenue officer under s 106 of the Bengal Tenancy Act operates as *res judicata* between the parties in a subsequent suit between the same parties regarding lands which formed the [illegible] *Pind* [illegible] *le*, 378 [illegible] *Loy* [illegible] DHONI [illegible] N., 401

See RAM AUTAR SINGH *v* SANOMAN SINGH

[I. L. R., 27 Calc, 167

524 — Decision in rent suit—*Beng Act VIII of 1869—Jurisdiction of Civil Court*—The decision of the Civil Court in a suit for rent under Bengal Act VIII of 1869 was final [illegible] declaration that [illegible] subject of the [illegible] NDER MOZOOM [illegible] W. R., 207

525 ——— *Question of title in Civil Court in rent suits since the passing of Beng Act VIII of 1869*—The old Privy Council and Full Bench rulings, that a Revenue Court's [illegible] bearing a rent suit under the Rent Act 18 [illegible] RAM DOSS NUSHKUR *v* LASH MONEE DOSSEE

[25 W R., 189

526 Decision in suit declaring title—*Subsequent suit for rent*—A decree of a Civil Court in a suit concerning the title is not of itself in all cases a bar to a suit against a tenant for rent by the person against whom such decree has [illegible] ing that the plaintiff may have an actual receipt of rent prior to the institution of the suit TARINEE *v* BAMUNDOSS MOAKHEY 1 W. R, 331

527 Decision as to validity of pottah — *Decision of Revenue Court Title—Collateral issue*—The trial and determination by the Revenue Court of the amount of rent which the plaintiff is entitled to under a mokurari pottah in which the genuineness of the pottah only comes collaterally in issue in determining the amount of rent was not a bar to a subsequent suit in the Civil Court to try the validity of the pottah JANESWAR DAS *v* GULZARI LAL

[5 B L R., 666 note 11 W R, 216

TEKAITNE GOWRA KUMARI *v* BENGAL COAL COMPANY 5 B L R 667 note 13 W R., 129

Affirmed by the Privy Council in TEKAETNE GOURA COOMAREE *v* SAROO COOMAREE

[19 W R., P C, 252

528 ——— *Decision of Revenue Court Suit for ejectment*—A Collector's judgment as to the genuineness of a pottah could not be pleaded as an estoppel in the Civil Court in an action for ejectment on account of trespass ARADHUN DEY *v* GOLAM HOSSEIN 8 W R., 467

529 *Civil Procedure Code 1859 s 2—Suit for declaration of title—Order of Collector under Act X of 1859 s 23*—In a suit for declaration of title to land from which a raiyat had been ejected at the suit of his zamindar by the order of a Collector under s 23 Act X of 1859 and wherein the genuineness of the pottah upon which the suit was brought was at issue the order of the Collector could not be pleaded in bar BHAIRO SINGH *v* LUKHARAN SINGH 3 B. L. R., Ap., 130

S C BHYRO SINGH *v* OODEE KURN SINGH

[12 W R., 234

530 ——— *Suit to declare pottah forged*—The proceedings in a suit under Act X of 1859 in which the Collector did not finally adjudicate upon the genuineness of a pottah, although he accepted it as genuine were no bar to a subsequent suit in the Civil Court for a declaration

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

that the pottah was a forgery. PITAMBUR SHAHA *v.* RAMJOY GHOSE . . . . 7 W. R., 92

SHIB PERSHAD PANAH *v.* MUDDUN MOHUN DOSS [15 W. R., 415

531. ——— **Decision as to validity of kabuliat**—*Court of competent jurisdiction—Question of title, Decision of, by Revenue Court.*—Where, for the purposes of a rent suit, a Revenue Court found that a kabuliat propounded by the plaintiff was a genuine document, such finding was no bar to a Civil Court trying the question of right between the parties, and for that purpose trying the validity and genuineness of the kabuliat. BOISTUB CHURN SEN *v.* TRAHEE RAM SEIN . 15 W. R., 32

532. ——— **Decision as to validity of bond**—*Court of competent jurisdiction—Concurrent jurisdiction—Civil Procedure Code, 1859, s. 2.*—*A* brought a suit against *B* in the Collector's Court for rent. In answer, *B* set up a bond, by the terms of which *A*, in consideration of a loan of R10,000, stipulated that *B* should apply a certain portion of the annual rent to the reduction of the loan, and the payment of the interest thereon. *A* alleged that the bond was false. The Collector, in an issue directed by the High Court, decided that it was genuine, and this decision was affirmed on appeal. *B* afterwards sued *A* in the Civil Court upon the bond. *Held per* PEACOCK, C.J., and PHEAR, J. (CAMPBELL, J., *dissentiente*), that the Collector's decision as to the genuineness of the bond did not operate as an estoppel. The two Courts were not Courts of concurrent jurisdiction. *Per* PEACOCK, C.J.—*Quære*—Is a judgment of a Court of concurrent jurisdiction between the same parties on the same point conclusive between the parties in another Court in the country? EDUN *v.* BECHUN [2 Ind. Jur., N. S., 264: 8 W. R., 175

533. ——— **Decision as to genuineness of document**—*Decision by Deputy Collector—Jurisdiction of the Revenue Courts.*—*A*, a raiyat, brought a suit in the Court of the Deputy Collector against *B*, his zamindar, for recovery of possession of a piece of land, on the ground that he was the holder of a mirasi pottah, and that he had been illegally ejected by *B*. The Deputy Collector held that the mirasi pottah was genuine, and that *B* had illegally ejected *A*. He passed a decree in favour of *A*, in execution of which *A* obtained possession of the land in dispute. In a suit brought by *B* against the heirs of *A* in the Civil Court for recovery of possession of the said piece of land, on the ground that the mirasi pottah was a spurious document, and that no mirasi pottah had been granted to *A*,—*Held* (JACKSON, J., doubting) that the decision of the Deputy Collector was not conclusive between the parties. CHUNDER COOMAR MUNDUL *v.* NUNNEE KHANUM [11 B. L. R., F. B., 434: 19 W. R., 322

UNNODA PERSHAD MOOKERJEE *v.* SOORENDRONATH PAL CHOWDHRY . . . . 20 W. R., 105

GUNGA GOBIND ROY *v.* KALA CHAND SURMA GAN- . . . . 20 W. R., 455

Contra, HURO LALL SAHA *v.* TIRTHANUND THAKOOR [11 B. L. R., 437 note: 13 W. R., 417

534. ——— **Decision as to validity of document**—*Civil Procedure Code, 1859, s. 2—Former suit in Revenue Court.*—In a suit by a tenant to recover possession of land from which he had been dispossessed by defendant under colour of a sub-lease alleged to have been extorted by force, it appeared that plaintiff had, on this very cause of action, sued the defendant in the Court of the Collector, who had found the sub-lease to be good and valid, and had dismissed the suit. *Held* that the suit, having once been dismissed by a Court of competent jurisdiction, could not again be entertained by the Civil Court. HOLLOWAY *v.* ASMAN ROY [10 W. R., 325

535. ——— **Order of Revenue Court for ejectment**—*Suit for possession—Act X of 1859, s. 25.*—The defendant had obtained an order under s. 25, Act X of 1859, to eject the plaintiff, who now sued in the Civil Court for recovery of possession. *Held* that s. 2, Act VIII of 1859, did not bar the suit. AMANAT ALI CHOWDHRY *v.* MUSSEN ALI [2 B. L. R., Ap., 36: 11 W. R., 145

536. ——— **Suit for ejectment**—*Order on application under Act X of 1859, s. 25.*—A suit for ejectment from land assigned for building purposes under a contract was not barred under s. 2, Act VIII of 1859, by reason of a previous order for ejectment obtained on an application under s. 25, Act X of 1859, such an application not being a suit. RAM NARAIN MITTER *v.* NOBIN CHUNDER MOORDAFARASH . . . 18 W. R., 208

537. ——— *Suit for ejectment, Dismissal of—Subsequent suit for ejectment.*—A suit for ejectment, on the ground that the defendant had entered the plaintiff's land wrongfully and forcibly, having been dismissed by the Court, which found that the defendant was not a trespasser, but a tenant,—*Held* that a subsequent suit by the same plaintiff, on the allegation that the defendant was a trespasser, though lately a tenant, was not prohibited by s. 2, Act VIII of 1859. The suit, however, was dismissed on other grounds. HEERA RAWUT *v.* RAGHA RAWUT . . . . 22 W. R., 115

538. ——— **Refusal of Collector in suit under s. 25, Act X of 1859**—*Subsequent suit for ejectment.*—A Collector's refusal to give assistance under s. 25, Act X of 1859, was not a determination by a Court of competent civil jurisdiction in a former suit within the meaning of s. 2, Act VIII of 1859. GOCOOL CHUNDER *v.* ALI MAHOMED [10 W. R., 6

See MUDUN MOHUN ROY *v.* GOURMONEE GOOPTO [B. L. R., Sup. Vol., 31: W. R., F. B., 126

539. ——— **Order by Revenue Courts for registration of name**—*Suit for declaration of title.*—In a suit for declaration of title, the mere

RES JUDICATA—*continued*

9 COMPETENT COURT—*continued.*

fact that the Revenue Courts decreed the registration of the plaintiff's vendor's name as a joint sharer of the estate, and that no steps were taken during twelve years to set aside that decree, was held not to operate as an estoppel NITTANUND ROY v. BYDONATH MOHAPATHUR . . W. R., 1864, 350

540 ——— *Proceedings under s. 27, Act X of 1859*—Two purchasers of holdings in the defendant's zamindari at a sale for arrears of revenue applied to the Collector to have the transfer registered in the zamindar's sherista under Act X of 1859, s. 27. Their application was refused and then they brought a suit in the Civil Court to set aside the Collector's order and register their names. *Held* that proceedings authorized to be taken in the Collector's Court under s. 27, [illegible] and [illegible] ar to a [illegible] f 1859 [illegible] ROY [illegible] B, 43

S C CHUNDER NARAIN GHOSE v. KASHEENATH ROY CHOWDHRY 12 W. R., F. B., 30

[illegible]

before a Collector, the one by defendants asking an amendment of the Collectorate record by expunging therefrom plaintiff's names as being out of posses[illegible]

[illegible]

RAGHOO SINGH . 2 N. W., 64

542 — Order by settlement officer—*Civil Procedure Code, 1882, s. 13—Act XIX of 1873, ss. 56, 62, 64, 241 (g)*—*Held* that an order by a settlement officer directing that certain persons should be recorded as the sub-proprietors of certain land as they claimed to be and not as lessees as certain persons asserted that they were, did not operate as *res judicata* in a suit by the latter persons against the former for a declaration that the former were not sub-proprietors of the land but lessees thereof the settlement officer not being competent under Act XIX of 1873 (N.-W. P. Land Revenue Act) to try such a question of right. TOTA RAM v. HAR KISHEN I. L. R., 7 All., 224

543 ——— Decision of Collector in measurement proceedings—*Beng. Act VIII of 1869, s. 15—Jurisdiction of Collector*—If a Collector professing to proceed under the provisions of s. 38, Bengal Act VIII of 1869 does not ascertain the existing rates of rent but proceeds to assess the rents—in other words to determine what rates are in his opinion fair and equitable,—he exceeds his jurisdiction and his proceedings are null and void. But if he has properly exercised the jurisdiction conferred on him by that section, his proceedings are conclusive between the parties in a subsequent suit for rent. MERJAN JANAND v. KRISHTO CHUNDER *alias* KINOO LAHARY

I. L. R., 10 Calc., 507

544 ——— Decision as to surety in rent suit—*Jurisdiction of Revenue Court—Suit against sureties of lessee—Competent Court. Decision by*—When a person became security for the due payment of rent by a third party, and on default of such payment the creditor sued both the principal debtor and the surety in the Revenue Courts for the amount owing and such suit as against the surety was on appeal thrown out by the High Court on the ground that the Revenue Courts had no jurisdiction to entertain it, and the creditor then sued the surety in the Civil Courts.—*Held* that the proceedings instituted in the Revenue Courts were no bar to the entertainment of this suit. GUNESH KOOER v. OOMDUT OON NISSA BEGUM 6 N. W., 77

545 ——— Dismissal of suit for rent—*Subsequent suit for possession with mesne profits*—The dismissal of a suit for rent is no bar to suit for title and possession with mesne profits. GOUR HUREEE DOSS v. MUTTEEOOLAH 1 W. R., 99

546 ——— Dismissal of suit in Revenue Court for want of jurisdiction.—The [illegible]

BHIKAREE PANDAH v. AJOODHYA PERSHAD 3 W. R., 176

547. ——— Decree for rent at enhanced rate—*Suit for declaration of right to same land*—A decree in a suit for a kabuliat at an enhanced rate was no bar, under s. 2, Act VIII of [illegible] f the [illegible] ot be [illegible] 424

548 ——— Decision as to liability for rent—*Subsequent suit for declaration of title*—The decision of a Revenue Court that a party was liable for rent to another as his tenant did not bar that party suing in a Civil Court to obtain a declaration of title on his general civil rights either as proprietor by purchase or as mokurraridar. JUDDOONATH SEIN v. RAM COOMAR CHATTERJEE

9 W. R., 359

ISHAN CHUNDER ROY CHOWDHRY v. BHYRUB CHUNDER DOSS . . 21 W. R., 25

549 ——— Decision as to tenancy agreement.—*A Deputy Collector having in a suit for rent given plaintiff (H) a decree determining adversely to defendant (A) an issue which he had raised as to an arrangement of tenancy,—Held* that

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

K could not succeed as plaintiff in a new suit in the same Court in which he set up the same arrangement and asked to have it declared as that under which he held the land from M. KALEE DASS GHOSAL v. MUDDOOSOODUN ROY . 10 W. R., 465

550. ——— Suit in Revenue Court on a lease—*Subsequent suit for same sum as damages.*—When a suit for rent due on a certain stipulation in a patni lease was dismissed in the Revenue Courts,—*Held* that another suit could not be brought in the Civil Court as for damages laid at the amount of rent which would have been realized. GOPALKISTO MOOKERJEE v. MUDHOOSOODUN PAUL CHOWDHRY . . W. R., 1864, Act X, 82

551. ——— Suit in Revenue Court to set aside attachment—*Subsequent suit in Civil Court to assess rent on same land.*—A suit was brought in the Revenue Court to set aside an attachment for rent, on the ground that such attachment was for rent at a higher rate than was due. The landholder claimed the higher rate under an alleged assessment of a Batwara Ameen. The Collector made a decree setting aside the attachment, on the ground that the landholder failed to prove that the higher amount was due. *Held* that the landholder could not maintain a suit in the Civil Court to assess the land at the higher rate claimed for the year for which the attachment had issued, on the ground of prior service of notice of demand of the higher rate, under Bengal Regulation V of 1812, that question having been already adjudicated upon by a Court of competent jurisdiction. REAZOONNISSA KHANUM v. DOYANAUTH JHA . Marsh., 638

552. ——— Decision of Revenue Court as to possession—*Former suit by lessee against zamindar.*—*Held* that a decree of the Revenue Court, in a suit for possession brought by one lessee against the zamindar, was no bar to a suit in the Civil Court brought by another lessee to obtain possession against both the zamindar and the first lessee. RUN SINGH v. MAHOMED ABID [2 Agra, 127

553. ——— Dismissal of suit for ejectment—*Suit for removal of trees—Jurisdiction of Revenue Court—Act X of 1859, s. 23.*—The dismissal of a previous suit brought by plaintiff for ejectment of defendant, his cultivator, on account of breach of contract under cl. 5, s. 23, Act X of 1859, as being barred by limitation, was held not to operate as a bar to a suit for removal and possession of certain trees, and avoidance of sale-deed executed by cultivator, which was of a different nature from the one dismissed, and did not come within the suits defined in s. 23 Act X of 1859, and therefore was not cognizable by the Revenue Court. JOGUL KISHORE v. CHUTTER SINGH . . . 1 Agra, 27

554. ——— Refusal of application for ejectment—*Civil Procedure Code, 1882, s. 13—Landholder and tenant—Application for tenant's ejectment for building on land—Suit for demolition of building.*—A decision of a Revenue Court disallowing an application to eject a tenant, because he has built on his land, does not, under s. 13 of the Civil Procedure Code, bar a suit in the Civil Court to have the building demolished. AMRIT LAL v. BALBIR [I. L. R., 6 All., 68

555. ——— Decision ordering ejectment—*Jurisdiction of Revenue Court—N.-W. P. Rent Act (XVIII of 1873), s 93—Landlord and tenant—Determination of title.*—The decision of a Revenue Court, in a suit by a landholder against a tenant under s. 93 (b) of Act XVIII of 1873 for the ejectment of the tenant on the ground of misconduct in constructing a well, that the tenant could not be ejected from his holding without compensation being given to him for his outlay in constructing it, is not a determination of the landholder's right to demolish the well as having been constructed by a person not having a right to construct it; and consequently such a decision is not a bar to a suit by the landholder in the Civil Court for the demolition of the well as having been so constructed. RAJ BAHADUR v. BIRMHA SINGH . . . I. L. R., 3 All., 85

556. ——— Decision as to existence of relation of landlord and tenant—*Civil Procedure Code, 1877, s. 13—Suit for arrears of rent—Determination of title—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 93, 95, 148.*—The question whether the parties to a suit in a Court of revenue for arrears of rent stand in the relation of landlord and tenant is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit, but not one which such Court has special jurisdiction to determine, and its determination of that question is not that of a competent Court. Consequently, where a Court of revenue determines in such a suit that the parties do not stand in such relation, such determination does not bar the party alleging that the parties do stand in such relation from suing in the Civil Court to establish such relation. GOPAL v. UCHABAL [I. L. R., 3 All., 51

557. ——— Decree of Revenue Court in suit as to rate of rent—*Suit for arrears of rent.*—A Revenue Court cannot entertain a suit to determine the rate of rent payable by an ex-proprietary tenant, but an application only. *Held* therefore, where a landholder sued an ex-proprietary tenant for arrears of rent at a certain rate, and obtained an *ex-parte* decree for arrears of rent at that rate, and again sued the tenant for arrears of rent at the same rate, that the Revenue Court had not jurisdiction to determine the rate of rent in the first suit, and that therefore the tenant was not precluded from setting up as a defence to the second suit that it was not maintainable, as the rate of rent had not been fixed. PHULAHRA v. JEOLAL SINGH [I. L. R., 6 All., 52

558. ——— Determination of question of title—*Act XIX of 1863, ss. 8, 9.*—Where M, the recorded proprietor of an estate, applied to have his share of such estate separated, and an objection

RES JUDICATA—continued

9. COMPETENT COURT—continued

was made to such separation by *H*, another recorded proprietor of the estate which raised the question of *M*'s proprietary right to a portion of his share, and the Collector proceeded under s. 8 Act XIX of 1863, to inquire into the merits of such objection and decided that *M*'s interest in such portion of his share was that of a mortgagee and not a proprietor and *M* did not appeal against such decision and it became final. —*Held*, in a suit to the Civil Court by *M* against *H* in which he claimed a declaration of his proprietary right to such portion that a fresh adjudication of his right was barred. HAR SAHAI MAL *v.* MAHARAJ SINGH I. L. R., 2 All., 294

559. ——————— *Partition—Appeal—Act XIX of 1873 (N. W. P. Land Revenue Act), ss. 113, 114.*—Where in proceedings for partition under Act XIX of 1873 a question of title to land ... [illegible] ... title to such land notwithstanding that in some respects such adjudication may have been irregular or defective. *Har Sahai Mal v. Maharaj Singh, I. L. R., 2 All. 294*, and *S. A. No. 191 of 1881* decided the 27th July 1881 followed. *Held* in this case on consideration of the partition proceedings that the question of title raised therein had been adjudicated on, and therefore the rule mentioned above applied. BATESHAR NATH *v.* FAIZ-UL-HASAN [I. L. R., 5 All., 280

560. ——————— *Determination of proprietary right—N.-W. P. Land Revenue Act (XIX of 1873), ss. 113, 114.*—In the case of an objection to a partition raising a question of ... [illegible] ... made an order disallowing an objection to a partition raising a question of title on the ground that such question had been determined against the objector in a suit for profits between the parties.—*Held* that such order was not a decision of a Court of Civil Judicature within the meaning of s. 114 of Act XIX of 1873, but that it could be contested by a suit in the Civil Court. *Kameshar Pas v. Sukhoo Pas, 1 N. W., Ed. 1873, 131, Bukhla v. Gangu, 8 Agra, 161*; and *Harsahai Mal v. Maharaj Singh, I. L. R., 2 All. 294* distinguished. ASGHAR ALI SHAH *v.* JHANDA MAL I. L. R., 2 All., 639

561. ——————— *N. W. P. Rent Act (XII of 1881), ss. 36, 39, 95 (a), and 96 (b)—Suit in a Civil Court for a declaration on a question of title decided by a Court of revenue under s. 39 of Act XII of 1881—Jurisdiction of Civil and Revenue Courts.*—The defendants served a notice of ejectment under s. 36 of Act XII of 1881 on the plaintiffs alleging the plaintiffs to be their sub-tenants and themselves to be tenants with a right of occupancy. The plaintiffs objected that they and not the defendants were the tenants in chief of the land in question. This objection was decided under s. 39 of the said Act by a Court of revenue adversely to the plaintiffs. The plaintiffs thereupon sued in a Civil Court for a declaration that they were tenants with a right of occupancy and for maintenance of possession. *Held* that, inasmuch as s. 96 (b) of Act XII of 1881 gave to a decision of a Court of revenue under s. 39 the effect of a judgment of a Civil Court, the hearing of the plaintiffs' present suit by a Civil Court was barred. The principle of the decision in *Tarapat Ojha v. Ram Lilas Kuar, I. L. R., 15 All., 387*, affirmed. The jurisdiction of Civil Courts and Courts of Revenue in the North-Western Provinces considered. SHEO NARAIN RAI *v.* PARMESHAR RAI I. L. R., 18 All., 270

562. ——————— *Civil Procedure Code, s. 13—Partition—N.-W. P. Land Revenue Act (XIX of 1873), ss. 113, 114—Irregular procedure.*—Upon an application made under Ch. IV of the N. W. P. Land Revenue Act (XIX of 1873) for partition of common land in which the owners of six pattis were interested into six equal parts an objection was raised that the land should be divided into parts proportionate to the size of the different pattis. The Assistant Collector before whom the objection was made disallowed it with reference to the provisions of the wajib-ul-urz in which the custom of the village was recorded and made the partition in the manner prayed. No appeal was preferred by the objectors to the District Judge. The Collector confirmed the partition and after an appeal to the Commissioner the Assistant Collector's decision was upheld. The objectors then brought a suit in the Civil Court for a declaration that the defendants were only entitled to a share of the common land proportionate to the area of their pattis. *Held* that the objection which was raised in the Revenue Court was one which raised a question of title or of proprietary right in respect of the common land within the meaning of s. 113 of the N. W. P. Land Revenue Act; that the decision of the Assistant Collector was a decision within the meaning of s. 114 of the Act; and that consequently the suit was barred by s. 13 of the Civil Procedure Code. *Held* also that the question was not affected by any mistakes in procedure that had been made in the Revenue Courts. AMIR SINGH *v.* NARMATI PRASAD I. L. R., 9 All., 388

563. ——————— *Estoppel—Suit for a declaration of proprietary right.*—In 1864 the defendants served a notice upon the plaintiff demanding rent for land in his possession for which the plaintiff had not paid them rent previously. The plaintiff thereupon instituted a suit in the Revenue Court contesting his liability to pay rent for such land on the ground that he was the proprietor thereof. A decree was made in that suit on the 16th August 1865, directing the plaintiff to execute a kabuliat to pay the defendants rent for such land at a certain rate. The plaintiff did not appeal from that decree,

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

K could not succeed as plaintiff in a new suit in the same Court in which he set up the same arrangement and asked to have it declared as that under which he held the land from *M.* KALEE DASS GHOSAL *v.* MUDDOOSOODUN ROY . **10 W. R., 465**

550. ———— **Suit in Revenue Court on a lease**—*Subsequent suit for same sum as damages.*—When a suit for rent due on a certain stipulation in a patni lease was dismissed in the Revenue Courts,—*Held* that another suit could not be brought in the Civil Court as for damages laid at the amount of rent which would have been realized. GOPALKISTO MOOKERJEE *v.* MUDHOOSOODUN PAUL CHOWDHRY . . **W. R., 1864, Act X, 82**

551. ———— **Suit in Revenue Court to set aside attachment**—*Subsequent suit in Civil Court to assess rent on same land.*—A suit was brought in the Revenue Court to set aside an attachment for rent, on the ground that such attachment was for rent at a higher rate than was due. The landholder claimed the higher rate under an alleged assessment of a Batwara Ameen. The Collector made a decree setting aside the attachment, on the ground that the landholder failed to prove that the higher amount was due. *Held* that the landholder could not maintain a suit in the Civil Court to assess the land at the higher rate claimed for the year for which the attachment had issued, on the ground of prior service of notice of demand of the higher rate, under Bengal Regulation V of 1812, that question having been already adjudicated upon by a Court of competent jurisdiction. REAZOONNISSA KHANUM *v.* DOYANAUTH JHA . **Marsh., 638**

552. ———— **Decision of Revenue Court as to possession**—*Former suit by lessee against zamindar.*—*Held* that a decree of the Revenue Court, in a suit for possession brought by one lessee against the zamindar, was no bar to a suit in the Civil Court brought by another lessee to obtain possession against both the zamindar and the first lessee. RUN SINGH *v.* MAHOMED ABID [**2 Agra, 127**

553. ———— **Dismissal of suit for ejectment**—*Suit for removal of trees—Jurisdiction of Revenue Court—Act X of 1859, s. 23.*—The dismissal of a previous suit brought by plaintiff for ejectment of defendant, his cultivator, on account of breach of contract under cl. 5, s. 23, Act X of 1859, as being barred by limitation, was held not to operate as a bar to a suit for removal and possession of certain trees, and avoidance of sale-deed executed by cultivator, which was of a different nature from the one dismissed, and did not come within the suits defined in s. 23, Act X of 1859, and therefore was not cognizable by the Revenue Court. JOGUL KISHORE *v.* CHUTTER SINGH . . . **1 Agra, 27**

554. ———— **Refusal of application for ejectment**—*Civil Procedure Code, 1882, s. 13—Landholder and tenant—Application for tenant's ejectment for building on land—Suit for demolition of building.*—A decision of a Revenue Court disallowing an application to eject a tenant, because he has built on his land, does not, under s. 13 of the Civil Procedure Code, bar a suit in the Civil Court to have the building demolished. AMRIT LAL *v.* BALBIR [**I. L. R., 6 All., 68**

555. ———— **Decision ordering ejectment**—*Jurisdiction of Revenue Court—N.-W. P. Rent Act (XVIII of 1873), s. 93—Landlord and tenant—Determination of title.*—The decision of a Revenue Court, in a suit by a landholder against a tenant under s. 93 (*b*) of Act XVIII of 1873 for the ejectment of the tenant on the ground of misconduct in constructing a well, that the tenant could not be ejected from his holding without compensation being given to him for his outlay in constructing it, is not a determination of the landholder's right to demolish the well as having been constructed by a person not having a right to construct it; and consequently such a decision is not a bar to a suit by the landholder in the Civil Court for the demolition of the well as having been so constructed. RAJ BAHADUR *v.* BIRMHA SINGH . . . **I. L. R., 3 All., 85**

556. ———— **Decision as to existence of relation of landlord and tenant**—*Civil Procedure Code, 1877, s. 13—Suit for arrears of rent—Determination of title—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 93, 95, 148.*—The question whether the parties to a suit in a Court of revenue for arrears of rent stand in the relation of landlord and tenant is one which it is necessary for such Court to try incidentally for the purpose of disposing of such suit, but not one which such Court has special jurisdiction to determine, and its determination of that question is not that of a competent Court. Consequently, where a Court of revenue determines in such a suit that the parties do not stand in such relation, such determination does not bar the party alleging that the parties do stand in such relation from suing in the Civil Court to establish such relation. GOPAL *v.* UCHABAL [**I. L. R., 3 All., 51**

557. ———— **Decree of Revenue Court in suit as to rate of rent**—*Suit for arrears of rent.*—A Revenue Court cannot entertain a suit to determine the rate of rent payable by an ex-proprietary tenant, but an application only. *Held* therefore, where a landholder sued an ex-proprietary tenant for arrears of rent at a certain rate, and obtained an *ex-parte* decree for arrears of rent at that rate, and again sued the tenant for arrears of rent at the same rate, that the Revenue Court had not jurisdiction to determine the rate of rent in the first suit, and that therefore the tenant was not precluded from setting up as a defence to the second suit that it was not maintainable, as the rate of rent had not been fixed. PHULAHRA *v.* JEOLAL SINGH [**I. L. R., 6 All., 52**

558. ———— **Determination of question of title**—*Act XIX of 1863, ss. 8, 9.*—Where *M*, the recorded proprietor of an estate, applied to have his share of such estate separated, and an objection

RES JUDICATA—*continued*

9 COMPETENT COURT—*continued*

was made to such separation by *H*, another recorded

[illegible]

SINGH . . I. L R, 2 All, 294

559 ———— *Partition—Appeal—Act XIX of 1873 (N.-W P Land Revenue Act), ss 113 114*—Where in proceedings for [illegible] of 1873 a question of title [illegible] -tition, [illegible] such [illegible] tween [illegible] at the [illegible] some respects such adjudication may have been irregular or defective *Har Sahai Mal v Maharaj Singh, I. L R, 2 All, 294*, and *S. A No 12) of 1881*, decided the 27th July 1881, followed *Held* in this case, on consideration of the partition proceedings that the question of title raised therein had been adjudicated on, and therefore the rule mentioned above applied. BATESHAR NATH v. FAIZ UL HASAN

[I. L. R, 5 All, 280

560 ———— *Determination of proprietary right—N.-W. P. Land Revenue Act (XIX of 1873), ss. 113, 114*—In the case of an objection to a partition raising a question of

[illegible]

question had been determined against the objector in a suit for profits between the parties,—*Held* that such order was not a decision of a Court of Civil Judicature within the meaning of *s. 114 of Act XIX of* [illegible] a suit in the [illegible] *Hoo Rai, I N.* [illegible] *inga, 3 Area,* [illegible] *Singh, I. L* [illegible] AR ALI SHAH v. [illegible], 2 All, 839

561. ———— *N.-W. P. Rent Act (XII of 1881), ss 36, 39, 93 (e), and 96 (b)—Suit in a Civil Court for a declaration on a question of title decided by a Court of revenue under s. 39 of Act XII of 1881—Jurisdiction of Civil and Revenue Courts*—The defendants served a notice of ejectment under s 36 of Act XII of 188 on the plaintiffs alleging the plaintiffs to be their sub-tenants and themselves to be tenants with a right

RES JUDICATA—*continued.*

9 COMPETENT COURT—*continued*

of occupancy The plaintiffs objected that they, and not the defendants, were the tenants in chief of the land in question. This objection was decided under s 39 of the said Act, by a Court of revenue adversely to the plaintiffs. The plaintiffs thereupon sued in a Civil Court for a declaration that they were tenants with a right of occupancy and for maintenance of possession *Held* that inasmuch as s 96 (*b*) of Act XII of 1881 gave to a decision of a Court of revenue under s. 39 the effect of a judgment of a Civil Court, the hearing of the plaintiffs' present suit by a Civil Court was barred The principle of the decision in *Tarapat Ojha v. Ram Ratan Kuar, I L R, 15 All, 387*, affirmed The jurisdiction of Civil Courts and Courts of Revenue in the North Western Provinces considered SHEO NARAIN RAI v PARMESHAR RAI . . I. L. R, 18 All, 270

562. ———— *Civil Procedure Code, s 13—Partition—N.-W P Land Revenue Act (XIX of 1873), ss 113 114 Irregular procedure*—Upon an application made under Ch IV of the N.-W P Land Revenue Act (XIX of 1873) for partition of common land in which the owners of six pattis were interested into six equal parts, an objection was raised that the land should be divided into parts proportionate to the size of the different pattis The Assistant Collector before whom the objection was made, disallowed it with reference to the provisions of the wajib-ul-arz in which the custom of the village was recorded and made the partition in the manner prayed. No appeal was preferred by the objectors to the District Judge. The Collector confirmed the partition and after an appeal to the Commissioner, the Assistant Collector's decision was upheld The objectors then brought a suit in the Civil Court for a declaration that the defendants were only entitled to a share of the common land proportionate to the area of their pattis *Held* that the objection which was raised in [illegible] Assistant Collector was a decision within the meaning of s 114 of the Act; and that consequently the suit was barred by s 13 of the Civil Procedure Code *Held* also that the question was not affected by any mistakes in procedure that had been made in the Revenue Courts AMIR SINGH v NATWATI PRASAD . . . I. L. R., 9 All., 383

563. ———— *Estoppel—Suit for a declaration of proprietary right*—In 1884 the defendants served a notice upon the plaintiff demanding rent for land in his possession for which the plaintiff had not paid them rent previously. The plaintiff thereupon instituted a suit in the Revenue Court contesting his liability to pay rent for such land on the ground that he was the proprietor thereof. A decree was made in that suit on the 16th August 1885, directing the plaintiff to execute a kabuliat to pay the defendants rent for such land at a certain rate The plaintiff did not appeal from that decree,

ES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

ut from its date until August 1877 paid the defen- ınts rent for such land. On the 8th August 1877 ıe plaintiff instituted the present suit against the efendants in the Civil Court, in which he claimed a eclaration of his proprietary right to such land, and) be maintained in possession thereof as proprietor, ·ee from the liability to pay rent, and to have the ·ecree of the Revenue Court dated the 16th August 65 declared null and inoperative. *Held* that the laintiff's suit in the Revenue Court not being one hich that Court was competent to entertain, the ecision in that suit could not be held final on the estion of title raised in the present suit; and that ıere was nothing in the conduct of the plaintiff hich estopped him from instituting the present suit. EBI PRASAD *v.* JAFAR ALI . I. L. R., 3 All., 40

564. ———————— *Jurisdiction of ·evenue Courts—Landlord and tenant—N.-W. P. ·ent Act (XVIII of 1873), ss. 36-39.*—The question of title raised in a suit for a declaration that the efendant holds an estate paying revenue to Govern- ent as a manager subject to ejectment at will, and r ejectment, is not concluded by the orders of e Revenue Courts establishing the relationship of ndlord and tenant between the parties, on an plication having been made by the defendant under 39 of Act XVIII of 1873, upon a notice having een served upon him by the plaintiff under s. 36 f that Act, objecting to his ejectment. MUHAMMAD BU JAFAR *v.* WALI MUHAMMAD

[I. L. R., 3 All., 81

See CHOTU *v.* JITAN . I. L. R., 3 All., 63

565. ———————— *Landholder and ·nant—Decision of Revenue Court on an applica- ·on under s. 39 of Act XVIII of 1873.*—The laintiffs in this suit, landholders, had caused a otice of ejectment to be served on the defendants, ıeir tenants under a lease, on the ground that the ·nancy had expired. The defendants applied to the ·evenue Court, under s. 39 of Act XVIII of 873, contesting their liability to be ejected, on the round that the lease was a perpetual lease. The ·evenue Court held, with reference to the word istemrari" contained in the lease, that the lease was ·erpetual, and defendants were not liable to be ejected. he plaintiffs thereupon sued in the Civil Court or the cancelment of the word "istemrari" in the ease, on the ground that it had been inserted raudulently. *Held*, on appeal from the decree of he lower Appellate Court dismissing the suit as ·arred by the decision of the Revenue Court, that it was ıot so barred, the matter in dispute being peculiarly ·ithin the jurisdiction of the Civil Court, and not ·ne which a Revenue Court was competent finally to ·etermine on an application under s. 39 of Act XVIII f 1873. HUSAIN SHAH *v.* GOPAL RAI

[I. L. R., 2 All., 428

566. ———————— *Civil Procedure Code, 1877, s. 13—N.-W. P. Rent Act (XVIII of 1873), s. 39*—S caused a notice of ejectment o be served upon *K* in respect of certain land, alleging that he held the same by virtue of a lease

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

which had expired. *K* contested his liability to be ejected under s. 39 of Act XVIII of 1873, denying that he held the land by virtue of such lease, and alleging that he had a right of occupancy. The Revenue Court decided that *K* held the land under a right of occupancy, and not under such lease. *S* thereupon sued *K* in the Civil Court, claiming possession of such land, on the allegation that *K* was a trespasser wrongfully retaining possession thereof after the expiration of his lease. *Held* that the decision of the Revenue Court did not render the matter in issue *res judicata*. The provisions of s. 13 of Act X of 1877 do not apply to applications such as those under s. 39 of Act XVIII of 1873. SUKHDAIK MISR *v.* KARIM CHAUDHRI . I. L. R., 3 All., 521

567. ———————— *Jurisdiction of Civil Court—Act XVIII of 1873 (N.-W. P. Rent Act), ss. 36-39.*—The defendants, claiming to be occupancy tenants of certain land and alleging that the plaintiff was their sub-tenant, caused a notice of ejectment to be served on the plaintiff under ss. 36-39 of Act XVIII of 1873. The plaintiff thereupon, under the provisions of s. 39 of that Act, preferred an application contesting his liability to be ejected, alleging that he had a right of occupancy in such land jointly with the defendants and was not their sub-tenant. The Assistant Collector trying the case finally decided that the plaintiff was the sub-tenant of the defendants, and the plaintiff was ejected. The plaintiff then sued the defendants in the Civil Court for a declaration of his right as an occupancy tenant to such land and possession of the same. *Held* that the decision of the Assistant Collector as to the respective rights of the parties could only be regarded as incidental and ancillary to the main point to be determined by him, *viz.*, whether, assuming the relation of landlord and tenant to exist between the parties, the plaintiff was liable to be ejected; and such decision was not a bar to a fresh determination of such rights in the Civil Court. BIRBAL *v.* TIKA RAM . . I. L. R., 4 All., 11

568. ———— Decision as to liability to ejectment—*Landholder and tenant—Ejectment of tenant—Suit by tenant for declaration of right—Jurisdiction—Act XVIII of 1873 (N.-W. P. Rent Act), s. 93 (b).*—An occupancy-tenant, who had been ejected under ss. 34 and 93 (*b*) of the N.-W. P. Rent Act, on the ground that he had committed an act mentioned in those sections which rendered him liable to ejectment, sued in the Civil Court for a declaration of his right of occupancy, and to have the decree of the Revenue Court directing his ejectment declared of no effect, on the ground that his act was not one of those rendering him liable to ejectment, being authorized by local custom. *Held* that the question of the plaintiff's liability to ejectment on account of the act in question being a matter the cognizance of which was limited to the Revenue Courts, and the decision of the Revenue Court against him having become final, the plaintiff's suit was barred by s. 13 of the Civil Procedure Code. *Raj*

RES JUDICATA—*continued*

9 COMPETENT COURT—*continued*

Bahadur v Birmha Singh, I L R., 3 All., 85, distinguished RADHA PRASAD SINGH v SALIK RAI [I. L. R., 5 All., 245

569 ———— *Act XVIII of 1873, s 95—Determination of title under cl (n)*—S applied to the Revenue Court, under cl. (n) of s 95 of Act XVIII of 1873, for the recovery of the

OLDFIELD, *J*, *contra* SHIMBHU NARAIN SINGH v BACHCHA I. L. R., 2 All., 200

570 ———— *Decision as to liability to ejectment—N.-W. P Rent Act, 1881,* s

SINGH I. L. R., 6 All., 295

571. ———— *Resumption of rent free grant Suit for declaration that land is "garden land" and for possession—Act XII of 1881, ss 10 30, 95 (a), (c), (n)*—A zamindar applied to the Revenue Court under s. 30 of the N.-W P Rent Act, and obtained an order for the resumption of certain plots of land, on the finding that they were resumable rent free grants The occupiers of the land were ejected and the zamindar obtained possession Subsequently the occupiers brought a suit in the Civil Court to obtain a declaration that they held plots in question under a license from the zamindar's predecessor in title, as orchard land, without payment of any rent or other allowance to the landlord, and that they were entitled to retain the land on this footing so long as it should continue to be occupied with trees They sought to recover possession of the soil and timber asking also for "a determination of the nature of their tenure" therein *Held* that the cognizance of the suit by the Civil Court was not barred by the provisions of s 13 of the Civil Procedure Code, inasmuch as the jurisdiction of the Civil Court to entertain it was not ousted by s 95 of the Rent Act, since the "matter" presented by the plaintiffs was not one "on which an application of the nature mentioned in that section"

572 ———— **Suit to contest demand of distrainer**—*Act XII of 1881 (N.-W. P Rent Act), ss 84 148*—A decree of a Rent Court passed upon enquiries made under ss 84 and 148 of the Rent Act (XII of 1881) is not conclusive as between the parties to the enquiry, upon the question of title in a suit instituted in a Civil Court for declaration of right to and possession of, the land in respect of which the Rent Court decree was passed The period of limitation for instituting a suit in the Civil Court, as prescribed in these sections applies only to suits brought by plaintiff or unsuccessful intervenor to have it declared that plaintiff had a title to receive the particular rent claimed, and which the Rent Court has refused to give him, and not to suits for declaration of title to and possession of, the land in respect of which the rent accrued due In 1881 the plaintiffs had under the provisions of the Rent Act (XII of 1881), made a distraint for rent alleged to be due by one of their tenants The tenant contested the legality of the distraint by a proceeding in the

Rent Court decided against the defendant, but owing to some irregularity, the distraint was withdrawn Plaintiffs subsequently instituted a suit in the Rent Court against the tenant for recovery of arrears of rent and the defendant again intervened and upon enquiry, under s 148 of the Rent Act (XII of 1881), plaintiffs' suit for arrears of rent was dismissed Plaintiffs then instituted this suit in the Civil Court for declaration of their right to, and possession of, the land in respect of which distraint proceedings had been taken, and suit for recovery of arrears of rent instituted. The Court of first instance dismissed the suit on the merits. The plaintiffs appealed and urged (*inter alia*) that the defendant was estopped by the decision of the 28th June 1881, from contesting plaintiffs' title.

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

Held that the decision of the 28th June 1881 in the inquiry held under s. 84 of the Rent Act (XII of 1881) was not conclusive between the parties in a subsequent suit between them to determine their title to the land in respect of which the distraint proceedings had been taken. GANGA PRASAD *v.* BALDEO RAM . . . I. L. R., 10 All., 347

573. ——— **"Court of jurisdiction competent to try the suit in which such issue has been subsequently raised"**—*N.-W. P. Land Revenue Act (XIX of 1873), ss. 112 and 114—Civil Procedure Code (1882), s. 13—Mortgage—Foreclosure—Suit for redemption.*— One *H S* mortgaged in 1864, by two mortgages of the same date, certain immoveable property to one *A S*. In 1877 *A S* applied for foreclosure of these mortgages and obtained an order under s. 8 of Regulation XXVII of 1806, but these proceedings were, it was alleged, never brought to a legal conclusion. Subsequently, the mortgagee applied in a Court of revenue for partition in his favour of the mortgaged property The mortgagor resisted that application on the ground that the foreclosure proceedings had not been completed; but the Court, acting under ss. 113 and 114 of Act XIX of 1873, overruled that objection and granted partition in favour of the mortgagee. In 1892 the mortgagor sued the representatives of the original mortgagee in a Civil Court for redemption of the mortgages of 1864. The defendants resisted the suit principally on the plea that s. 13 of Act XIV of 1882 applied and was a bar to the suit; but no plea of *res judicata* outside s. 13 was raised. The plaintiff's suit was dismissed as stated by the principle of *res judicata*. The plaintiff appealed. *Held* by TYRRELL, J., that the Court of revenue being incompetent to determine the suit in which the issue whether the mortgages had been foreclosed or not was subsequently raised, s. 13 of Act XIV of 1882 did not apply, and no plea of *res judicata* outside s. 13 could be entertained, inasmuch as no such plea had been put forward in the Court below or in the High Court. *Misir Raghobar Dial* v. *Sheo Buksh Singh, I. L. R., 9 Calc., 439,* referred to *Per* BURKITT, J., *contra.*— The provisions of s. 13 of Act XIV of 1882 are not exhaustive, and, the plaintiff not having appealed therefrom, the decision of the Court of revenue must be held, upon the principle of *res judicata*, to be a bar to the present suit. *Ram Lal* v. *Chhab Nath, I. L. R., 12 All., 578,* and *Ram Kirpal* v. *Rup Kuari, I. L. R., 6 All., 269,* referred to. HAR CHARAN SINGH *v.* HAR SHANKAR SINGH [I. L. R., 16 All., 464

Held in the same case by KNOX, BLAIR, and BANERJI, *JJ.*, on appeal under the Letters Patent, that where a Court of revenue, acting under s. 113 of Act XIX of 1873, has decided a question of title or of proprietary right, such decision, being the decision of "a Court of civil judicature of first instance," will operate as *res judicata* in a subsequent civil suit in which the same question is being litigated. HAR CHARAN SINGH *v.* HAR SHANKAR SINGH [I. L. R., 18 All., 59

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

574. ——— *Transfer of Property Act (IV of 1882), s. 99—Sale by a Court of revenue in contravention of s. 99—Subsequent suit for partition in a Civil Court based upon rights acquired under such sale—Co-sharers.*—A Court of revenue, in execution of a decree for rent, sold the mortgagor's interest in a certain house which had been mortgaged together with other property, and the sale was upheld on appeal to the Board of Revenue. Subsequently the auction-purchaser at the sale above referred to sued in a Civil Court for partition of the share purchased by him. *Held* that the co-sharers in the property in question could not dispute the validity of the sale, notwithstanding that the decree and the sale in pursuance thereof were in direct violation of s. 99 of Act IV of 1882. TARA CHAND *v.* IMDAD HUSAIN I. L. R., 18 All., 325

575. ——— **Decision of Revenue Court**—*Civil Procedure Code (1882), s. 13.*—A zamindar distrained for rent under the Rent Recovery Act of 1865. Thereupon the tenant filed a summary suit under that Act in a Revenue Court, and the distraint was annulled on the ground that the zamindar had not tendered a proper pottah as required by s. 7. The zamindar now sued in the Court of the District Munsif to recover the arrears of rent. *Held* that the question of the propriety of the pottah tendered was not *res judicata*. RANGAYYA APPA RAU *v.* RATNAM . . . I. L. R., 20 Mad., 392

576. ——— **Decision of Collector under Mad. Reg. V of 1822 when unappealed.**—A case decided by a Collector under Regulation V of 1822, from whose decision no appeal was made, was held to be *res judicata*, and could not be re-opened before a Small Cause Court Judge. UPPALAPATI GANAKAYA GARU *v.* BALAVI RAMUDU [2 Mad., 475

But *see* ADMULAM PILLAI *v.* KOVIL CHINNA PILLAI . . . . . . 2 Mad., 22

577. ——— **Decision as to rate of rent**—*Decision on agreement set up by tenant.*—In a suit brought in a Revenue Court by a landlord against his tenant to enforce acceptance of a pottah at certain rates for a certain year, the tenant pleaded that by virtue of a special agreement he was entitled to hold at favourable rates, but failed to establish this plea, and a decree was passed in favour of the landlord. The tenant then sued in the Civil Court to establish his right to compel the landlord to grant him a pottah at favourable rates for the next year, by virtue of the special agreement put forward by him in the suit in the Revenue Court. *Held* that the decision of the Revenue Court was no bar to the suit. HARIKA RAMAYYAR *v.* SINDU TIRTASAMI [I. L. R., 7 Mad., 61

578.——— **Former suit under Madras Rent Recovery Act (Mad. Act VIII of 1865)**—*Jurisdiction of Revenue Court—Question of title.* In a suit for land it appeared that the defendant had obtained, under the Madras Rent Recovery Act, a judgment that the present plaintiff

RES JUDICATA—*continued.*

9. COMPETENT COURT—*continued.*

should accept from him a pottah for the land in

these proceedings as constituting a bar to the present suit *Held*, following *Harika Ramayya* v *Sunter Tirtasami*, *I L R*, *7 Mad 61*, that the decision of the Revenue Court was no bar to the suit GANGARAJU v KONDIREDDISWAMI

[I. L. R, 17 Mad, 106

579 ——— Decision as to right to possession—*Dismissal of application by Collector to raise attachment*—S the mortgagee of a talukhdari village, obtained a decree upon his mortgage against his mortgagor the talukhdar of the village under which S attached the village The Collector of the district in which the attached village was situated thereupon came in under s 246 of the Civil Procedure Code 1859 and sought to raise the attachment but, as he failed to appear when the matter came on for adjudication his application was dismissed The village was then sold under the decree and was purchased by S, the mortgagee Upon S seeking to obtain possession of the village, he was resisted by the Collector, whereupon S (after proceedings ineffectually taken by him under s 269

application under s 246 of the Code (to set aside which dismissal the Collector had not filed a suit within the year allowed for that purpose) and that S ought therefore to have been at once put in possession of the village without further proof of his title COLLECTOR OF AHMEDABAD v SAVAIDAS BECHARDAS 9 Bom, 205

580 ——— Order of Mamlatdar under Bom. Act V of 1864—*Effect of order on mortgagee*—A mortgagee is not affected by the order of a Mamlatdar made under Bombay Act V of 1864 on the application of the mortgagor for possession subsequent to the date of the mortgage KRISHNAJI NARAYAN v GOVIND BHASKAR 9 Bom, 2,6

581 ——— Dismissal of suit by Mamlatdar on the merits—*Possessory suit in Mamlatdar's Court—Subsequent suit in Civil Court under s 9 of the Specific Relief Act (I of 1877)—Mamlatdars' Act (Bom Act III of 1876), s 18—Specific Relief Act (I of 1877) s 9*—A possessory suit filed in the Mamlatdar's Court was dismissed by the Mamlatdar on the merits The plaintiff thereupon filed another suit under s. 9 of the Specific Relief Act (I of 1877) in a Civil Court which allowed the claim and passed a decree in his favour The defendant applied to the High Court in its extraordinary jurisdiction and contended that the plaintiff's claim was *res judicata*, and that the Mamlatdar's decree barred the second suit *Held* that, having regard to s 18 of the Mamlatdars' Courts Act (Bom. Act III of 1876), the Mamlatdar's decision was not conclusive and that the plaintiff was entitled to bring the second suit under s 9 of the Specific Relief Act RAMCHANDRA BALAJI PHADNIS v NARSINHACHARYA YEDUNATHACHARYA KATTI

[I. L. R., 24 Bom, 251

in the Court of the Deputy Collector under the Madras Rent Recovery Act s 9 to enforce acceptance of a pottah by the defendant it appeared that in a former suit between the same parties in the same Court, it had been decided that the defendant was the plaintiff's tenant and as such bound to accept a pottah from him in respect of the land in question in the present suit *Held* that the defendant was not entitled in the present suit to dispute the plaintiff's title since the former decision constituted it *res judicata* VENKATACHALAPATI v KRISHNA

[I L R., 13 Mad, 287

(*d*) CRIMINAL COURTS

583 ——— Decision of Criminal Court *Civil Procedure Code, 1877, s 13—Suit by Hindu father for compensation for the loss of his daughter's services in consequence of her abduction—Compensation for costs of prosecuting abductor*—A Hindu sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant and for the costs incurred by him in prosecuting the defendant criminally for such abduction The defendant was convicted on such prosecution. *Held* that the decision of the Criminal Court did not operate under s 13 of Act X of 1877 to bar the determination in such suit of the question whether the defendant had or had not abducted the plaintiff's daughter RAM LAL v TULA RAM

[I. L. R., 4 All, 97

584. ——— Conviction in criminal case—*Subsequent civil suit for damages*—The conviction in a criminal case is not conclusive evidence in a civil suit for damages in respect to the same act. BISHONATH NEOGY v HURO GOBIND NEOGY

[5 W. R., 27

585 ——— Decision as to validity of document in criminal case—*Subsequent suit in Civil Court*—A Civil Court is not bound by a Magistrate's view of the genuineness of a document. NITTYANUND SURMAH v KASHEENATH NYALUNKAR

[5 W. R., 26

JUGGUT MISSER v BABOO LALL

[5 W. R., Cr., 50

OOMANATH ROY CHOWDHRY v RAGHOONATH MITTER

[Marsh., 43: W. R., F. B., 10: 1 Hay, 75

10 RELIEF NOT GRANTED

586 ——— Dismissal of suit without leave to bring fresh suit—*Civil Procedure*

RES JUDICATA—*continued.*

10. RELIEF NOT GRANTED—*continued.*

Code, s. 373—Withdrawal of suit.—Expl. III of s. 13 of the Civil Procedure Code contemplates a decree which does not expressly grant the relief claimed : the termination of a suit by the plaintiff being allowed to withdraw it, without leave to bring a fresh one, is not a bar, under expl. III, to a subsequent suit in which the same matter is in issue. KAMINI KANT ROY *v.* RAM NATH CHUCKERBUTTY [I. L. R., 21 Calc., 265

587. ———— Refusal to give relief not claimed in plaint—*Subsequent suit for possession of the land not claimed—Civil Procedure Code, 1859, s. 2.*—*A B* instituted a suit against *V B* to recover possession of one-half of a field. *S N* and *B N*, on their application, were made plaintiffs in that suit, but no alteration in the amount either of stamp or claim was made in the plaint. The Principal Sudder Ameen awarded to *A B* one-fourth of the field, and to *S N* and *B N* conjointly he awarded one-fourth, but as to the remaining one-half he passed no decree, as it had not been claimed in the plaint. *S N* and *B N* thereupon filed a fresh suit to recover possession of their remaining one-fourth of the field, and the Principal Sudder Ameen passed a decree in their favour. This decree was confirmed by the Joint Judge. *Held* that the decrees of the lower Courts were erroneous, and that the claim of the plaintiffs was barred by the provisions of s. 2 of the Civil Procedure Code, but leave was granted to them to apply to the Court below for a review of the decree passed in the former suit. VYASRAV BALAJI *v.* SUBHAJI NARAYAN . . 5 Bom., A. C., 173

588. ———— Plaint in former suit, Description of property in—*Variance between body of plaint and schedule.*—The father of the appellant obtained a decree against *G*'s widow and his reversionary heirs, who had intervened in the suit, for possession of property mortgaged by the widow. In the schedule annexed to the plaint the mortgaged property was described as "Mouzah B, usli with dakhili,"—that is, Mouzah B K and Mouzah M B,—but in the body of the plaint it was described simply as "Mouzah B." On the death of plaintiff in that suit, the reversionary heirs of *G* sued the appellant for an adjudication of their right to 16 annas of Mouzah M B, and it was found that Mouzahs B K and M B were not usli with dakhili, but distinct mouzahs, and that the mortgage-deed did not include Mouzah M B. *Held*, affirming the judgment of the High Court, that in the first suit the Court was called on to adjudicate upon the property as described in the body of the plaint, and not as described in the schedule annexed thereto, and that the question in the latter suit was therefore not *res judicata.* HET NARAIN SINGH *v.* RAM PERSHAD SINGH [7 C. L. R., 404

589. ———— Refusal to decide question of title—*Reference of party to another suit.*—In a suit between *A* and *B* a question of title was raised and decided in *B*'s favour in the Court of first instance, but on appeal the Judge refused to go into it, saying that *B* might bring a fresh suit. *Held* that a subsequent suit by *B* raising the same question was not barred as *res judicata.* *Watson* v. *Collector of Rajshahye, 3 B. L. R., P. C., 48 : 12 W. R., P. C., 43*, cited and distinguished. EMAMOODEEN SHOWDAGHUR *v.* FUTTEH ALI . 3 C. L. R., 447

590. ———— Suit to determine issue left untried by Judge—*Fresh suit.*—A fresh suit will not lie to determine an issue left untried by the Judge. The plaintiff's remedy, where such is the case, should be by special appeal to the High Court. JUGGESSUR NUNDEE *v.* CHUNDER GOBIND SINGH [9 W. R., 524

591. ———— Declaratory decree—*Civil Procedure Code, s. 13—Maintenance suit, Decree in—Annual payments.*—A Hindu widow obtained a decree in 1876 which provided that she should receive future maintenance annually at a certain rate, but did not specify any date on which it should become due. In 1887 she filed the present suit claiming arrears of maintenance at the rate fixed in the decree of 1876. *Held* that the suit did not lie. *Sabhanatha* v. *Lakshmi, I. L. R., 7 Mad., 80*, distinguished. VENKANNA *v.* AITAMMA . I. L. R., 12 Mad., 183

592. ———— Issue advisedly left undecided in former suit.—In 1878 *A*, as the auction-purchaser of a talukh, sued 35 persons for possession of a part of this talukh. In this suit the issues raised were—(1) whether *A* had purchased the whole talukh, or an 8-anna share of the right, title, and interest of the judgment-debtors therein ; (2) as to the correctness of the boundaries of the talukh as given in the plaint. The Court held that *A* had purchased the right, title, and interest of the judgment-debtors in the talukh, and as it appeared that some of the defendants were not judgment-debtors, and as it did not appear what portions of the talukh were held by the several defendants, the lower Appellate Court dismissed the suit, with liberty to the plaintiff to bring a fresh suit within the proper time. In 1880 *A* brought a fresh suit against 16 of the same defendants and 19 others for possession of a portion of the same talukh. The issues raised were—(1) whether the suit was barred under s. 13 of the Code ; (2) whether *A* had purchased the whole or a portion of the talukh ; (3) whether the defendants were in possession of all the disputed land, and, if not, what portions of the talukh were held by the several defendants ; (4) as to the correctness of the boundaries of the talukh. The Munsif held that the suit was not barred, and on the merits gave *A* a decree. The Subordinate Judge held that the suit was barred, and refused to go into the merits. *Held* that the question whether *A* had purchased the whole or only a portion of the talukh was *res judicata*, but that the question as to what lands *A* was entitled to by virtue of his purchase having been left undecided in the former suit, *A* was entitled to a decision on that point. RAM CHARAN BUHARDAR *v.* REAZUDDIN . I. L. R., 10 Calc., 856

593. ———— Judgment in former suit appealed from—*Stay of execution pending appeal—Review.*—*Held* that a former judgment by a Court of competent jurisdiction upon the same cause

RES JUDICATA—*continued*

10 RELIEF NOT GRANTED—*continued.*

of action was conclusive between the same parties in a subsequent suit brought in another Court, notwithstanding the pendency of an appeal against it; but

594. ———— Affirming judgment in special appeal—*Affirmation in general terms by rejecting appeal*—In a special appeal the general

595 ————Decision on issue not after-

mined cannot be re-opened on a second special appeal SUBHANJI BIN BAHIRJI *v* BHAVANRAV BIN ANANDRAV . . 1 Bom., 173

of an issue in one of two suits tried together, which is not appealed against, cannot be treated as *res judicata* so far as the same issue is concerned in an appeal from the decision in the other suit *A*, a ticcadar, sued *B* for rent in respect of a holding in the ticca In that suit *B* pleaded that he was a partner of *A* in the ticca transaction, and that no rent was due from him in consequence thereof *B* then sued *A* for an account of the partnership in the same transaction, and *A* in that suit denied the partnership Both suits were heard together by the Munsif,

s 13 of the Code of Civil Procedure did not apply, and that the question was not *res judicata*. There was no bar at the time the issue was tried and decided by the Munsif, and the Appellate Court was bound to decide the appeal upon the evidence ABDUL MAJID *v* JEW NARAIN MAHTO

[I. L. R., 16 Calc., 233

597. ———— Suit for possession and mesne profits—*Civil Procedure Code (Act XIV of 1882), ss. 13, 211, 244—Decree for possession and mesne profits up to date of suit—Separate suit for subsequent mesne profits*—In a suit for recovery of possession and mesne profits, the Court has power under s 211 of the Civil Procedure Code either to award mesne profits up to the date of the institution of the suit or up to the date of delivery of possession. And where a decree for possession is silent as regards mesne profits which have accrued between the date of the institution of the suit and delivery of possession, a separate suit will lie for such subsequent mesne profits, ss. 13 and 244 of the Code being no bar to it *Sadasiva Pillai* v. *Ramalinga Pillai*, *L R., 2 I. A., 219 15 B L. R., 383*, *Fakharuddin Mahomed Ahsan Chowdhry* v. *Official Trustee of*

SECRETARY OF STATE FOR INDIA

[I. L. R., 17 Calc., 968

598 — *Civil Procedure Code, ss 13, 211, 244—Claim as to which judgment is silent—Mesne profits subsequent to suit*—In a suit for the partition of the zamindari, the plaintiffs asked (*inter alia*) for "ten years' past profits and

part of it, but did not object to it so far as it omitted to provide for subsequent mesne profits The plaintiffs instituted the present suit to recover from the defendants mesne profits from the date of the above suit. *Held* that the plaintiffs' claim, so far as concerned mesne profits, accrued since the decree in the former suit was not *res judicata*, and the suit to that extent was not precluded by the Civil Procedure Code, s 13 RAMABHADRA *v.* JAGANNATHA I L. R., 14 Mad., 328

599. ———— *Ex parte decree for possession without mention of mesne profits—Subsequent suit for same mesne profits and for subsequent mesne profits—Civil Procedure Code (Act XIV of 1882), s 13*—A suit was instituted for recovery of possession and for mesne profits. An *ex-parte* decree for possession only was made, but that decree was silent as regarded the mesne profits Subsequently a second suit was instituted for the same mesne profits as well as for mesne profits for a subsequent period. *Held* that the claim for mesne profits prior to the institution of the first suit was barred under s 13 of the Civil Procedure Code JIBAN DAS OSWAL *v* DURGA PERSHAD ADHIKARI

[I. L. R., 21 Calc., 252

600 ———— *Civil Procedure Code, s 13, expl III—Suit for possession of land and mesne profits past and future—Future mesne profits not granted—Subsequent suit for*

RES JUDICATA—*continued.*

10. RELIEF NOT GRANTED—*continued.*

such future mesne profits.—*Held* that, where a suit has been brought for possession of immoveable property and for mesne profits both before and after suit, the mere omission of the Court to adjudicate upon the claim for future mesne profits will not, by reason of s. 13, expl. III, of the Code of Civil Procedure, operate as a bar to a subsequent suit for mesne profits accruing due after the institution of the former suit. *Mon Mohun Sirkar* v. *Secretary of State for India, I. L. R., 17 Calc., 968,* followed. *Jiban Das Oswal* v. *Durga Pershad Adhikari, I. L. R., 21 Calc., 252; Pratab Chundra Barua* v. *Swarnamayi, 4 B. L. R., A. C., 113; Julius* v. *Bishop of Oxford, L. R., 5 Ap. Cas., 214; In re Baker, L. R., 44 Ch. D., 262; Bhirrav* v. *Sitaram, I. L. R., 19 Bom., 532;* and *Thyila Kandi Ummatha* v. *Thyila Kandi Cheria Kunhamed, I. L. R., 4 Mad., 308,* referred to. *Ramabhadra* v. *Jagannatha, I. L. R., 14 Mad., 328,* discussed. *Narain Das* v. *Khan Singh, Weekly Notes, All., 1894, p. 159,* overruled. RAM DAYAL *v.* MADAN MOHAN LAL

[I. L. R., 21 All., 425

601. ———— Dismissal of application to set aside ex-parte decree and sale in execution on ground of fraud—*Right to bring suit for same purpose without appealing against order—Effect of not appealing against an appealable order—Civil Procedure Code (1882), ss. 13, 108, 244, and 311.*—The plaintiff, having applied unsuccessfully under ss. 108 and 311 of the Civil Procedure Code to set aside an *ex-parte* decree against him and the sale of his property in execution thereof on the ground of fraud, and without preferring an appeal against the order rejecting his said application under s. 108 of the Code, instituted this suit praying for the same relief. The Subordinate Judge dismissed the suit as not maintainable. *Held* that such a suit was maintainable, and that ss. 13 and 244 of the Civil Procedure Code were no bar thereto. The facts that his application under s. 108 was unsuccessful, and that he did not appeal against the order rejecting that application, did not disentitle him from prosecuting his remedy by suit on the ground of fraud. *Abdul Mazumdar* v. *Mahomed Gazi Chowdhry, I. L. R., 21 Calc., 605,* approved. *Held* also that, when there is an appeal against a decision, the effect of not appealing is that the decision holds good for what it is worth; so far as concerns any other modes of relief available, the person not appealing is in no worse position than if he had appealed and failed. *Raj Kishen Mookerjee* v. *Modhoo Soodun Mundle, 17 W. R., 413* distinguished. PRAN NATH ROY *v.* MOHESH CHANDRA MOITRA . I. L. R., 24 Calc., 543

602. ———— Dismissal of application to set aside ex-parte decree as barred by limitation—*Suit to set it aside as obtained by fraud—Civil Procedure Code (1882), s. 180 and s. 13.*—An *ex-parte* decree was passed against a defendant. The defendant judgment-debtor applied under s. 108 of the Code of Civil Procedure to have such *ex-parte* decree set aside, but his application was dismissed as barred by limitation. *Held* that the defendant was not thereafter precluded from bringing a suit to set aside the *ex-parte* decree as having been obtained by fraud. *Pran Nath Roy* v. *Mohesh Chandra Moitra, I. L. R., 24 Calc., 546,* followed. DWARKA PRASAD *v.* LACHHOMAN DAS

[I. L. R., 21 All., 289

603. ———— Point decided by lower Court, but not dealt with on appeal—*Issue as to enhancement of rent—Subsequent suit for enhancement.*—In a suit for enhancement of rent, the Munsif found that the service of notice was sufficient, but that the rent could not be enhanced. On appeal, the District Judge found that the service was insufficient, and dismissed the suit, expressly declining to consider the question whether the rent was enhanceable. In a subsequent suit for enhancement by the same plaintiff against the same defendant, the Munsif found that no sufficient ground for enhancement had been made out, and dismissed the suit. On appeal, the District Judge agreed with the Munsif on this point, and held also that the decision of the Munsif in the first suit, that the rent could not be enhanced, was *res judicata*. *Held* that, where the decision of a lower Court is appealed to a superior tribunal, which for any reason does not think fit to decide the matter, the question is left open, and is not *res judicata*. CHUNDER COOMAR MITTER *v.* SIB SUNDARI DASSEE

[I. L. R., 8 Calc., 631: 11 C. L. R., 22

604. ———— Effect of appealing against a judgment—*Civil Procedure Codes (Act VIII of 1859, s. 2; Act X of 1877, s. 13, expl. 4)—Title—Trespass—Damages.*—When the judgment of a Court of first instance upon a particular issue is appealed against, that judgment ceases to be *res judicata*, and becomes *res sub judice*; and if the Appellate Court declines to decide that issue, and disposes of the case on other grounds, the judgment of the first Court upon that issue is no more a bar to a future suit than it would be if that judgment had been reversed by the Court of Appeal. NILVARU *v.* NILVARU . . . I. L. R., 6 Bom., 110

605. ———— *Effect of judgment pending appeal—Dismissal of appeal for want of prosecution.*—The plaintiff sued to recover two villages from the defendants, claiming title from *C*, the purchaser. The first defendant alleged that her husband, not *C*, was the purchaser. This question was determined in a former suit, in which the present first defendant was plaintiff, and the present plaintiff defendant, in favour of the present plaintiff, by the Civil Judge, and the decision was confirmed on appeal by the Sudder Court. An appeal to Her Majesty in Council was dismissed for want of prosecution. *Held* that the matter in issue was *res judicata*. *Quære*—Whether the former judgment could be deemed conclusive whilst an appeal was pending. KARKARLAPUDI SURIYANARAYANARAZU GARU *v.* CHELLAMKURI CHELLAMMA 5 Mad., 176

RES JUDICATA—*continued.*

10 RELIEF NOT GRANTED—*concluded.*

606. ———— **Decision on a point of law subsequently disapproved of by a Full Bench**—*Suit as to same subject matter*—Where a Division Bench of the High Court decided, as a point of law, that a property had not passed under a certain deed of sale, and subsequently the decision on that point of law was in another case disapproved of by a Full Bench, the decision of the Division Bench (where the same plaintiff has again sued to recover the same property, relying on the same deed of sale) is no less a *res judicata* because it may have been founded on an erroneous view of the law or a view of the law which a Full Bench has subsequently disapproved. GOWRI KOER *v.* AUDH KOER

I. L. R., 10 Calc, 1087

Followed in RAI CHURN GHOSE *v.* KUMUD MOHON DUTTA CHAUDHURI . 1 C. W. N., 687

Same case on review . I. L. R., 25 Calc, 571 [2 C. W. N., 291

11 PRIVATE RIGHTS

607. ———— **Prescriptive right**—*Civil Procedure Code (Act X of 1877), s 13 expl 5*—Expl 5 of s 13 of Act X of 1877 only applies to cases where several different persons claim an easement or other right under one common title,—as, for instance, where the inhabitants of a village claim by custom a right of pasturage over the same tract of land, or to take water from the same spring or well. Where therefore *A*, in defending

. . . .

ing to use the same drain as an easement, and asking for the removal of the wall in question in the former suit, and *B* set up the judgment in the suit between himself and *A* as a bar to the suit,—*Held* that the right claimed by *C* not being one which he and other inhabitants of the neighbourhood claimed under one common title, but a prescriptive right which he claimed individually in respect of his own house and premises and depending upon the length of time he had used the right, was a separate claim, and that the judgment in the suit between *B* and *A* did not operate as a bar to his suit. KALISHUNKUR DOSS *v.* GOPAL CHUNDER DUTT

I. L. R., 6 Calc, 49 : 6 C L. R, 543

608. ———————— *Right to use of water—Decision in former suit*—A decision in a former case, in which a mere question as to the use of the water in a water-course arose, cannot operate as *res judicata* in a subsequent case, in which the subject matter is whether the defendants have the right of throwing up an embankment and obstructing the water-way. MUNMOHUN SINGH *v.* AMRITNATH CHOWDHRY . . W. R., 1864, 167

609. ———————— *Civil Procedure Code, 1859 s 2—Suit on same cause of action—Suit to obtain right of way*—Where a suit

RES JUDICATA—*concluded*

11 PRIVATE RIGHTS—*concluded*

. . . .

action—namely, the obstruction of the road—was not decided in the first trial, s 2 of the Code of Civil Procedure did not bar a second suit for the removal of the obstruction. NURKEM MUNDLE *v.* BORAMDY SIRDAR . . . 25 W. R., 208

610. ———— **Right to fees for hereditary services**—*Decision in former suit*—In an action to receive fees claimed for services as an hereditary family and village priest it appeared that a deceased brother of the plaintiff had recovered judgment against one of the defendants and others in an action for similar fees. *Held* that the former

. . . .

611. ———— **Right to receive honours as priest of temple**—*Right decided in former suit*—Plaintiff sued to establish his right to receive certain honours in a temple as appertaining to his office of officiating priest of the temple and to recover damages for the invasion of his right. In a former suit between the predecessor and the plaintiff and the first defendant the claim to sit at the right side of the idol at festivals was admitted but the right to receive a cake on the same occasion was disallowed. *Held* that the claim of the plaintiff, so far as it sought to establish the plaintiff's right was *res judicata*. ARCHAKAM SRINIVASA DIKSHATULU *v.* UDAYAGIRY ANANTHA CHARLU 4 Mad., 349

612. ———— **Right to water for irrigation**—*Civil Procedure Code 1882 s 13 expl 5*—In 1881 *A* sued *B*, *C*, and others for damages for the loss of his crops by the diversion of a water-channel by the defendants. *A* claimed a right common to himself and other raiyats of his village to use the water during the day-time under an arrangement by which *B*, *C* and the other defendants in the suit were entitled to use the water during the night time. In 1882 *A* and four other raiyats, not parties to the former suit, sued *B*, *C* and thirteen others not parties to the former suit, for a decree declaring that the plaintiffs were entitled to the exclusive use of the water in the channel by day. The lower Courts held that the suit was barred by s. 13 of the Code of Civil Procedure. *Held* that, as between the plaintiffs other than *A* and the defendants and as between *A* and the defendants other than *B* and *C*, the suit was not barred by s. 13 of the Code of Civil Procedure. THANAKOTI *v.* MUNIAPPA . . . . I. L. R., 8 Mad., 496

RES NULLIUS.

See CRIMINAL MISAPPROPRIATION.

[I. L. R., 11 Mad., 145

RES NULLIUS—*concluded.*

See STOLEN PROPERTY—OFFENCES RELATING TO . I. L. R., 11 Mad., 145
[I. L. R., 8 All., 51
I. L. R., 9 All., 348

See THEFT . I. L. R., 17 Calc., 852

RESPONDENT.

See COSTS — SPECIAL CASES — RESPONDENTS.

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.

See PARTIES - SUBSTITUTION OF PARTIES—RESPONDENTS.

——— Costs of—

See PRIVY COUNCIL, PRACTICE OF—COSTS.
[9 B. L. R., 460
11 B. L. R., 158
I. L. R., 25 Calc., 187
L. R., 24 I. A., 191
[I. L. R., 21 All., 406 : L. R., 26 I. A., 58

——— Death of—

See ABATEMENT OF SUIT—APPEALS.

See PRIVY COUNCIL, PRACTICE OF—DEATH OF PARTY ON RECORD.
[I. L. R., 19 Calc., 513
L. R., 19 I. A., 108

——— not appearing in lower Court.

See PRACTICE—CIVIL CASES—APPEAL.
[I. L. R., 3 Calc., 228

——— Notice to—

See PRIVY COUNCIL, PRACTICE OF REHEARING . I. L. R., 19 All., 209
[L. R., 24 I. A., 49

——— Objections by—

See CASES UNDER APPEAL—OBJECTIONS BY RESPONDENT.

See CASES UNDER APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

See LIMITATION ACT, 1877, s. 5.
[I. L. R., 16 Bom., 249

See PRACTICE—CIVIL CASES—APPEAL.

See PRIVY COUNCIL, PRACTICE OF—PRACTICE AS TO OBJECTIONS.

——— Withdrawal of, from appeal.

See INSOLVENT ACT, s. 73.
[I. L. R., 14 Bom., 189

RESTITUTION OF CONJUGAL RIGHTS.

See BURMA CIVIL COURTS ACT, 1875, s. 49.
[I. L. R., 13 Calc., 232

RESTITUTION OF CONJUGAL RIGHTS—*continued.*

See CIVIL PROCEDURE CODE, 1882, ss. 258, 260 (1859, s. 200).
[I. L. R., 1 All., 501
1 Ind. Jur., N. S., 101
11 Moore's I. A., 551

See HINDU LAW—MARRIAGE—RESTRAINT ON, OR DISSOLUTION OF, MARRIAGE.
[I. L. R., 3 Calc., 305

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGES.
[I. L. R., 17 Bom., 400

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION—RESTITUTION OF CONJUGAL RIGHTS.
[I. L. R., 18 Bom., 316

See LIMITATION ACT, 1877, s. 23.
[I. L. R., 16 Bom., 714, 715 note
I. L. R., 13 All., 126
I. L. R., 23 Bom., 307

See LIMITATION ACT, 1877, ART. 35.
[I. L. R., 23 Bom., 307

See MAHOMEDAN LAW—DOWER.
[I. L. R., 1 All., 483
I. L. R., 2 All., 831
I. L. R., 8 All., 149
I. L. R., 11 Mad., 327

See MARRIAGE I. L. R., 12 Calc., 706

See PARSIS . I. L. R., 23 Bom., 279

See VALUATION OF SUIT—SUITS.
[I. L. R., 13 Calc., 232
I. L. R., 18 Calc., 378

——— Second suit for—

See RES JUDICATA—CAUSE OF ACTION.
[I. L. R., 18 Bom., 327

1. ——— Right of suit—*Jurisdiction of Civil Court—Suit by husband against wife for restitution of conjugal rights.*—A suit by husband against wife for restitution of conjugal rights will lie in the Civil Courts. JHOTUN BEEBEE *v.* AMEER CHAND . . . 1 Ind. Jur., N. S., 317

S. C. CHOTUN BEBEE *v.* AMEER CHUND
[6 W. R., 105

2. ——— *Suit to recover possession of wife.*—*Held* that a suit by a husband to recover possession of the person of his wife will lie. HUR SOOKHA *v.* POORUN . . 2 Agra, 115

Contra, MELARAM NUDIAL *v.* THANOORAM BAMUN . . . . . . 9 W. R., 552

3. ——— ——— *Ecclesiastical law—Parsis.*—A suit for the restitution of conjugal rights, which is strictly an ecclesiastical proceeding, cannot, consistently with the principles and rules of ecclesiastical law, be applied to parties who profess the Parsi religion. ARDASEY CURSETJEE *v.* PEROZEBOYE
[6 Moore's I. A., 348 : 4 W. R., P. C., 91

RESTITUTION OF CONJUGAL RIGHTS—*continued*

4 ——— — *Suit for restitution by Mahomedan before payment of dower*.—A suit will not lie by a Mahomedan to enforce the return of his wife to his house, even after consummation with consent, until her dower (prompt) has been paid ABDOOL SHUKKOAR *v* RAHEEM OON NISSA
[6 N W, 94

5 ——— *Suit by Mahomedan husband against wife—Procedure—Beng Reg II of 1793, s 15*—A Mahomedan husband may institute a suit in the Civil Courts of India to enforce his marital rights by compelling his wife against her will to return to cohabitation with him, and such suit must, under the imperative words of s 15, Regulation IV of 1793, and the nature of the thing, be determined according to the principles of Mahomedan law JUDOONATH BOSE *v* SHUMSOONISSA BEGUM BUZLOOR RUHEEM *v* SHUMSOONISSA BEGUM
[8 W. R, P. C, 3: 11 Moore's I. A, 551

6. ——— *Hindu husband convert to Christianity*.—A Hindu husband who has been repudiated by his wife on his conversion to Christianity cannot sue for the restitution of conjugal society. MUCHOO *v* ARZOON SAHOO
[5 W. R, 235

7 ——— *Mahomedan converted to Christianity*—*Semble*—That where persons of Mahomedan faith are married according to the Mahomedan law, and either party becomes a convert to Christianity, a claim for restitution of conjugal rights cannot be supported ZUBURDUST KHAN *v* HIS WIFE 2 N. W., 370

8 Right to decree—*Marriage complete except one ceremony which would have altered status of woman as to caste*.—Where a man who had been married to a woman, but had failed to go through the second ceremony, without which, according to the customs of his caste, the woman would have been defiled had he obtained [illegible] married a second [illegible] eve that she [illegible] rriage, which [illegible] restitution of [illegible] after a first [illegible] his wife was [illegible] it case, there [illegible] ial, but had been neglected, and the claimant had not shown cause for his neglect, he was not entitled to a decree BOOLCHAND KOLLTA *v* JANOKEE 25 W. R., 386

9. ——— *Custom as to child-wife living apart from husband till puberty*—[illegible] while such contingency had not happened, in refusing to order such a wife to go to her husband, although the marriage was valid SUNTOSH RAM DOSS *v*. GERU PATTUCK . . . 23 W. R., 22

RESTITUTION OF CONJUGAL RIGHTS—*continued*.

10 ——— *Agreement to separate, Suit to set aside—Consent of wife*.—Where a husband and wife (Hindus) thirteen years previously had agreed to separate, the husband having treated his wife with cruelty, and kept his sister-in-law as his mistress, and was still so keeping her at the date of the institution of the suit, and, further, had not contributed to the maintenance of his wife during the period of the separation,—*Held* that the husband was not entitled, without his wife's consent to have that agreement set aside or to insist upon restitution of conjugal rights MOOLA *v* NUNDY
[4 N. W, 109

11. ——— *Husband and wife—Suit by a husband—Marriage during wife's infancy—Non-consummation of marriage—Specific performance of contract of marriage made in infancy—Hindu law—Poverty of husband*.—A, a [illegible] where A visited from time to time The marriage was not consummated. Eleven years after the marriage,—*viz*, in 1884,—the husband called upon the wife to go to his house and live with him and she refused He thereupon brought the present suit praying for restitution of conjugal rights, and that the defendant might be ordered to take up her residence with him *Held* that the suit was not maintainable DADAJI BHIKAJI *v* RUKHMABAI
[I. L. R., 9 Bom, 529

Held on appeal, reversing the decree, that the suit was maintainable, and that the case should be remanded for a decision on the merits DADAJI BHIKAJI *v* RUKHMABAI I. L. R, 10 Bom, 301

12. *Plea of impossibility of sexual intercourse—Legal defences to suit for restitution—Discretion of Judge to refuse decree except when legal plea is proved—Husband and wife*.—A plea by a wife that sexual intercourse with her is impossible owing to her incurable disease or physical malformation is not in itself a good defence to a suit by the husband for restitution of conjugal rights A Judge has no discretion to refuse a decree for restitution of conjugal rights for other causes than those which in law justify a wife from refusing to return to live with her husband, and he cannot abstain from passing a decree in favour of a plaintiff-spouse, because he considers that it would not be for the benefit of either side that the decree should be granted. *Dadaji v. Rukhmabai, I L R, 10 Bom, 301*, followed Where therefore the lower Appellate Court found that there was no cruelty, but that the suit was brought by the husband as a counter-move to defeat the claim of his wife for separate maintenance, and a considerable time after she had ceased to live in his house, and because on the last occasion when she returned to live with him she left the house crying,—*Held* that these circumstances were not sufficient in law to justify the Court in refusing the husband's claim for

RESTITUTION OF CONJUGAL RIGHTS—*continued.*

restitution of conjugal rights. PURSHOTAMDAS MANICKLAL *v.* BAIMANI . I. L. R., 21 Bom., 610

13. ———— *Husband and wife—Hindu law—Suit by Hindu husband out of caste at time of suit—Decree for restitution conditional on plaintiff's obtaining restoration to caste.*—In a suit by a Hindu, a Sunar by caste, against his wife for restitution of conjugal rights, it was found that the plaintiff, in consequence of having left his wife and cohabited with a Mahomedan woman (whom, however, he had left at the time of suit), had been turned out of caste, but that the misconduct of which he had been guilty was not of such a character as to render him liable to perpetual excommunication, and upon making certain amends, he could obtain restoration to his caste. *Held* that, while the plaintiff was entitled to come into Court for the relief prayed, unless, in the circumstances above stated, the marriage had, under the Hindu law, been dissolved, the Court was bound, when asked to employ its coercive process to compel a wife to return to her husband, not to disregard any reasonable objection she might raise to such process being granted, either on the ground that she had been subjected before to personal injury or cruelty at the hands of her husband, or that she went in fear of one or the other or that the husband was actually living in adultery with another woman, or that, if she resumed cohabitation or association with him, he being outcasted, she would herself incur the risk of being put out of caste. *Held* therefore that in decreeing a claim of this description a Court was entitled, if it saw good reason to do so, while recognizing the civil rights of husband to his wife to put such conditions upon the enforcement of his rights by legal process as the circumstances of the case might fairly demand; and that, applying this principle to the present case, the defendant might reasonably ask the Court, before compelling her return to her husband, to make it a condition that he should first obtain his restoration to caste. *Held* also that, under the Hindu law, the fact that a husband had had adulterous intercourse with another woman, which had ceased at the time of suit, was not an answer to a claim by him for restitution of conjugal rights. PAIGI *v.* SHEONARAIN

[I. L. R., 8 All., 78

14. ———— **Ground for suit**—*Mahomedan law—Dower—Lien of wife for dower.*—In a suit brought by a husband for restitution of conjugal rights, the parties being Sunni Mahomedans governed by the Hanafi law, the defendant pleaded that the suit was not maintainable, as the plaintiff had not paid her dower-debt. The plaintiff thereupon deposited the whole of the dower-debt in Court. It appeared that the defendant's dower had been fixed without any specification as to whether it was to be wholly or partly prompt. It also appeared that she had attained majority before the marriage, and that she had cohabited with the plaintiff for three months after marriage, and there was no evidence that she had ever demanded payment of her dower before the suit was filed, or that she had refused cohabitation on the ground of non-payment. Besides the plea already mentioned she also relied upon allegations of divorce and cruelty, but these allegations were found to be untrue. The lower Appellate Court dismissed the suit, holding that, inasmuch as the plaintiff had not paid the dower-debt at the time when he brought his suit, he had no cause of action under the provisions of the Mahomedan law. *Held* by the Full Bench that the lower Appellate Court's view of the Mahomedan law relating to conjugal rights and the husband's obligation to pay dower was erroneous; and that the plaintiff, under the circumstances of the case, had a right to maintain the suit. ABDUL KADIR *v.* SALIMA . . . I. L. R., 8 All., 149

15. ———— *Mahomedan law—Dower—Prompt dower—Stipulation as to residence.* In a suit by a Mahomedan husband for restitution of conjugal rights the defendant, his wife, pleaded first that he had entered into a stipulation at the time of the marriage to reside with her in the house of her father and that he had not done so; and secondly that he had not paid the exigible portion of the dower due to her, the marriage having been consummated. *Held* as to the first point, upon the facts (after referring to the authorities, but without deciding whether a stipulation of this kind can be valid in any case), that the stipulation relied upon was not a sufficient answer to the plaintiff's claim. *Held* upon the authorities that the non-payment of prompt dower is not a sufficient plea in bar of such a suit. *Abdul Kadir v. Salima, I. L. R., 8 All., 149,* approved. HAMIDUNNESSA BIBI *v.* ZOHIRUDDIN SHEIK

[I. L. R., 17 Calc., 670

16. ———— *Hindu law—Defence to suit—Cruelty of husband.*—A suit for restitution of conjugal rights may be maintained by a Hindu: but *quære* if the same state of circumstances which would justify such a suit or which would be an answer to such a suit in the case of a European would be equally so in the case of a Hindu. Where cruelty on the part of the husband has been condoned by the wife, a much smaller measure of offence would be sufficient to neutralize the condonation than would have justified the wife, in the first instance, in separating from her husband. But the act or acts constituting the offence must be of such a nature as to give the wife just reason to suppose that the husband is about to renew his former course of conduct, and consequently to entertain well-founded apprehension for her personal safety. JOGENDRONUNDINI DOSSEE *v.* HURRY DOSS GHOSE

[I. L. R., 5 Calc., 500: 5 C. L. R., 65

17. ———— **Defence to suit**—*Cruelty of husband.*—If the wife raise a defence of cruelty, she must prove violence of such a character as to endanger or cause a reasonable apprehension of danger to her personal health or safety. The *ratio decidendi* in such a case considered and laid down. JUDOO NATH BOSE *v.* SHUMSOONNISSA BEGUM. BUZLOOR RUHEEM *v.* SHUMSOONNISSA BEGUM

[8 W. R., P. C., 3: 11 Moore's I. A., 551

RESTITUTION OF CONJUGAL RIGHTS—*continued*

18 ——— *Husband and wife Cruelty—Action for harbouring wife—Civil Procedure Code, 1859, s 200*—In a suit by a

violence of such a character as to endanger personal health or safety, or whether there is the reasonable apprehension of it Every person who receives a

has turned his wife out of doors or has by some insult or ill treatment, compelled her to leave him YAMUNABAI v NARAYAN MORESHWAR PENDSE
[I. L R., 1 Bom , 164

19 ——— *Suit by husband*

defence BAI PREMKUVAR v BHIKA KALLIANJI
[5 Bom , A. C , 209

20 ——— *Divorce—Hindu law—Custom*—Where a Hindu sued his wife for restitution of conjugal rights and the defendant pleaded divorce it was held that, though the Hindu law does not contemplate divorce still in those districts where it is recognized as an established custom it would have the force of law KUDOMEE DOSSEE v JOTEERAM KOLITA . I L R., 3 Calc , 305

21. ——— Declaration of nullity of

22 ——— Presumption of validity of marriage—*Consent of lawful guardian—Non-performance of ceremonies*—The ceremony of nandimukh or bridhi shradh is not an essential of Hindu marriage nor would the want of consent by the lawful guardian necessarily invalidate such marriage In a suit for restitution of conjugal rights the fact of the celebration of marriage having been established, the presumption in the absence of anything to the contrary is that all the necessary ceremonies have been complied with. BRINDABUN CHUNDRA KURMOKAR v CHUNDRA KURMOKAR
[I. L. R., 12 Calc , 140

23 ——— Form of decree—*Order for restitution—Order for recovery of wife's person*—A Civil Court cannot pass a decree for the recovery of the person of a wife, the proper order being for the restitution of conjugal rights MEIARAM NUDIAL v THANOORAM BAMUN . 9 W. R , 562

24.——— *Declaratory order—Order for delivery of wife to husband*—*Held* (by JACKSON, J , and MACPHERSON, J) that the decree in a suit for restitution of conjugal rights ought to be declaratory only and to be enforced in case of disobedience by attachment *Held* (by SETON KARR J) that the wife may be ordered to be delivered over to her husband JHOTUN BEEBEE v AMEER CHAND 1 Ind. Jur., N S , 317

CHOTUN BEBEE v AMEER CHAND
[6 W R , 105

25 ——— *Order enjoining wife to return to husband—Order to abstain from preventing her return*—In a suit for restitution of conjugal rights brought against a wife and certain persons said to be detaining her from her husband the proper form of decree is one enjoining the wife to return to her husband and the other co-defendants to abstain from preventing her return JAFFREE KHANUM v IMDAD HOSEIN 2 N W., 314

KUBO NAMOYEE DEBEE v GUNGADHUR SURMAH
[20 W R., 50

LALL NATH MISSER v SHEOBURN PANDEY
[20 W R., 92

26 ——— *Order for bodily delivery of wife to husband*—*Quære* Whether the Court can enforce its order on a wife to return to her husband by giving her over bodily into her husband's hands. JUGGOONATH BOSE v SHUMSOONISSA BEGUM BUZLOOR RUHEEM v SHUMSOONNISSA BEGUM
[8 W R., P C, 3 : 11 Moore's I. A., 551

27 ——— *Execution of decree—Order for return of wife and against interference to prevent return* *Held* that a decree for restitution of conjugal rights should be passed in the form that the husband is entitled to conjugal rights, that his wife do return to live with him and that her parents do not interfere in any manner to prevent her so doing RAM TAHUL v MAHNO
[3 Agra, 111

KOOBUR KHANSAMA v JAN KHANSAMA
[8 W R., 467

28 ——— *Order for return of wife—Procedure on failure to comply with order*—In suits for restitution of conjugal rights the decree should be in the form that the wife do return to her husband with which decretal order if she fails to comply she may be dealt with under the provisions of the Code of Civil Procedure relating to attachment and imprisonment for non performance of the act decreed, for a wife cannot be delivered in execution as a chattel TOOTZAH v JUSSORDA 2 Agra, 337

IMAMUN v MAHOMED MAJEEDOOLLAH
[3 Agra, 68

29 ——— *Civil Procedure Code (VIII of 1859), s 200*—*Per* MARKBY J —In a suit by a husband for restitution of conjugal rights, a decree that "the case be decreed awarding the plaintiff to take defendant as his married wife" is not a proper form of decree The decree may order the wife to return to her husband's protection, but such a decree is not one which can be enforced in

RESTITUTION OF CONJUGAL RIGHTS—*concluded.*

the manner provided by s. 200, Act VIII of 1859, as being an order "for the performance of a particular act." GATHA RAM MISTREE *v.* MOOHITA KOCHIN ATTEAH DOMOONEE [14 B. L. R., 298: 23 W. R., 170

30. ——— Execution of decree—*Civil Procedure Code, 1859, s. 200.—Semble*—That a decree for restitution of conjugal rights between Mahomedans or Hindus may be enforced under s. 200 of Act VIII of 1859. YAMUNABAI *v.* NARAYAN MORESHWAR PANDSE . I. L. R., 1 Bom., 164

31. ——— *Decree under Parsi Marriage and Divorce Act (XV of 1865), s. 36—Enforcing decree—Civil Procedure Code, 1859, s. 200.*—A decree for restitution of conjugal rights under the Parsi Marriage and Divorce Act is enforceable only in the manner provided in s. 36 of the Act; such provision is in substitution of, and not in addition to, the ordinary remedies provided by s. 200 of the Code of Civil Procedure. ARDESAR JAHANGIR FRAMJI *v.* AVABAI . 9 Bom., 290

32. ——— *Maintenance order obtained by a wife against husband—Subsequent decree for restitution of conjugal rights obtained by a husband—Effect of such decree on previous order of maintenance—Criminal Procedure Code (Act X of 1882), s. 488.*—A decree of a Civil Court for restitution of conjugal rights supersedes any previous order of a Magistrate for maintenance, if the wife should persist in refusing to live with her husband. A Magistrate ought to cancel a previous order of maintenance made by him, or rather treat it as determined, if the wife failing to comply with the decree for restitution refuses to live with her husband. IN RE BULAKIDAS . I. L. R., 23 Bom., 484

LUTFOTEE DOOMONY *v.* TIKHA MOODOI [13 W. R., Cr., 52

RESTITUTION OF RIGHTS BY MOTION.

See LIMITATION ACT, ART. 179—NATURE OF APPLICATION—GENERALLY. [I. L. R., 20 Mad., 448

1. ——— Restitution of rights by motion where the appellate decree does not mention restitution—*Execution pending appeal of decree set aside on appeal—Civil Procedure Code (Act XIV of 1882), s. 583.*—Where a decree made by a Court of first instance is executed pending an appeal, and on appeal such decree is set aside, the appellant is entitled by motion to obtain restitution, even though the decree of the Court of appeal is silent as to such restitution. *A*, the owner of a 15 odd pie share of certain indigo land, brought a suit for partition against his co-sharer *B*, the owner of the rest of the land, and obtained a decree, from which *B* appealed. *A*, without waiting for the disposal of the appeal, executed his decree and obtained possession of his share, settling it with tenants. The

RESTITUTION OF RIGHTS BY MOTION—*continued.*

decree was subsequently set aside on *B*'s appeal, but no order as to restitution was made in it. *Held*, on motion by *H*, that he was entitled to be put into the same position as before the partition was made (*i.e.*, joint possession with *A*) and to remove any tenants who refused to vacate. ROHNI SINGH *v.* HODDING . . I. L. R., 21 Calc., 340

2. ——— Restitution of an advantage obtained by virtue of a decree of High Court subsequently reversed on appeal to Privy Council—*Civil Procedure Code (1882), s. 583—Right of suit—Parties, Non-joinder of.*—The holder of a decree of the High Court for costs assigned his rights under that decree. The assignee caused his name to be brought on to the record as transferee in place of the decree-holder, and he, and after him his legal representative, executed the decree against the judgment-debtor. The decree was appealed to the Privy Council, but the assignee was not a party to the record in that Court. The Privy Council reversed the decree. Thereupon the successful plaintiff applied under s. 583 of the Code of Civil Procedure to obtain restitution from the representative of the assignee of the amount realized in execution of the decree of the High Court. *Held* that, whether or not the amount realized by the assignee was recoverable by suit, it was not recoverable by proceedings under s. 583 of the Code, inasmuch as the assignee was no party to the decree of the Privy Council. BHAGWATI PRASAD *v.* JAMNA PRASAD . [I. L. R., 19 All., 136

3. ——— Restitution of benefit obtained under a decree which is reversed in appeal—*Restitution sought by means of execution of appellate decree against a person not a party to the appeal.*—*Held* that appellants in the Privy Council who had, antecedently to filing their appeal to Her Majesty in Council, paid to the assignee of the decree appealed against, which was for costs only, the amount then payable under that decree could not, on succeeding in their appeal, obtain restitution, merely by virtue of and in execution of the order of Her Majesty in Council, of the amount so paid, from the assignee when that assignee had been no party to the appeal to Her Majesty in Council. *Bhagwati Prasad* v. *Jamna Prasad, I. L. R., 19 All., 136*, referred to. SADIQ HUSAIN *v.* LALTA PRASAD . . . I. L. R., 20 All., 139

4. ——— *Civil Procedure Code (1882), s. 583—Interest on amount so recovered.*—Where, in consequence of a decree having been reversed on appeal, the decree-holder is entitled to recover under s. 583 of the Code of Civil Procedure any sum which before such decree was reversed he had been obliged to pay in execution of that decree, such decree-holder is entitled also to receive interest on the amount so recoverable. *Rodger* v. *Comptoir D'Escompte de Paris, L. R., 3 P. C., 465; Jaswant Singh* v. *Dip Singh, I. L. R., 7 All., 432; Ram Sahai* v. *Bank of Bengal, I. L. R., 8 All., 262; Bhagwan Singh* v. *Ummatul Hasnain, I. L. R. 18 All., 262; Ayyaryyar* v. *Shastram Ayyar, I. L.*

RESTITUTION OF RIGHTS BY MOTION—*concluded*

P 9 Mad 506, and *Halli Prasad v Chatarpal Dube, Weekly Notes, All, 1888, p 257*, referred to *Uewa Kuar v Banarsi Prasad, Weekly Notes, All 1897 p 76*, dissented from PHUL CHAND v SHANKAR SARUP I L R, 20 All, 430

5 ———— *Civil Procedure Code (1882), s 583—Interest—Mesne profits—Held* that a person who is entitled under s 583 of the Code of Civil Procedure to the restoration of a benefit of which he has been deprived by reason of a decree which has been subsequently reversed in appeal is entitled, if the thing to be restored is money, to interest for the time during

[illegible]

possession *Phul Chand v Shankar Sarup I L R 20 All 430* approved HARDAT v IZZAT UN NISSA [I. L. R, 21 All, 1

6 ———— Petition for restitution—*Civil Procedure Code (1882), s 583—Property taken from petitioner by process of Court under decree—Subsequent reversal of decree—Custody of third party—Principles on which restitution is ordered*—Two trustees of a temple having been removed from office a suit was brought against them by the newly appointed trustees and a decree obtained

[illegible]

law raises an obligation on the party to the record who received the benefit of the erroneous judgment to make restitution to the other party for what he had lost and it is the duty of the Courts to enforce that obligation unless it be shown that restitution would be clearly contrary to the real justice of the case That with reference to the position of innocent third parties the rule that a plaintiff in an action to recover land cannot by his writ of restitution or assistance dispossess a stranger to the proceeding holding possession on an independent title or claim of title and not in collusion with the defendant does not apply where the party seeking to be restored to possession has been wrongfully dispossessed by the agency of the Court. *Held* therefore that the trustees who had been dispossessed must be given an opportunity to prove whether any and which of the temple properties were in his custody as alleged and whether he was deprived of such custody under the decree which was reversed and whether the newly-appointed trustees acquired the custody of them thereunder and that if substantiated the claim for restitution could not be successfully resisted DORASAMI AYYAR v ANNASAMI AYYAR

[I L R, 23 Mad., 306

RESUMPTION

		Col
1	RIGHT TO RESUME	7782
2	PROCEDURE	7785
3	EFFECT OF RESUMPTION	7787
4	MISCELLANEOUS CASES	7792

See CASES UNDER GHATWALI TENURE

See CASES UNDER GRANT—RESUMPTION OR REVOCATION OF GRANT

See CASES UNDER ONUS OF PROOF—RESUMPTION AND ASSESSMENT

See CASES UNDER SERVICE TENURE

See CASES UNDER SETTLEMENT

— of ferry.

See JURISDICTION OF CIVIL COURT—FERRIES . B L R., Sup Vol., 630

———— of jaghir by East India Company

See ACT OF STATE 12 B L R., 120 [L R, I. A, Sup Vol, 10

———— Power of—

See BENGAL TENANCY ACT s 101 [I. L R, 20 Calc, 577

1 RIGHT TO RESUME

1 ———— Right to resume mokurari tenure—*Death of grantor without heirs*—A mokurari tenure granted in perpetuity cannot be resumed by the grantor even if the grantee dies without heirs. HIMMUT BAHADOOR v SOONEET KOER 15 W R, 540

2 ———— *Grant in lieu of maintenance—Limitation*—Although a grant of a mokurari lease in lieu of maintenance may be resumable by the grantor and his heirs yet if the grantor or any of his successors receives distinct notice of a claim on the part of the grantee to hold in

[illegible]

NILMONY SINGH DEO I L R., 3 Calc, 793

3 ———— *Grant in lieu of maintenance—Hindu law—Custom—Impartible estate*—The mere fact of the impartibility of an estate or rather the mere fact that the succession to a zamindari is governed by the law of primogeniture does not deprive the zamindar of his ordinary right to alienate it or any portion of it during his lifetime Accordingly an ordinary mokurari lease granted by a zamindar of lands forming portion of a zamindari the succession to which is governed by the law of primogeniture is valid and the lands comprised in it cannot be resumed on the death of the grantor by his successor But a mokurari khorposh or allowance for maintenance or an estate for life in lieu of maintenance granted by the owner of a zamindari impartible by special custom but otherwise subject to Bengal law, to a member of his family, is resumable

RESUMPTION—*continued.*

1. RIGHT TO RESUME—*continued.*

by his successor on the death of the grantor. UDOY ADITTYA DEB *v.* JADUBLAL ADITTYA DEB [I. L. R., 5 Calc., 113: 4 C. L. R., 181

See WOODOYADITTO DEB *v.* MUKOOND NARAIN ADITTO . . . . . 22 W. R., 225

4.———— Right to resume julkurs in navigable rivers—*Beng. Reg. II of 1819.*—A suit for resumption of julkurs in navigable rivers not forming part of settled estates is cognizable only in the ordinary Courts, (1) because of the total absence of the word "julkur" in any of the Resumption Regulations, either before or after Regulation II of 1819; and (2) by reason of the difference in the nature of the claims between one to take possession of julkur and one to resume lands. COLLECTOR OF MALDAH *v.* SUDUROODDEEN 1 W. R., 116

5.———— Right to resume jaghir—*Alienation by grantee.*—A zamindar cannot sue to resume a jaghir on the ground of its alienation by the grantee, so long as there are heirs male of the grantee existent. RAMESWAR NATH SING *v.* HARALAL SING [1 B. L. R., A. C., 170

6.———— Right to resume permanent tenure—*Forfeiture of tenure—Non-payment of Government revenue.*—Where an ancient and permanent tenure is held by several persons in separate shares, and some of the sharers make default in the payment of their quota of the Government assessment, the portion of the tenure held by the sharers who paid their shares of the assessment cannot be resumed or forfeited by the Government. In such a case the onus lies on the Government to make out by clear evidence under what special contract, or agreement, or regulation, it forfeits the entire tenure. BRETT *v.* ELLAIYA [12 W. R., P. C., 33: 13 Moore's I. A., 104

affirming the decision of the High Court in ELLAIYA *v.* COLLECTOR OF SALEM . . . 3 Mad., 59

7.———— Right to resume village—*Village entered as jaghir in accounts of permanent settlement—Zamindar, Right of.*—Where a village, part of a zamindari, has been entered as a jaghir in the accounts of the permanent settlement, the zamindar cannot resume the village, and is entitled in respect thereof only to the usual kuttubandi. HARISCHANDANA DEVA *v.* RAMANNA CHANDRI [1 Mad., 355

8.———— Right to resume Neemuk Sayer mehals—*Beng. Regs. VIII and XXVII of 1793—Right of Government as Sovereign.*—The resumption by Government of Neemuk Sayer mehals (saltpetre-duty estates) upheld, the sanads of the Subadar of Behar, the ruling power previous to the Company's accession to the Dewanny, purporting to grant the Government as mokurari istemrari at a permanent fixed rent, being declared forgeries. *Quære*—Whether the Neemuk Sayer mehals being a sayer right was not wholly abolished by Bengal Regulation XXVII of 1793, and the Bengal Government in its Sovereign character had not an absolute right to resume. The settlement by the Government with a proprietor of the soil under the decennial settlement, made perpetual by Bengal Regulation VIII of 1793 relates to land revenue only, and not to sayer duties claimed by a party not a land proprietor. GOVERNMENT OF BENGAL *v.* JAFUR HOSSEIN KHAN . . . 5 Moore's I. A., 467

9.———— Right to resume subordinate tenure by istemrardar—*Customary right.*—A custom was alleged entitling a Patwi Thakur, or chief belonging to the Rathor clan of Rajputs, who was the istemrardar of an ancient and impartible talukh in Ajmere, to resume land formerly part of it, but granted some generations back as a subordinate estate to a collateral relation of the chief. The ground of the resumption claimed was that the last successor to the estate so granted had died without issue and without adopting. *Held* that the Commissioner's judgment, which was that a right of resumption exerciseable merely on the above ground had not been established, was correct, being supported to some extent certainly by answers received by the Chief Commissioner on enquiry from the neighbouring durbars of Rajputana chiefs, and on the whole, by the balance of the evidence. RAO BAHADUR SINGH *v.* JOWAHIR KUAR [I. L. R., 10 Calc., 887: L. R., 11 I. A., 75

10.———— Right of maafidar—*Recognition of right to resume—Limitation—Cause of action.*—*Held* that mere recognition of right to resume contained in the wajib-ul-urz, where the grant existed many years previous to the date of that document, does not re-grant to a maafidar so as to give plaintiff a new starting point from which his right to resume should date. DAYUM KHAN *v.* TUNSOOKH RAI [2 Agra, 189

11.———— Right of manager of religious endowment—*Beng. Reg. XIX of 1793.*—The manager of a religious endowment consisting of the profits of a number of villages after paying revenue, was not a zamindar under Regulation XIX of 1793, and could not sue for resumption of invalid lakhiraj land. NOBIN CHUNDER ROY CHOWDHRY *v.* PEAREE KHANUM . . . . 3 W. R., 143

12.———— Right of talukhdars—*Limit of area in suit for resumption.*—Talukhdars had no legal right to sue for resumption of areas containing more than 100 bighas of land. GOPAL CHUNDER ROY *v.* OODHUB CHUNDER MULLICK [W. R., 1864, 156

13.———— Right of Government as agent for zamindar—*Limit of area in suit for resumption.*—The Government, when acting as agent of a zamindar, could only sue to resume invalid lakhiraj lands under 100 bighas. RAM LOCHUN SIRCAR *v.* DENONATH PAUL . . . 2 W. R., 279

14.———— Right of zamindar—*Presumption—Land held under different sanads—Limit of area in suit for resumption.*—When land beyond 100 bighas in extent is admittedly held by a lakhirajdar, the presumption is that it is held under one grant, and that it is resumable by Government, and

RESUMPTION—*continued.*

1 RIGHT TO RESUME—*concluded*

not by the zamindar To rebut the presumption, the zamindar must show that the land though beyond 100 bighas in extent, is held under different sanads JOGENDRO NARAIN ROY *v* HURRY DOSS ROY [W. R., 1864, 145

15. — ——— *Right of zamindar to assess and resume invalid lakhiraj tenures—Limit of area in suit for resumption*—When a zamindar engaged to pay a certain amount of revenue on certain lakhiraj lands on condition of Government stopping resumption proceedings in respect to such lands, he had a right under that engagement to resume invalid rent-free tenures below 100 bighas in extent, whatever had been the nature of a reement with Government in previous years, but he had no right to resume lands of greater extent than 100 bighas covered by one sanad BEER CHUNDER JOOBRAJ *v* UMAKANT SEIN W. R., 1864, 232

See BEERCHUNDER JOOBRAJ *v* SHIBJOY THAKOOR [W. R., 1864, 8

16 ——————— *Beng Reg II of 1809, s 30—Limit of area in suit for resumption.*—To bar a zamindar's right to resume, as invalid lakhiraj under s. 30, Regulation II of 1809, lands in excess of 100 bighas, it must be shown that the lands are held under a sanad in excess of 100 bighas, or under different sanads, each in excess of 100 bighas MAHOMED MUNSOOR *v.* UMBICA CHURN ROY [W. R., 1864, 132

17. ——————— *Beng Reg. XIX of 1793—Limit of area in suit for resumption*—A zamindar is not precluded by Regulation XIX of 1793 from suing for the resumption of invalid lakhiraj lands exceeding 100 bighas held under several sanads provided none of them singly is a grant for more than 100 bighas. The release of lands covered by one such sanad from the claim of Government to resume, on the ground that they were under 50 bighas, does not bar the zamindar's right to resume them FLIAS *v* MAHOMED PEEZEER [W. R., 1864, 217

18 — —— *Beng. Reg X of 1793, s. 19—Limitation in suit for resumption*—A zamindar suing for resumption of alleged invalid lakhiraj land under s. 19, Regulation X of 1793 was not limited to time provided he could prove that, at some time subsequent to the decennial settlement, the land sought to be resumed was part of his mal estate, and had paid rent GOPAL CHUNDER SHAHA *v* BHABO TARINEE DOSSEE . . 7 W. R., 240

2. PROCEDURE.

19 ——— Assessment of resumed lands—*Beng. Reg XIX of 1793—Beng Reg II of 1819, s 30 Suit for rent*—Unless the holder of a resumption-decree took steps under Regulation XIX of 1793 to have the revenue fixed by the Collector, and the defendant consented to pay the revenue required of him, he had no *locus standi* on holding the lands to bring suits for rent. The rule to be followed in determining in what manner and under what regulation the assessment of resumed lakhiraj land should be conducted was first, to ascertain whether the existence of the lakhiraj prior to 1791 had been decided by the decree for resumption. It could not be presumed that every case instituted under s. 30, Regulation II of 1819, dealt with an estate which was held lakhiraj prior to 1791. POGOSE *v.* FERAM HOSSEIN . . . 15 W. R., 483

20. ——— Question of validity of grant—*Limitation—Existence of tenure before* [illegible]

21 [illegible]

created prior to the 1st of December 1790, and therefore was not exempt from limitation under s 10, Regulation XIX of 1793 HEERA MONEE DABEE *v.* KOONJ BEHARY HOLDAR [B L R, Sup Vol., Ap, 8; 2 W. R., 207

22. ——————— *Beng Reg XIX of 1793, s 10—Beng Reg. II of 1819, s 30*— [illegible]

Heera Monee Dabee v Koonj Behary Holdar, B L. R., Sup Vol, Ap, 8 upheld. HARIHAR [illegible]

SONATUN GHOSE *v* ABDOOL FARAR [B L R., Sup. Vol., 109: 2 W. R., 91

23. — ——— Notice to parties—*Party not in possession*—In resumption-proceedings it is not necessary to give notice to a party not in possession or to make him a formal party to the suit. RAM CHUNDER SHAHA *v* COLLECTOR OF MYMENSINGH [22 W. R., 48

24 ——————— *Beng. Reg II of 1819, s 16—Omission to give notice*—Where the resumption officer, as directed by s 15 Regulation II of 1819, supplied the defendant in a resumption suit with a copy of his reasons for considering the lands in question liable to resumption and subsequently, in the absence of the defendant, declared the lands liable to assessment,—*Held* that, as defendant failed to appear either in person or by agent, it was impossible for the resumption officer to give him the warning mentioned in s. 16 of the same law, and the legality of the proceedings was not affected by the omission. BURODA KANT ROY *v* COMMISSIONER OF THE SOONDERBUNS . . 13 W. R., 180

RESUMPTION—*continued.*

2. PROCEDURE—*concluded.*

25. ———— Right to intervene in suit—*Beng. Regs. II of 1819 and III of 1828—Decree of Special Commissioners.*—In a suit by Government under Regulation II of 1819 to resume invalid lakhiraj land held by a mohunt, as the interests of the zamindar, who claimed a portion of the lands sought to be assessed, as forming part of his permanently-assessed estate, were liable to be affected by the decision of the Collector,—*Held* that he had a right to intervene and become a party to the suit, and to prefer an appeal from the decree. The decree of the Special Commissioners under Regulation III of 1828 was final, if no appeal or petition of review was presented within a reasonably sufficient period. MOHESHUR SINGH *v.* GOVERNMENT OF INDIA [3 W. R., P. C., 45: 7 Moore's I. A., 283

3. EFFECT OF RESUMPTION.

26. Finality of proceedings—*Injury to parties—Diluvion.*—Resumption proceedings are final and not liable to question by the Civil Courts. But when proceedings take place in the nature of extensive settlements with other parties after intermediate and temporary settlements, and acts are done wholly without jurisdiction, or lands are taken not included in the original decree, there should be a remedy to parties deeming themselves to have been wronged thereby. If lands adjudged to Government in a resumption suit diluviate and re-form on the same site, Government does not thereby lose its rights to them, nor is it obliged to institute wholly new proceedings. Diluvion does not create any new right. COLLECTOR OF DACCA *v.* KISHEN KISHORE CHATTERJEE. JUGO BUNDHOO BOSE *v.* COLLECTOR OF DACCA . . . W. R., 1864, 273

27. ———— Finality of resumption-decree—*Settlement proceedings—Jurisdiction of Civil Court.*—The ruling of the late Sudder Court as to the final and conclusive character of a resumption-decree was held not to apply to what was subsequently done administratively by a settlement officer, the proper distinction being that the decree of the Resumption Court as to the liability of the resumed mehal to be assessed with a Government demand is final; but the subsequent dealing by the settlement officer with alleged proprietary right and claim to land not mentioned in the decree, is open to the jurisdiction of the Civil Court. MAHOMED GAZEE CHOWDHRY *v.* LALL BEBEE . . 10 W. R., 103

RAM CHUNDER SHAHA *v.* COLLECTOR OF MYMENSINGH . . . . . . 22 W. R., 48

28. ———— Effect on contract between zamindar and tenant—*Resumption of lakhiraj tenure by Government—Under-tenants, Rights of.*—The mere resumption of a lakhiraj tenure by Government does not dissolve the contract between the zamindar and tenant. The tenant has the option to determine his tenancy, or he may consent that the amount of revenue which the landlord must pay to Government, or a portion of it, shall be added to his original jumma. FARZHARA BANU *v.* AZIZUNNISSA BIBI [B. L. R., Sup. Vol., 175: 3 W. R., 72

RESUMPTION—*continued.*

3. EFFECT OF RESUMPTION—*continued.*

29. ———— Effect on tenant—*Illegal assessment of revenue—Mad. Reg. XXVII of 1802.*—In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an agraharam village for non-payment of tirvai due from other tenants of the village, and to recover the increased tirvai imposed by the Collector,—*Held* that the plaintiff's right to enjoy his share of the village lands under the original pottah was not legally determined by resumption; and that, continuing liable only to the fixed rent, the plaintiff was entitled to the return of the amount paid under compulsion, in excess of such rent, at the date of the suit. Madras Regulation XXVII of 1802 considered. ELLAIYA *v.* COLLECTOR OF SALEM . 3 Mad., 59

Affirmed by the Privy Council on appeal in BRETT *v.* ELLAIYA [13 Moore's I. A., 104: 12 W. R., P. C., 33

30. ———— Effect on howladar—*Rights of howladars.*—The resumption by Government of a parent estate did not nullify the existing rights of a howladar within the estate, or deprive him of the benefit of the presumption arising under s. 16 of Act X of 1859. MOTHOORA NATH GUNGOPADHYA *v.* SHEETA MONEE . . . . 9 W. R., 354

31. ———— Effect on sub-tenure—*Sub-tenures before decennial settlement.*—A sub-tenure created before, and in existence at the time of, the decennial settlement cannot be invalidated by any subsequent settlement of the mehal in which it is situated. Resumption of lakhiraj land under the revenue law does not destroy any such sub-tenure in the estate resumed. ABDOOL ALI *v.* RAMGUTTY [12 W. R., 128

32. ———— Effect on lakhirajdars—*Rights of lakhirajdars—Settlement—Cause of action.*—A resumption-decree does not destroy the proprietary right of the lakhirajdars, which continues unless and until they are dispossessed in due course of law. By obtaining a permanent settlement they acquire no new right; a cause of action accruing to them if ousted before settlement. THAKOOR DASS ROY CHOWDHRY *v.* NUBEEN KISHEN GHOSE [15 W. R., 552

33. ———— Effect on charitable trust—*Omission of mention of existence of charitable trust or endowment.*—The resumption of lands by Government, and the making a fresh settlement of the resumed lands without any allusion to their being held in trust for charitable purposes prior to the resumption proceedings, are not conclusive proof that there was no such trust. The only question decided by the Government in resuming was that those who claimed the land as lakhiraj had not been able to prove that the land was held under any such religious or charitable trust as would debar Government from resuming. LEELANUND SINGH BAHADOOR *v.* ISHUREE NUNDUN DUTT JHA . . 8 W. R., 316

RESUMPTION—*continued.*

3 EFFECT OF RESUMPTION—*continued*

34. ———— Effect on rights acquired previous to resumption—*Liability of purchaser of rent free holding to pay rent or revenue* —Where the plaintiff's ancestor purchased a certain quantity of land from a rent-free holder of the mouzah, who on the resumption of the maafi tenure by Government was admitted to a proprietary settlement of the mouzah and acquired a good prescriptive title,—*Held* that the resumption by the Government did not affect the right which the plaintiff's ancestor had previously acquired in the land and the land not having been assessed with revenue by the Government the plaintiff could not be treated as a mere cultivator, and liable to pay either rent or revenue AHMED *v.* GUNAISH PERSHAD 2 Agra, 9

35. ———— Effect on right of collection or profits—*Maafi lands*—Where maafi lands are, after resumption and assessment, left in the possession of the ex maafidars, the persons entitled to collection or profits are, in the absence of any stipulation to the contrary, the ex maafidars and not the lambardar of the village DAL CHUND *v.* SEETA KOONWAR . . 2 Agra, 152

36 ———— Liability to pay rent—*Resumption and assessment by settlement officer*—Where land is resumed and assessed by a settlement officer the tenant is bound to pay rent at the rate assessed by the settlement officer WOOMANATH ROY CHOWDRY *v.* DEBNATH ROY CHOWDRY [14 W R., 471

D'SILVA *v.* RAJ COOMAR DUTT 16 W. R., 153

37 ———— Effect on mortgagee under zur-i peshgi lease—*Omission to call in advance—Acquiescence in liability of profits for revenue*—When property granted in a zur i peshgi lease was originally rent free, but subsequently resumed and assessed by Government the mortgagee was held bound either to make a fresh agreement to take the profits minus the Government revenue as his security, or to call in his money His not adopting either course for a long period was construed into assent on his part to receive the profits, minus the Government revenue, as security JOY PROKASH NARAIN *v.* RADHA KISHEN . . W. R., 1864, 227

38 ———— Effect of resumption and settlement of lakhiraj on the holder of a mokurari lease from the lakhirajdar—*Lakhiraj tenure—Settlement of invalid lakhiraj*—Assessment of revenue by Government on invalid lakhiraj land after resumption does not confer a new estate on [illegible]

39 ———— Effect of resumption on mortgages created by inamdar—*Inam lands*—An inamdar, having granted several mortgages upon his inam lands died. The right to hold the lands rent-free was ruled by Government to have ceased upon the death, but the inam was continued to his representatives, subject to the payment of assessment, under the Government circular of 1854 *Held* that the original estate in the lands was not destroyed; that no new title in the inamdar's representatives was created; and that the lands continued chargeable in their hands with any valid specific liens created upon them by the inamdar VISHNU TRIMBAK *v.* TATIA *alias* VASUDEV PANT . 1 Bom., 22

40 ———— Effect on inamdar—*Inam—Landlord and tenant*—On the resumption of an inam, the inamdar's right to exemption from the payment of the Government assessment ceases and the inamdar becomes liable to pay such assessment; but all his other rights remain unaffected and therefore those who were his tenants before the resumption do not thereby cease to be so and can be ejected if they are not permanent tenants or are not otherwise entitled to remain in possession GANGABHAI *v.* KALAPA DABI MUKRYA I. L. R., 9 Bom., 419

41. ———— Resumption of inam village, and re grant, Effect of—*Acts of State Waikars Status of—Treaties of 1820—Effect of grant of inam under construction—Attachment by Government of such village Effect of*—From the year 1820 down to the year 1872 the Waikar family had been in the enjoyment of the village of Pasarni under a treaty between the East India Company and one *M A* and *K M* were brothers and the last male descendants of *M* For an alleged fraud of *K M* Government restricted the enjoyment of the said village to his lifetime only *A* predeceased *K M* On the death of *K M* Government, on the 31st December 1872 placed an attachment over the village On the 13th July 1874 a judgment-creditor of *A* caused the lands in dispute, which were mirasi lands of the Waikar family situated at Pasarni to be sold in execution of his decree against *A*, and they were purchased by the defendant who was put in possession on the 22nd April 1876 In the meanwhile Government, having chosen to recognize the plaintiff as a representative of the Waikar family, had removed the attachment, and re-granted the village to the plaintiff shortly before, viz., on the 3rd April 1876. The plaintiff, being dispossessed, sued the defendant contending (*inter alia*) that *A*, having predeceased his brother, had no interest in the lands which had been purchased by the defendant The Court of first instance awarded the plaintiff's claim, and directed the defendant to pay the plaintiff's costs. The defendant appealed to the District Judge, who was of opinion that the proceedings of Government since the attachment in 1872 and restoration of the village were acts of State, and he varied the [illegible]

RESUMPTION—*continued.*

3. EFFECT OF RESUMPTION—*continued.*

of Government in 1873 and 1876, by which the plaintiff was recognized as the representative of the Waikar family, were not acts of State. The status of the Waikars and other persons, with whom the agreements of 1820 were entered into, was not that of an independent sovereign. They (the Waikars) were merely powerful saranjamdars subordinate to the Raja of Satara, and after the annexation of the territory of the Raja in 1819 they held their lands under the East India Company. *Secretary of State for India v. Narayan Balbhant Bhosle, Printed Judgments for 1883, p. 244.* HARI SADASHIV v. AJMUDIN . . . I. L. R., 11 Bom., 235

42. ———— **Resumption of saranjam by British Government, Effect of, on position and rights of the saranjamdar**—*Occupancy rights of a saranjamdar—Inam, Resumption of—Public and private property of an absolute chief—Landlord and tenant—Tenancy created by chief prior to resumption of land by Government—Effect of resumption on rights of landlord—Adverse possession—Recognition of tenant by Government officers, as occupant paying assessment, does not prejudice landlord's rights.*—*A*, the Chief of Kagvad, let certain land to the defendant for a term of twelve years by a lease dated 12th June 1857. *A* died in the same year without male issue, and his saranjam was resumed by the British Government. In 1858 the Collector treated the defendant as occupant of the land in question for the purposes of assessment, and again in 1860 entered his name as occupant in the Government books. In January 1868 the widow of *A* adopted the plaintiff as his son. In 1881 the plaintiff sued the defendant to recover possession of the land let to the defendant in 1857. The defendant contended that the land was not the private land of *A*, but belonged to the State of Kagvad, which was resumed on his death by the Government; and that the plaintiff's claim was barred by the law of limitation. The Subordinate Judge allowed the plaintiff's claim, holding that the land was the private property of *A*, and that the claim was not barred. The District Judge, on appeal, held that the land was not the private property of the Chief, but was the property of the State, and that, on the resumption of the State by the British Government, the defendant's lease came to an end, and the relation of landlord and tenant, previously existing between the Chief and the defendant, ceased. He also held that the plaintiff's claim was barred by limitation, and reversed the decree of the Subordinate Judge. On appeal to the High Court,—*Held* that no distinction could be drawn between the public and private property of an absolute chief, which *A* was. That, in the absence of a contrary intention, the resumption by the British Government of a saranjam or inam leaves the occupancy rights of the saranjamdar or inamdar untouched; that a saranjamdar or inamdar may acquire occupancy rights during the continuance of the saranjam or inam. *Held* also that the fact that the revenue officers placed the defendant's name in the Government books as the occupant paying assessment, did not make the defendant's possession adverse, and could not prejudice the plaintiff's rights as landlord. GANPATRAV TRIMBAK PATWARDHAN v. GANESH BAJI BHAT

[I. L. R., 10 Bom., 112

RESUMPTION—*concluded.*

3. EFFECT OF RESUMPTION—*concluded.*

4. MISCELLANEOUS CASES.

43. ———— **Illegal resumption by Government**—*Liability to account.*—The Government having seized certain chur lands and dispossessed the proprietor in possession, and having entirely failed to establish any claim for assessment or resumption during the period of attachment following the dispossession of the proprietor,—*Held* that the Government must be regarded as a wrong-doer for the whole period, and must account to the proprietor for all the collections made by its officers up to the time of the restitution. SURNOMOYEE v. COLLECTOR OF RUNGPOR . W. R., F. B., 4: Marsh., 13

[1 Hay, 37

44. ———— **Right of mortgagee or transferee of maafi land on resumption**—*Right to question bonâ fide character of proceedings.*—Where a mortgagee of maafi land was no party to resumption proceedings under Act X of 1859, s. 28, and the land was resumed with the mortgagor's consent,—*Held* the mortgagee or transferee from him was entitled to question the *bonâ fide* character of the resumption proceedings. TOOLUN v. OOMAN SHUNKER . . . 2 Agra, 117

45. ———— **Purchases before resumption**—*Jagir.*—Where the evidence showed that certain arms and stores seized had been purchased by the jaghirdar before the resumption, and there was no authority or evidence to show that those who held by jaidad were not entitled to things so purchased,—*Held* that the representatives of the jaghirdar were entitled to recover the value of the arms and stores so seized. FORESTER v. SECRETARY OF STATE

[12 B. L. R., 120: 18 W. R., 349

L. R., I. A., Sup. Vol., 10

RESUMPTION CHITTAS.

See EVIDENCE ACT, 1872, s. 83.

[I. L. R., 14 Calc., 120

RE-TRIAL.

See CASES UNDER CRIMINAL PROCEDURE CODES, s. 437.

See CASES UNDER NEW TRIAL, AND RE-HEARING.

See CASES UNDER REVISION—CRIMINAL CASES—REVIVAL OF COMPLAINT AND RE-TRIAL.

"RETURN."

See AHOMEDAN LAW—INHERITANCE.

[I. L. R., 3 Calc., 702

I. L. R., 11 Calc., 14

17 W. R., P. C., 108

REUNION.

See CASES UNDER HINDU LAW—INHERITANCE—SPECIAL HEIRS—SEPARATED SONS OR BROTHERS AND REUNION.

REVENUE.

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE.

See CASES UNDER SALE FOR ARREARS OF REVENUE.

——— as distinguished from rent.

See APPEAL—N.-W. P. ACTS. [I. L. R., 18 All., 3

See GRANT—POWER TO GRANT. [B. L. R., Sup. Vol., 75, 774

——— Assessment of—

See BOMBAY LAND REVENUE ACT, s 216. [I. L. R, 18 Bom, 525

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

See MADRAS LAND REVENUE ASSESSMENT ACT, s. 2. [I. L. R, 19 Mad., 292, 308
I. L. R., 22 Mad., 270
L. R., 26 I. A., 16

——— Deposit of—

See SALE FOR ARREARS OF REVENUE—DEPOSIT TO STAY SALE.

——— Liability to pay—

See CASES UNDER SALE FOR ARREARS OF REVENUE—PURCHASER, RIGHTS AND LIABILITIES OF.

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—CERTIFICATES OF SALE . I. L. R., 2 Calc., 141

——— Matter concerning—

See JURISDICTION OF CIVIL COURT—REVENUE . . 2 Mad., 167
[I. L. R., 1 Mad., 89

See MANDAMUS . 11 B. L. R., 250

See RIGHT OF SUIT—ACTS DONE IN EXERCISE OF SOVEREIGN POWER. [I. L. R, 1 Calc., 11

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION REVENUE. [5 Bom., O. C., 1

——— Payment and non-payment of—

See CONTRACT ACT, ss. 69, 70 [I. L. R., 6 All., 67
I. L. R., 7 All., 660
I. L. R., 12 Calc., 213

REVENUE—*concluded*.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY . 14 B. L. R., 155
[I. L. R., 9 Calc., 377
I. L. R., 14 All., 273
I. L. R., 14 Calc., 809

See MONEY PAID . 7 N. W., 155

See MONEY PAID FOR BENEFIT OF ANOTHER. [I. L. R., 21 Calc., 142
L. R., 20 I. A., 160
I. L. R., 18 All., 471

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT [I. L. R., 20 Bom., 747

See SET-OFF—GENERAL CASES [I. L. R., 1 All., 135

——— Suit for contribution for payment of—

See CASES UNDER CONTRIBUTION, SUIT FOR—VOLUNTARY PAYMENTS.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. PROVINCES [I. L. R., 1 All., 26

REVENUE COMMISSIONERS.

——— Sanction of, to graze cattle

See BOMBAY SURVEY AND SETTLEMENT ACT (I OF 1865), s 32. [I. L. R., 2 Bom., 110

REVENUE COURT.

——— Jurisdiction of—

See CASES UNDER JURISDICTION OF CIVIL COURT—REVENUE COURTS.

See CASES UNDER JURISDICTION OF REVENUE COURT.

See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

——— Suit in—

See CASES UNDER JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS.

See WITHDRAWAL OF SUIT. [I. L. R., 21 Calc., 428, 514

——— Suit to set aside order of—

See CASES UNDER JURISDICTION OF CIVIL COURT REVENUE COURTS—ORDERS OF REVENUE COURTS

REVENUE OFFICER.

See BENGAL TENANCY ACT, s 102. [I. L. R., 21 Calc., 38
I. L. R., 24 Calc., 244

See BOMBAY LAND REVENUE ACT, s. 3. [I. L. R., 20 Bom., 603

REVENUE OFFICER—*concluded.*

See BOMBAY REVENUE JURISDICTION ACT, s. 11 . I. L. R., 20 Bom., 803

See SETTLEMENT OFFICER.

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 24 Calc., 462

REVENUE SERVANT.

See MADRAS REVENUE RECOVERY ACT, s. 52 . I. L. R., 15 Mad., 35

REVERSIONER.

See CASES UNDER DECLARATORY DECREE SUIT FOR—REVERSIONERS.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION Y WIDOW.

See CASES UNDER HINDU LAW—REVERSIONERS.

See CASES UNDER HINDU LAW—WIDOW—DECREES AGAINST WIDOW AS REPRESENTING THE ESTATE OR PERSONALLY.

See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION . I. L. R., 1 All., 503
[I. L. R., 8 Mad., 304
9 W. R., 598
I. L. R., 14 Calc., 323
I. L. R., 10 All., 407
I. L. R., 14 All., 377
I. L. R., 18 Bom., 534
I. L. R., 19 Bom., 36
I. L. R., 22 Mad., 356

See CASES UNDER LIMITATION ACT, 1877, ARTS. 140 AND 141.

See CASES UNDER LIMITATION ACT, 1877, ART. 144 (1859, s. 1, CL. 12)—ADVERSE POSSESSION.

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
[5 B. L. R., 585
I. L. R., 1 All., 282
I. L. R., 8 All., 365, 429
I. L. R., 9 Calc., 463
I. L. R., 22 All., 382

——— Interest of—

See INSOLVENT ACT, s. 7.
[I. L. R., 21 Bom., 319

REVIEW.

See DIVORCE ACT, s. 16.
[I. L. R., 6 Bom., 416

See LETTERS PATENT, HIGH COURT, CL. 15.
[I. L. R., 10 Calc., 108

See CASES UNDER LIMITATION ACT, 1877, s. 5.

See CASES UNDER LIMITATION ACT, 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—WHERE THERE HAS BEEN A REVIEW.

See PRACTICE—CIVIL CASES—REVIEW.
[10 W. R., 54
24 W. R., 430

See PRACTICE — CIVIL CASES — WITHDRAWAL OF SUITS OR APPEALS.
[I. L. R., 7 Bom., 287

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS.

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—REVIEWS.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[I. L. R., 1 All., 296
4 C. L. R., 14

——— Admission of, after time.

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[2 B. L. R., A. C., 181
5 B. L. R., 316

——— Application for—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE - TIME FOR APPEALING.
[B. L. R., Sup. Vol., 585

See COURT FEES ACT, s. 14.
[9 C. L. R., 479

See COURT FEES ACT, SCH. I, ARTS. 4 AND 5 . I. L. R., 4 Bom., 26
[14 W. R., 249
7 Mad., Ap., 1
I. L. R., 9 Mad., 134
I. L. R., 20 All., 410
I. L. R., 11 All., 176

See CASES UNDER LIMITATION ACT, 1877, s. 5.

REVIEW—*continued.*

See LIMITATION ACT, 1877, ART 179 (1859, s. 20)—STEP IN AID OF EXECUTION—RESISTANCE TO LEGAL PROCEEDINGS.
[B. L. R., Sup. Vol., 718
3 B. L. R., Ap., 33
18 W. R., 190
19 W. R., 266

———— Order granting—

See APPEAL—ORDERS.
[I. L. R., 12 Bom., 171
I. L. R., 16 Calc., 788
I. L. R., 13 Bom., 496
I. L. R., 22 Calc., 3, 734, 984
I. L. R., 18 All., 44
I. L. R., 21 Bom., 328
I. L. R., 24 Calc., 878

———— Order rejecting—

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS
[1 W. R., Mis., 13
5 W. R., Mis., 17
1 B. L. R., F. B., 1

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—MISCELLANEOUS CASES . 2 B. L. R., A. C., 264

See LETTERS PATENT, HIGH COURT CL 15 . . . 4 B. L. R., A. C., 10

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES
[5 B. L. R., Ap., 29

———— Order setting aside or affirming order granting—

See SPECIAL OR SECOND APPEAL— [illegible]

1 ORDERS SUBJECT TO REVIEW.

1. ———— Decrees—*Civil Procedure Code 1859, s. 376—Orders, Review of.* S. 376 of the Code of Civil Procedure authorized reviews of judg- [illegible] ... decrees of Court and also in re [illegible] ... [illegible]

[illegible] R., 345

2. ———— Order relating to execution of decree—A Judge has power to review an order relating to the execution of a decree (*Dissentiente,* MORGAN, J.) HARADHUN MOOKERJEE *v.* CHUNDER MONEY ROY . Marsh., 205: W. R., F. B., 66
[1 Hay, 577

LOTF ALI KHAN *v.* COURT OF WARDS
[6 W. R., Mis., 127

NARAYANBHAI LALBHAI *v.* GANGAKRISHNA BALKRISHNA . . . 4 Bom., A. C., 87

REVIEW—*continued.*

1. ORDERS SUBJECT TO REVIEW—*continued.*

3. ———— Review of an order dismissing an execution case—*Civil Procedure Code (Act XIV of 1882), ss. 623, 617.*—The scope of s. 623, Civil Procedure Code, is wide enough to admit of the review of an order dismissing an execution case. *Rama Rao v. Dyal Singh, I. L. R., 16 All., 3 0,* and *Hajrat Akramnissa Begam v. Valianissa Begam, I. L. R., 18 Bom., 429* ASOKA KUMAR ROY CHAUDHURI *v.* KHETTRAMONI DASI
[2 C. W. N., 606

4. ———— Order in proceedings under Act XXVII of 1860.—A review of judgment is admissible in proceedings under Act XXVII of 1860, although no express provisions for reviews are contained in the Act. IN THE MATTER OF THE PETITION OF POONA KOOER
[I. L. R., 1 Calc., 101: 24 W. R., 376

IN THE MATTER OF RUKMIN
[I. L. R., 1 All., 287

Contra, SIVU *v.* CHENAMMA 5 Mad., 417

5. Order under Administrator General's Act (II of 1874), s. 63—*Civil Procedure Code, 1877, s. 623.* The order passed under s. 63 of Act II of 1874 (s. 60 of Act XXIV of 1867) can be reviewed under s. 623 of Act X of 1877. SMITH *v.* SECRETARY OF STATE. IN THE MATTER OF ACT II OF 1874 I. L. R., 3 Calc., 340

6. —— Order rejecting application for registration—*Civil Procedure Code, 1859, s. 376—Registration Act, 1871, s. 76 Act XXIII of 1861, s. 38*—S. 38, Act XXIII of 1861, which enacted that "the procedure prescribed by Act VIII of 1859 shall be followed as far as it can be in all miscellaneous cases and proceedings which, after the passing of the Act, shall be instituted in any Court," rendered the whole procedure of Act VIII of 1859, including the power of admitting a review, applicable to a proceeding to compel registration under the Registration Act. An order rejecting an application for registration under s. 76 of the Registration Act of [illegible]

[illegible] mission of a review. IN THE MATTER OF THE PETITION OF ABDOOLLAH BIBEE HOSSEIN *v.* ABDOOLLAH
[I. L. R., 2 Calc., 131: L. R., 3 I. A., 221

reversing the decision of the High Court in IN THE MATTER OF THE PETITION OF ABDOOLLAH
[10 B. L. R., 304: 19 W. R., 303

7. ———— Order admitting appeal to Privy Council.—An appeal to the Privy Council being once admitted whether properly or erroneously, the High Court has no further jurisdiction to review its order and declare the appeal rejected. AMEERUNNISSA BEGUM *v.* INDURJEET KOOWER
[6 W. R., Mis., 97

IN RE WOOMATARA DEBEA . 6 W. R., Mis., 120

REVIEW—*continued.*

1. ORDERS SUBJECT TO REVIEW—*continued.*

8. ——— Order granting leave to appeal to Privy Council.—*Per* PRINSEP, *J.*—An order granting leave to appeal to the Privy Council is open to review. GOPINATH BIRDAR *v.* GOLUCK CHUNDER BOSE . I. L. R., 16 Calc., 292 note

9. ——— Order refusing to admit special appeal—*Act VIII of 1859, ss. 376 and 378—Power of High Court to grant a review—Notice of application for review.*—An order refusing to admit a special appeal is open to review, and the application for review may be made without notice to the other side. JOY COOMAR DUTTA JHA *v.* ESHABEE NUND DUTTA JHA . 10 B. L. R., 155: 18 W. R., 475

See IN RE BARMUTOLLAH

[10 B. L. R., 156 note

where, however, under the circumstances, the Court refused the application.

S. C. BURRAMOOLLAH *v.* NIL CHAND DUTT

[17 W. R., 484

10. ——— Judgment passed on compromise.—No review can be admitted of a judgment passed on a compromise. PURMESSUREE NARAIN SINGH *v.* ROMEEZOODDEEN AHMED . 5 W. R., 226

11. ——— Order refusing leave to sue as a pauper—*Suit in formâ pauperis—Court of original jurisdiction.*—A Court of original jurisdiction has power to entertain an application to review an order refusing a petition for leave to sue *in formâ pauperis* IN THE MATTER OF THE PETITION OF UMASUNDARI DEBI . . 5 B. L. R., Ap., 29

See MAHOMED GAZEE CHOWDHRY *v.* DULLAB BIBEE . 5 B. L. R., 318 note: 11 W. R., 22

12. ——— *Civil Procedure Code (Act X of 1877), ss. 409, 413, 541, 623, 625.*—An order made under s. 409 of the Civil Procedure Code (Act X of 1877) refusing leave to sue as a pauper is subject to review under s. 623. The provisions of s. 413 do not affect the right of a person, against whom such order has been made, to obtain a review. A petitioner applying for such review must file a copy of the order of which he seeks a review, together with a memorandum of objections (ss. 541 and 625). ADARJI EDULJI *v.* MANIKJI EDULJI

[I. L. R., 4 Bom., 414

13. ——— Order disallowing claim to attached property—*Civil Procedure Code, 1859, s. 246.*—A Court has power to grant a review of an order which it has passed under s. 246, Civil Procedure Code, 1859, disallowing a claim made to property attached in execution of a decree. The order granting the review is final under s. 378. COCHRANE *v.* HEERA LAL SEAL . . . . . 7 W. R., 79

14. ——— Order for probate—*Probate and testamentary matters.*—When once probate in solemn form has been granted, no one who has been cited or has taken part in the proceedings, or who was cognizant of them, can afterwards seek to have it cancelled. *Quære*—Whether a review may not be granted. IN THE MATTER OF PITAMBER GIRDHAR

[I. L. R., 5 Bom., 638

REVIEW—*continued.*

1. ORDERS SUBJECT TO REVIEW—*continued.*

See IN THE GOODS OF BHAGGOBATTY DASSEE. PROSUNNOMOYEE DASSEE *v.* ADHORE CHANDRA DUTT

[4 C. W. N., 757

15. ——— Order on reference from Small Cause Court.—An application for a review of judgment by the High Court on a reference from a Small Cause Court was not admissible under the Code of 1859. DOYLE *v.* KHOSAL MUNDLE

[3 W. R., S. C. C. Ref., 8

16. ——— *Civil Procedure Code (Act XIV of 1882), ss. 617, 619, and 623—Judgment on reference from Subordinate Judge with Small Cause Court powers.*—The High Court has no power to review a judgment passed by it on a reference from a Subordinate Judge with Small Cause Court powers. Cl. (c) of s. 623 of the Code of Civil Procedure (Act XIV of 1882) allows of a review of judgment on a reference only from a Court of Small Causes. The judgment of the High Court in such a case is not a decree or order within the meaning of cl. (*b*) of the section, but is simply a statement of the grounds in conformity with which the lower Court is to dispose of the case, as provided by s. 619. RAMCHANDRA PABAJI *v.* SITARAM VINAYAK

[I. L. R., 10 Bom., 68

17. ——— Order in rent suit—*Bengal Rent Act (VIII of 1869)—Orders in rent suits previous to passing of Act.*—Orders in rent suits were not subject to review until the passing of Bengal Act VIII of 1869, which made the Civil Procedure Code applicable to such suits MAHOMED TUCKEE *v.* AHMUDEE BEGUM . . . 3 N. W., 22

MONEEKURNIKA CHOWDHRAIN *v.* COLLECTOR OF MYMENSINGH . . . . 16 W. R., 159

RADHA PERSHAD SINGH *v.* SANSAR ROY

[14 W. R., 27

Though it was held in some cases that the admission of a review in such a case was not illegal. HURCHUND SINGH *v.* ROOPA KOOER 4 N. W., 171

ALI AZIM *v.* RAM MANICK ROY 12 W. R., 195

RAM JEEBUN DOSS *v.* DOYALEE DOSSEE

[11 W. R., 246

SREENATH DUTT *v.* RAMGOPAL CHATTERJEE

[11 W. R., 108

SOOBUL CHUNDER GOOHO *v.* TUMEEZOODDEEN CHOWDHRY . . . . 14 W. R., 414

18. ——— *Order on appeal from Collector under Mad. Act VIII of 1865—Civil Procedure Code, ss. 376, 378.*—A Civil Court, in hearing an appeal from the decision of a Collector under Madras Act VIII of 1865, must be guided by the Civil Procedure Code, and the judgment of the Civil Court may be reviewed under s. 376 of the Code. The order granting a review is final. SUBRAMANIYA PILLAY *v.* PERUMAL CHETTY

[4 Mad., 251

19. ——— Ex-parte decree—*Civil Procedure Code, s. 623.*—It is competent to a party against whom an *ex-parte* decree has been made to

REVIEW—*continued.*

1 ORDERS SUBJECT TO REVIEW—*concluded*

apply for review of judgment MUTTO *v.* ILAHI BEGAM . I L R, 6 All, 65

PORESH NATH MUNDUL *v* KHETTROMONEE DEBIA [20 W. R, 284

ALI AZIM *v* RAM MANICK ROY 12 W. R., 195

Contra, MOTEE CHAND *v* RADHAMADHUB CHAND [2 W. R., Mis, 34

20 ———— *Civil Procedure Code, 1882, s 623—Application of section*—S 623 of the Civil Procedure Code applies to all cases, whether they are disposed of in the presence of the parties or *ex-parte* in the absence of the defendants HARI HUR PERSHAD NARAIN SINGH *v* BUDDU PERSHAD . . . 13 C. L. R., 254

21. ———— **Order dismissing suit for default of prosecution**—*Civil Procedure Code, 1859, ss 119, 376—Re admission of suit*—The plaintiff's suit was dismissed "in default of prosecution,"

one under s. 119, Civil Procedure Code, but might fairly be regarded as an application for review of judgment under s 376, and in that view the misconstruction by the Munsif of the nature of the application was not a sufficient reason for depriving the plaintiff of the relief which he not inequitably obtained by the order passed in it, and the Court of first instance was directed to call on the plaintiff to

See also MAHOMED AZEEMOOLLAH *v* ALI BUKSH [5 N. W., 74

22. ———— **Order for dismissal for default of appearance on order for local investigation**—A case was remanded on appeal (in

2 POWER TO REVIEW.

23 ———— **Power of High Court to review or alter its own decree**—*Civil Procedure Code, 1882, s 623—Ground for review.*—The High Court has no power to alter its own decree, except under the provisions of either s. 206 or s 623 of the Code of Civil Procedure The ground of

REVIEW—*continued*

2. POWER TO REVIEW—*continued*

review must have been existing at the time of the decree, the s. 623 not authorizing review of a decree, which was right, on the happening of a subsequent event. KOTAGHIRI VENKATA SUBBAMMA RAO *v* VELLANKI VENKATARAMA RAO [I. L. R., 24 Mad., 1 L. R., 27 I. A., 197

24. ———— **Power where appeal is admitted by superior Court**—*Civil Procedure Code, 1859*—Under the Code of 1859, a Judge was not competent to hear a review in a case in which a special appeal had been admitted by the higher Court. SHEONATH SINGH *v* RAM THUL RAE N W., Pt. II, 39; Ed 1873, 97

JUGGURNATH SINGH *v* AFZUL KHAN [17 W. R., 130

LALLMUN *v* MANICK CHUND 1 Agra, 133

LUCAS *v* STEPHEN 9 W R, 301

NARAYAN BIN SIDOJI *v* DAYUDBHAI VALAD FATEBHAI 9 Bom, 238

25. ———— **Power of Judge to review**

Assurance and Investment Association Ex-parte Munday, 31 Beav, 206, referred to. MUSSOORIE BANK *v* HIMALAYA BANK I. L. R., 16 All., 53

26. ———— **Order of Revenue Commissioner setting aside sale**—*Public Demands Recovery Act (Beng Act VII of 1880)—Beng. Act VII of 1868—Review of order setting aside sale*—

took possession In a suit to recover possession of an 8 annas share of the talukh on the grounds among others that the order on review was passed without jurisdiction and without notice to the plaintiffs, and as such conferred no title on the purchaser, the District Judge on appeal, held that the order on review, not having been set aside remained in force but he remanded the case under s. 566 for trial of the question of notice On the case coming back to the Appellate Court before another Judge, he held the order on review to be *ultra vires* and the trial of the question of notice to be unnecessary The defendants preferred a second appeal against the last judgment. *Held* that the provisions of the Code of Civil Procedure relating to reviews of judgment were not extended to proceedings under Bengal Acts VII of 1868 and VII of 1880, and that, in the present case, the order passed on review, confirming the sale, was *ultra vires* and of no effect. LALA PRYAG LAL *v* JAI NARAYAN SINGH . I. L. R., 23 Calc., 419

REVIEW—*continued.*

2. POWER TO REVIEW—*continued.*

27. ———— **Power after admission and hearing of special appeal**—*Civil Procedure Code, 1859, s. 376.*—A Judge is right in refusing to entertain an application for review where a special appeal has been admitted, tried, and disposed of. The words of s. 376, Act VIII of 1859, "special appeal shall have been admitted," referred to cases which had advanced beyond the inchoate stage of appeals, and in which it had been shown *primâ facie* that there were errors in law. RAJ DHABEE LALL v. MOHADEO SINGH . . . **11 W. R., 511**

28. ———— *Correction of clerical errors.*—A lower Appellate Court has a right to grant a review of its own judgment for the purpose of correcting a clerical error, even after a special appeal from its decision has been heard and determined by the High Court. A lower Appellate Court has no jurisdiction to review its own judgment so as to modify its substance, as, for example, to alter an award of costs after a special appeal from its decision has been heard and determined by the High Court. OOMANUND ROY v. SUTTISH CHUNDER ROY [**9 W. R., 471**

29. ———— **Power of lower Appellate Court after dismissal of special appeal**—*24 & 25 Vict., c. 104, s. 15.*—Upon the dismissal of a special appeal by the High Court, the appellant in special appeal applied to the High Court for a review of judgment upon the ground of discovery of fresh evidence. This application was rejected, on the ground that the Court could not take cognizance of the merits of a case in special appeal, and therefore could not admit a review upon fresh evidence. The special appellant then applied to the lower Appellate Court for a review of its judgment on the ground of discovery of fresh evidence. This application was admitted, and a review of the judgment was allowed. On application to the High Court under s. 15 of the Charter Act,—*Held* the lower Appellate Court had no jurisdiction to admit the application for review. IN THE MATTER OF THE PETITION OF JADUNATH MOOKERJEE . . . **6 B. L. R., 333**

S C. JODOONATH MOOKERJEE v. PUNCHANUN MOOKERJEE . . . . **14 W. R., 438**

See also IN RE GUNGA BISHEN SAHU [**6 B. L R., 334 note**

BROJONATH KOONDOO CHOWDHRY v. JUMEEROONISSA BIBEE . . . . **7 W. R., 218**

30. ———— **Power where one of several defendants has appealed**—*Application for review on behalf of other defendants.*—The preferring of an appeal against a decision by one defendant does not deprive another defendant of his right to apply for a review of the same decision with reference to s. 376, Act VIII of 1859. BUNKOO LALL SINGH v. BASOOMUNISSA BIBEE . . . **7 W. R., 166**

31. ———— **Power to proceed with review where appeal** [illegible] **equently brought**—*Act VIII of 1859* [illegible] *376.*—A Judge is bound to proceed with [illegible] for a review of [illegible], even th[illegible] appeal has been filed subsequently to the application for review. BHARAT CHANDRA MAZUMDAR v. RAMGUNGA SEN [**B. L. R., Sup. Vol., 362 : 5 W. R., 59**

32. ———— **Power of inferior mofussil Courts to review judgments**—*Review before Civil Procedure Code, 1859—Beng. Reg. XXVI of 1814.*—Whereas by the law in force previous to the Code of Civil Procedure the subordinate Courts could not review their judgment without the permission of a superior Court, the Code removed that inability, and the removal extended to suits, past and pending, as well as future. A party petitioning, after the Code of Civil Procedure came into force, for the review of a judgment in appeal passed in 1849, is entitled to be governed by the terms of the old law (Regulation XXVI of 1814), which allows a review in respect to a decree from which "no further appeal" may have been admitted by a superior Court; and a "further appeal" included both a second or special appeal and a summary appeal. JOOGUL KISHORE SINGH v. OOGUR NARAIN SINGH . . **8 W. R., 483**

33. ———— The inferior Courts in the mofussil have no jurisdiction to review their own judgments, except under the circumstances and with the limitations set forth in the Code of Civil Procedure. BURRA FUKEER DOSS BERA v FUKEER DOSS BERA . . . . **20 W. R., 180**

34. ———— **Power of Insolvent Court**—*Insolvent Court, Bombay—Jurisdiction.*—The Court for the Relief of Insolvent Debtors at Bombay has jurisdiction to review its own orders. IN THE MATTER OF THUCKER BHAGVANDAS [**I. L. R., 4 Bom., 489**

35. ———— **Power of Judge of mofussil Small Cause Court**—*Mofussil Small Cause Courts Act (XI of 1865), s. 21—Code of Civil Procedure (Act X of 1877), s. 63, and Ch. XLVII, Sch. II.*—The Judge of a mofussil Small Cause Court may grant an application for a review of judgment under the Code of Civil Procedure. ISAN CHUNDER BANERJEE v. LUCHUN GOPE. KEMP v. PREM NARAYAN SING [**I. L. R., 5 Calc., 699 : 5 C. L. R., 539**

36. ———— **Application for re-admission of appeal dismissed on failure to deposit costs of paper book**—*High Court Rules, Part II, Ch. VIII, rule 17—Civil Procedure Code (1882), s. 627.*—The appellant in an appeal from an original decree having failed to deposit the estimated amount of costs for the preparation of the paper book, the appeal was dismissed under rule 17 of the High Court Rules, Part II, Ch. VIII. An application for re-admission of the appeal was then made on behalf of the appellant; and a rule granted by a Division Bench calling upon the opposite side to show cause. *Held* (by PETHERAM, C.J., and PRINSEP and GHOSE, JJ., reversing the decision of BEVERLEY, J.), that the matter before the Court was not an application for review of judgment, and could not be disposed of by a single [illegible] of the High Court under s. 627 of the Civil

REVIEW—*continued*

2 POWER TO REVIEW—*continued.*

Procedure Code RAMHARI SAHU *v* MADAN MOHAN MITTER . . I. L. R., 23 Calc., 339

37. ———— Order dismissing appeal for default in depositing costs of paper book—*High Court Rules, Part II, Ch VIII, Rule 17—Procedure to set aside order—Civil Procedure Code (1882), ss 623 and 626*—A decree of a Division Bench of the High Court, dismissing an appeal for default in depositing the estimated costs of preparation of the paper book under rule 17 of the High Court Rules Part II, Ch VIII, can only be set aside by an order under s 626 of the Civil Procedure Code (Act XIV of 1882) *Ramhari Sahu v Madan Mohan Mitter, I L R, 23 Calc 339*, so far as it decides the contrary, is wrongly decided FATIMUNNISSA *alias* KANEZ FATIMA *v* DEOKI PERSHAD [I L R., 24 Calc., 350

IKBAL HOSSAIN *v* DEOKI PROSHAD [1 C. W. N., 21

38 ———— Decree properly made against minor—*Right of minor to impeach decree on attaining majority—Form of decree against minor—Practice—Procedure*—A testator in his will directed his daughter in law *I* (defendant No 1) to adopt his nephew *K* (defendant No 2), and he devised the residue of his estate to him The executors of the will subsequently brought this suit to have the will construed and the rights of *K* in the testator's estate ascertained and declared A decree was made on the 1st October 1887, by which it was declared that *K*'s adoption was a condition precedent to his inheritance, and that, unless he was adopted, he was not entitled to any part of the testator's property On the 22nd October 1894 *K* filed a petition of review, stating that at the date of the decree he was a minor and had only recently, *viz* on the 14th December 1894 attained the age of eighteen years. He contended that there was error apparent on the face of the decree, inasmuch as it did not provide that he should have an opportunity of showing cause against it in so far as it affected his interest after he attained his majority *Held* that the review could not be granted The Courts in India, after deciding an issue in which an infant, party to suit is interested, have no power to reserve to the infant the right of questioning such decision At all events a decree is not erroneous for not containing such a provision when the issue in which the infant is interested has been fully gone into and argued before the Court A decree passed against an infant properly represented is binding upon him like a decree passed against an adult but it is open to the infant to impeach such decree by a suit in cases where his guardian has been guilty of fraud or negligence in allowing the decree to be passed against him CURSANDAS NATHA *v* LADKAVAHU [I. L. R., 19 Bom., 571

39 ———— Dismissal of suit for default—*Civil Procedure Code, 1882 ss 98, 99 and 623—No application to reinstate suit—Application barred by negligence*—When a suit was dismissed for default under s. 98, Civil Procedure Code, and the plaintiff neglected to make an application within thirty days from the date of dismissal to get the suit restored to the file—*Held* that the Court had no jurisdiction under s. 623, Civil Procedure Code, to reinstate the case where a person by his own negligence has allowed his rights under s 99 to be barred. KOILASH MUNDAL *v* NABADWIP CHANDRA KAR [2 C W N., 318

40. ———— Dismissal of a suit for default under s 102—*Civil Procedure Code (Act XIV of 1882), ss 102 103, and 623 Review of judgment without applying to reinstate the suit under s 103 of the Code*—When a suit was dismissed for default under s 102 of the Code of Civil Procedure and an application for review of judgment was made by the plaintiff without a previous application to have the order of dismissal set aside under s. 103 of the Code,—*Held* that the Court had jurisdiction to entertain the application for review of judgment *Koilash Mundal v Nabadwip Chandra Kar 2 C W N, 318*, distinguished RAJ NARAIN PURKAIT *v* ANANGA MOHAN BHANDARI I. L. R., 26 Calc., 598

41. ———— Order for review—*Civil Procedure Code 1882 s 623—Omission to record reasons for granting—Validity of order*—An order intended to operate as an order for review is not invalidated by an irregularity in its form by reason of which it purports to be an order made on an application to set aside a decree and restore a suit for trial The provision in s 626 of the Code of Civil Procedure that a Judge granting an application for a review "shall record with his own hand his reasons for such opinion" is directory and an order is not necessarily invalidated by the fact that the reasons are not recorded though there may be cases in which it is necessary in the interests of justice that the reasons should be recorded and in such cases the record would be essential to the validity of the order. *Oyimund Asram v Gopin Mohan Sen I. L. R., 22 Calc 734* referred to. MANICKA MUDALIER *v* GURUSAMI MUDALIAR I L R., 23 Mad., 490

42 ———— Power of Special Judge to review ex-parte order—*Dekkan Agriculturists Relief Act (XVII of 1879), s 53—Its review of Court*—The Special Judge under the Dekkan Agriculturists Relief Act (XVII of 1879) has power to review an *ex-parte* order made by him RAMCHANDRA NARAYAN KULKARNI *v* DRAUPADI [I. L. R., 20 Bom., 291

43 ———— Review of first Court's order—*Dekkan Agriculturists' Relief Act (XVII of 1879) ss 53 73, and 74—Civil Procedure Code (1882), Application of—District Judge, Jurisdiction of—Assistant Judge Jurisdiction of—Its revision of Court*—An Assistant Judge having found that the defendants in a suit pending before him were not agriculturists the defendants presented a petition for review of that finding, and in review the Assistant Judge came to a contrary conclusion *Held* that, as s. 74 of the Dekkan Agriculturists' Relief Act (XVII of 1879) only makes the Civil Procedure Code

REVIEW—*continued.*

2. POWER TO REVIEW—*continued.*

(Act XIV of 1882) applicable to suits before the Subordinate Judge, the conduct of proceedings before a District or Assistant Judge when sitting in revision under s. 53 of Act XVII of 1879 is within his own discretion, and the granting of a review on the ground of mistake as to the nature of a defendant's income is a reasonable exercise of such discretion. BADARICHARYA v. RAMCHANDRA GOPAL SAVANT [I. L. R., 19 Bom., 113

44. ———— **Power of Special Judge to review his own decree** *Dekkan Agriculturists' Relief Act (XVII of 1879), ss. 53, 73, and 74—Application of Civil Procedure Code (1882) to proceedings of Special Judge—Discretion of Court—Superintendence of High Court—Civil Procedure Code, s. 622.*—The Special Judge appointed under the Dekkan Agriculturists' Relief Act (XVII of 1879) (the defendant not appearing) reversed, in revision under s. 53 of that Act, the decree of a Subordinate Judge and passed a decree for the plaintiff. One of the defendants, who, it appeared, had not been served with notice of the previous application for review, subsequently applied to the Special Judge to review his decree, and that application was granted on the ground that the applicant had not had notice of the former review. On this subsequent review the Special Judge discovered that he had made a mistake with reference to the date of certain documents, and that this mistake had led him to a wrong conclusion upon the merits of the case. He consequently reversed his former order and dismissed the suit, confirming the original decree of the Subordinate Judge. The plaintiff then applied to the High Court under its extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882). *Held* that in granting a re-hearing the Special Judge had exercised a reasonable discretion with which the High Court could not interfere in its extraordinary jurisdiction. The Civil Procedure Code is not applicable to proceedings before the Special Judge, and the conduct of such proceedings rests within his discretion. *Badaricharya* v. *Ramchandra Gopal Savant, I. L. R., 19 Bom., 113,* approved. PARSONS, *J.*—The Special Judge cannot, under the Dekkan Agriculturists' Relief Act, review his decree and order a new trial on the ground of discovery of fresh evidence, but he has discretional power to review his decree in order to correct a mistake into which he has fallen. RAMSING v. KISANSINGH [I. L. R., 19 Bom., 116

45. ———— **Bengal Tenancy Act (VIII of 1885), ss. 103, 143**—*Rules framed under s. 189 of the Bengal Tenancy Act—Whether proceedings under s. 103 of the Bengal Tenancy Act are suits between landlord and tenant—Code of Civil Procedure (Act XIV of 1882).*—Proceedings under s. 103 of the Bengal Tenancy Act are suits between landlord and tenant within the meaning of s. 143 by virtue of the rules framed under s. 189 of that Act; therefore the provisions of the Code of Civil Procedure relating to review of judgment are applicable to such proceedings. ACHHA MIAN CHOWDHRY v. DURGA CHURN LAW . . . . I. L. R., 25 Calc., 146 [2 C. W. N., 137

REVIEW—*continued.*

2. POWER TO REVIEW—*concluded.*

46. ———— **Power to grant second review**—*Civil Procedure Code, 1859.*—A Court has no jurisdiction to grant a second review of judgment on the application of the same party under the Code of Civil Procedure, 1859. VENGAMA SHETTY v. PAMOO SHETTY . . . . 5 Mad., 323

47. ———— *First review not appealed from nor shown to be erroneous.*—A second review of judgment was refused as not contemplated either by the law itself or the Full Bench ruling of 12th February 1866, the first review being neither appealed against nor shown to be wrong. TARANATH ROY v. RAJ BULLUB BHUNJE . 7 W. R., 464

NASIRUDDIN KHAN v. INDRONARAYAN CHOWDHRY [B. L. R., Sup. Vol., 367 : 5 W. R., 93 1 Ind Jur., N. S., 147

48. ———— **Admission of review after prior order rejecting it**—*Act VIII of 1859, ss. 376, 377, 378, and 380—Order rejecting review.*—An order rejecting a review is not conclusive, and the Court may, in the exercise of its discretion, admit a review even after a prior order rejecting it. SETON-KARR, *J*, differed. NASIRUDDIN KHAN v. INDRONARAYAN CHOWDHRY . B. L. R., Sup. Vol., 367 [1 Ind. Jur., N. S., 147 : 5 W. R., 93

KASHEENATH ROY v. LUCKHEENARAIN CHATTERJEE . . . . . . W. R., 1864, 91

FUKHEEROODDEEN v. KALACHAND SIRDAR [1 W. R., 287

NEEDOO MONEE DOSSEE v. SARODA MONEE DOSSEE
DOORGANATH SHOOR v. SOOKHMY BISWAS [2 W. R., 61, 62

RASH BEHAREE SINGH v. KOONJ BEHAREE SINGH [W. R., 1864, Mis., 31

ASUDOODDEEN HYDER v. ABDOOL KUREEM [6 W. R., 110

49. ———— **Second application for review**—"*Final*"—*Civil Procedure Code (Act VIII of 1859), s. 378—Civil Procedure Code (Act XIV of 1882), ss. 623, 629.*—There is nothing in the Civil Procedure Code (Act XIV of 1882) which prevents a second application for a review being made after a previous application for review has been made and rejected, and such an application can therefore be entertained. The word "Final" in s. 629 of Act XIV of 1882 bears the same meaning, and ought to have the same construction put upon it as was put upon the same word in s. 378 of Act VIII of 1859 by the Full Bench in *Nasiruddin Khan* v. *Indronarayan Chowdhry, B. L. R., Sup. Vol., 367.* GOBINDA RAM MONDAL v. BHOLANATH BHATTA [I. L. R., 15 Calc., 432

3. FORM OF, AND PROCEDURE ON, APPLICATION.

50. ———— **Form of application.**—Applications for review of judgment should set forth concisely the grounds of objection to the decision of

REVIEW—*continued*

3 FORM OF, AND PROCEDURE ON, APPLICATION—*concluded.*

51. ——— To what Court to be made —*Review of judgment of Sudder Court rejecting special appeal.*—An application for a review, on the ground of the discovery of new evidence, of a judgment of the late Sudder Court rejecting a special appeal, ought not to be made to the High Court, but to the Court of original jurisdiction RAO BANEEHAM *v.* NEWAZ BIBEE . . . . 8 W. R., 511

52. ——— *Presentation of application to Munsarim instead of Judge* —On the 26th January 1889 an application was presented to the

53. ——— Application for review by

54. ——— Admission of review without notice —A proceeding admitting a review, without notice to the opposite party, as required by s. 378 of the Code of Civil Procedure, 1859, is wholly vitiated by such defect, and not binding on that party GOLABOO *v.* RAMDYAL SINGH . 8 W. R., 304

55. ——— Application for review—*Copy of judgment, decree, or order sought to be reviewed—Civil Procedure Code (1882), ss 541 and 625—Limitation Act (XV of 1877), s. 12*—It is not necessary that an application for review of judgment should be accompanied by a copy of the decree, order, or judgment sought to be reviewed WAJID ALI SHAH *v.* NAWAL KISHORE

[I. L. R., 17 All., 213

4 REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE.

56. ——— Proper Court to review judgment—*Power of one Judge to review another's judgment* —As a general rule, the Court which pronounces a judgment is the only Court that can review that judgment RAM NATH *v.* GOWHER

[2 N W., 230

57. ——— Hearing of application by different Judge when allowable *Delay* —A review was intended to be a consideration of the same subject by the same Judge, as distinguished from an appeal, which is a hearing before another tribunal A review therefore should be prosecuted with as much expedition as possible with a view to the re hearing before the same Judge. The exceptions to this rule are allowable only *ex necessitate,*

SINGH *v.* GOVERNMENT OF INDIA

[3 W. R., P. C, 45: 17 Moore's I A., 283

See SURUT SOONDUREE DEBIA *v.* RAJENDUR KISHORE ROY CHOWDHRY 9 W. R, 125

58 ——— Power of Judge to review judgment of predecessor—*Civil Procedure*

circumstances stated in s 379, Act VIII of 1859, from considering that application AMAN ALI CHOWDHRY *v.* KASIM ALI 6 W. R., 316

59. ——— Power to review judgment of predecessor — *Ground of review* —A lower Court acts without jurisdiction if it admits a review of its predecessor's judgment, unless either the party apply for review within ninety days or the Court is satisfied that there is just and reasonable cause for not having preferred the application within the limited period GOSSIE DOSS *v.* NARAIN DOSS

[W. R, 1864, 287

PURMESSURRE NARAIN SINGH *v.* ROMEEZOODDEEN AHMED . 5 W. R., 226

SREENATH CHOWDHRY *v.* KRITARTOMOYEE DOSSEE . 18 W. R., 286

60. ——— *Exercise of power* —A Subordinate Judge has the power under the law to review the decision of his predecessor, although the power is one which should be exercised very sparingly KANGALEE CHURN JOSH *v.* DURSUNEE DOSSEE . . 16 W. R., 103

61. ——— *Civil Procedure Code, 1859, ss 376, 378—Power of Judge to review judgment of his predecessor* —A Judge has no power to allow a review of his predecessor's judgment on the ground that he comes to a different conclusion on the facts of the case. The general words used in ss. 376 and 378 of Act VIII of 1859 are controlled

REVIEW—*continued.*

4. REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE—*continued.*

and restricted by the particular words, and it is only the discovery of new evidence, or the correction of a patent and indubitable error or omission, or some other particular ground of the like description, which justifies the granting of a review. ROY MEGHRAJ *v.* BEEJOY GOBIND BURRAL

[I. L. R., 1 Calc., 197: 23 W. R., 438

See IN THE MATTER OF THE PETITION OF MATHRA PARSHAD . . . . I. L. R., 1 All., 296

BANEE MADHUB BOSE *v.* KALI CHURN SINGH ROY . . . . 24 W. R., 387

MUNEEROODDIN *v.* KADIR BUKSH

[24 W. R., 410

WOLFUT *v.* NUSRUTOOLLAH . 25 W. R., 48

62. ———— *Ground for review—Civil Procedure Code, 1859, ss. 376-378.*—Where a Judge allowed a review of his predecessor's judgment on the sole ground that it appeared to him that the judgment of his predecessor had done injustice,—*Held* by the High Court (MORGAN, C.J., and INNES, J.) that, though the generality of the terms used in the sections of the Procedure Code, Act VIII of 1859, relating to review of judgment—*viz*, "other good and sufficient reason" (s. 376). "and otherwise requisite for the ends of justice" (s. 378),—confers a wide jurisdiction, this jurisdiction could not be held to authorize a Judge to revise and reverse his predecessor's decree on the ground above mentioned. If the review is asked for in reference to the conclusions of fact drawn from the evidence, it should not be granted, simply upon the same evidence. *Reasut Hossein* v. *Abdoollah, I. L. R., 2 Calc., 131,* discussed. RAMAN *v.* KURNATHA THARAKAN . . . I. L. R., 2 Mad., 10

63. ———— Power of Judge to review case after transfer to his file—*Order dismissing suit.*—A Judge cannot, by transferring a case to his own file, confer on himself the power to review an order of dismissal pronounced by a Principal Sudder Ameen. GOLAM ESHA *v.* HURRISH CHUNDER MOOKERJEE . . W. R., 1864, Mis., 29

64. ———— Case transferred to another Court on abolition of original Court—*Civil Procedure Code, 1882, ss. 623, 624.*—S. 624 of the Code of Civil Procedure must be read as a proviso to s. 623. *Held* therefore that, when a Court had been abolished and its business transferred to a Court presided over by another Judge, such Judge should not entertain an application for review of judgment except in the case provided for by s. 624. SARANGAPANI *v.* NARAYANASAMI

[I. L. R., 8 Mad., 567

65. ———— Application presented to original Judge—*Grant of application, Notice of—Hearing by successor—Civil Procedure Code (Act XIV of 1882), s. 624.*—An application for review of judgment, upon a ground other than those mentioned in s. 624 of the Civil Procedure Code, if presented to the Judge who delivered it, and who thereupon directs notice to be given to the opposite party, may be heard and disposed of by his successor. *Pancham* v. *Jhinguri, I. L. R., 4 All., 278,* dissented from. KAROO SINGH *v.* DEO NARAIN SINGH

[I. L. R., 10 Calc., 80: 13 C. L. R., 261

66. ———— *Civil Procedure Code (Act XIV of 1882), s. 624—Execution-case struck off in absence of decree-holder and without giving him notice of day fixed for hearing it—Ground for review by another Judge—Practice.*—In the absence of the decree-holder and without giving him notice of the day fixed for the hearing of the darkhast, the Subordinate Judge struck off an execution-proceeding. *Held* that, under s. 624 of the Civil Procedure Code, an application to review the order could not be heard by the successor of the Judge who made it. KHEMA KANUJI *v.* DHANJI FRAMJI . . . I. L. R., 14 Bom., 101

67. ———— *Civil Procedure Code (Act XIV of 1882), ss. 624, 626 (c)—Civil Procedure Code Amendment Act (VII of 1888), s. 59—Notice of hearing review.*—An application for review of judgment upon grounds other than those mentioned in s. 624 of the Code of Civil Procedure (as amended by Act VII of 1888), if presented to the Judge who delivered it, and who has thereupon directed notice to be given to the opposite party, may be heard and disposed of by his successor. GANPAT *v.* JIVAN . . I. L. R., 16 Bom., 603

68. ———— *Civil Procedure Code, 1882, s. 624—Application for review heard by successor to Judge who passed the decree.*—When an application for review is presented to the Judge who made the decree, and he thereupon issues notice to the other side, the application is "made" to him within the meaning of s. 624 of the Civil Procedure Code, and may be heard and disposed of by his successor in office. *Karoo Singh* v. *Deo Narain Singh, I. L. R., 10 Calc., 80,* followed. FAZEL BISWAS *v.* JAMADAR SHEIK

[I. L. R., 13 Calc., 231

69. ———— *Civil Procedure Code, 1877, ss. 623, 624—To whom application may be made—Meaning of "made."*—The term "made" in s. 624 of the Civil Procedure Code does not mean "presented," but means and includes the hearing and determination of the application for review of judgment. *Held* therefore, where an application for a review of judgment on the ground, not of the discovery of new and important matter or evidence as mentioned in s. 623 of the Civil Procedure Code, or of a clerical error apparent on the face of the decree, but on other grounds, was presented to the District Judge who delivered the judgment, and such Judge was transferred before he could entertain such application, that his successor was not competent to entertain it. PANCHAM *v.* JHINGURI

[I. L. R., 4 All., 278

70. ———— *Civil Procedure Code (Act XIV of 1882), ss. 623 and 624—"New and important matter"—Money paid into Court*

REVIEW—*continued.*

4. REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE—*continued*

under a decree to abide the result of an appeal to the Privy Council from a former decree on which it is based—Application to recover the money on the reversal of the former decree—By a deed of sale, dated 9th May 1858, certain lands belonging to a minor talukhdar were sold by his mother and natural guardian to the plaintiffs' father. The lands were described as nakri (*i e*, held free of assessment) and the sale-deed provided that in case the vendee were at any future time compelled to pay assessment to Government in respect of the nakri lands the vendor would recoup the vendee for any payment so made. In 1872 Government for the first time levied assessment on the nakri lands. In 1876 the plaintiff filed a suit against the talukhdar to recover the amount of assessment paid by them in respect of the nakri lands for the years 1872–76. The High Court passed a decree in plaintiffs' favour in March 1883. Against this decree the talukhdar appealed to the Privy Council. In April 1883 the plaintiffs filed a second suit on the same cause of action to recover from the talukhdar the amount of assessment levied on the nakri lands for the years 1877–82. In this suit a decree was passed against the talukhdar solely on the strength of the High Court's decree in the former suit. In execution of this decree, the plaintiffs attached the talukhdar's property. Thereupon the talukhdar deposited in Court the amount due under the decree, and applied to the Court for removal of the attachment, and for stay of further proceedings in execution pending the disposal of his appeal to the Privy Council in the former suit. This application was granted. In March 1887 the Privy Council decided the appeal in favour of the talukhdar, and reversed the High Court's decree. Thereupon the talukhdar applied for a refund of the money he had deposited in Court. The Court suggested that his proper remedy was by an application for review of the decree in the second suit. The talukhdar accordingly presented a petition of review. This petition was rejected by the District Judge, on the ground that he had no jurisdiction to grant a review of his predecessor's decision except on the grounds set forth in s. 624 of the Code of Civil Procedure. *Held* that the District Judge had jurisdiction to entertain the application for review. The decision of the Privy Council reversing the decree of the High Court in the first suit, having been passed subsequently to the decree in the second suit, which depended on the reversed decree of the High Court, was "new and important matter" within the meaning of ss. 623 and 624 of the Code of Civil Procedure. WAGHELA RAISANGJI SHIVSANGJI *v.* MASLUDIN . . I. L. R., 13 Bom., 330

71. ———————— *Code of Civil Procedure (Act XIV of 1882), ss. 623, 627—Practice*—A second appeal was decided on the 1st June 1888 in favour of the respondent by two Judges of the High Court. On the 24th July 1888 an application for review was filed with the Registrar. Various reasons prevented the two Judges from sitting together until the month of March 1889. On the 6th March the matter came up before them, when a rule was issued calling upon the other side to show cause why a review of judgment should not be granted, being made returnable on the 28th March 1889. On the 28th March one of the two Judges had left India on furlough, and the rule was taken up, heard and made absolute by the other sitting alone. *Held* that he had jurisdiction to hear the rule. AUGHOR CHURN MOHUNT *v.* SHAMONT LOCHUN MOHUNT

[I. L. R., 16 Calc., 788

72. ———————— *Civil Procedure Code, s. 624—Grant of application for review by successor of original Judge*—An application for review of judgment was presented on other grounds than those specified in s. 624 to a District Munsif who had delivered the judgment, and he thereupon ordered the decree to be produced. The District Munsif having resigned, his successor heard and [illegible] CHERU KURUP *v.* CHERU KANDA KURUP

[I. L. R., 12 Mad., 509

73. ———— N.-W. P. Rent Act (XII of 1881), s. 185—*Civil Procedure Code (1882), s. 623*—S. 623 and the following sections of the Code of Civil Procedure which deal with reviews of judgments have no application to suits and proceedings under the N. W. P. Rent Act, 1881. Where s. 185 of Act XII of 1881 applies, it is only in cases where there is no right of appeal that a review can be granted, and that only on the special ground provided for in the Act itself. WAZIR SINGH *v.* KISHORI RAWANJI . . I. L. R., 10 All., 522

5. GROUNDS FOR REVIEW

74. ———— Good and sufficient reason —*Change of incumbent of office of Judge*—A Court has the power, for any reason that it may consider good and sufficient, to grant a review of its judgment [illegible] (during the ninety days) of office incumbents. MOTOORA *v.* ABLAK ROY . . 11 W. R., 107

75. ———— Unfairness of decision—*Power to admit review*—When once a Civil Court has passed a final decision between the parties, it loses jurisdiction over the suit except for the purposes of executing the decree; and it cannot hold a new trial of the same unless, for some reason within the Procedure Act, the first trial appears to have been unfair between the two parties. LUKEET MOHUN ROY CHOWDHRY *v.* SOWTRA BEEBEE . 10 W. R., 42

76. ———— Correction of error or omission—*Civil Procedure Code, 1859, ss. 376-378*—PINHEY, *J.*—A review may be admitted on any ground, whether urged at the original hearing of the appeal or not, whenever the Court considers that it

REVIEW—*continued.*

5. GROUNDS FOR REVIEW—*continued.*

is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice ; following *Chintamani Pal* v. *Pyari Mohun Mookerjee, 6 B. L. R., 126.* KALU BIN BHIWAJI *v.* VISHRAM MAWAJI . . . I. L. R., 1 Bom., 543

77. ———— The ground of review of a decree must have been existing at the time of the decree, s 623 not authorizing a review of a decree, which was right on the happening of a certain event. KOTAGHIRI VENKATA SUBBAMMA RAO *v.* VELLANKI VENKATARAMA RAO [I. L. R., 24 Mad., 1 L. R., 27 I. A., 197

78. ———— Error in law.—An error on a point of law is a ground for a review of judgment. KOH POH *v.* MOUNG TAY . . 10 W. R., 143

79. ———— Omission to try material issue—*Act VIII of 1859, s. 376.*—The omission of a Court to take into consideration a material issue is a sufficient ground to admit an application for review of judgment. BIHARI LAL NANDI *v.* TRAILAKHOMAYI BARMANI [3 B. L. R., A. C., 346 : 12 W. R., 223

HUSSUN ALI CHOWDHRY *v.* NASIROODDEEN [16 W. R., 134

WISE *v.* HURO LALL GIREE GOSSAIN [16 W. R., 150

80. ———— *Act X of 1877 (Civil Procedure Code), s. 623—Reasons for applying for review—Error in fact or law.*—A Divisional Bench of the High Court, sitting as a Court of second appeal, being of opinion that the Court of first appeal had omitted to determine a certain issue of fact, determined such issue itself and decided the appeal in accordance with its determination of such issue. An application for review of judgment was made on two grounds, *viz.,* (i) that the Bench was wrong in thinking that such issue had not been determined by the Court of first appeal ; and (ii) that the Bench, sitting as a Court of second appeal, was not empowered to determine an issue of fact which the Court of first appeal had omitted to determine, but should have referred such issue to that Court for determination under s. 566 of the Civil Procedure Code. *Held* that, looking to the provisions of that Code relating to review of judgment, such application ought not to be allowed on the grounds mentioned, which virtually disclosed reasons for appeal from the judgment. SHEO RATAN *v.* LAPPU KUAR [I. L. R., 5 All., 14

81. ———— Omission to decide issue.—The absence of a formal finding on an issue tried and decided by a Court of first instance is not an error calling for review of judgment in the High Court. SABAPATHI *v.* SUBRAYA . I. L. R., 2 Mad., 58

82. ———— Omission to consider effect of documentary evidence—*Civil Procedure Code, 1859, ss. 376-378.*—Where a Judge has, in deciding a case, omitted to consider the effect of important documentary evidence filed with the plaint which was not taken issue upon, and which materially affects the merits of the case, he is competent, under ss 376 to 378 of Act VIII of 1859, to grant a review and re-hear the case. MAHADEVA RAYAR *v.* SAPPANI . . . . I. L. R., 1 Mad., 396

83. ———— Erroneous decision on immaterial point.—*Held* that, when an issue which decides the case on the merits has been found in favour of either party, a review of judgment will not be granted merely because there has been an erroneous decision on a point affecting an issue which, in consequence of the finding, has become immaterial. RAKUB DOSS *v.* SOORAJ MULL [Bourke, O. C., 131

84. ———— Summarily discrediting documentary evidence without inspection—*Report of Commissioner to make local inquiry.*—An application for a review of judgment was made to a Court of appeal on the ground that certain very material documents on which the Court of first instance had relied had been summarily discredited without being inspected by the Court of appeal, and that the Court of appeal had erred in declaring the report of a Commissioner appointed by the Court of first instance for the purpose of making a local inquiry to be unworthy of reliance, because he was a mohurrir of the Court of first instance. *Held* that, in granting the review applied for, the lower Appellate Court had not exceeded the discretion vested in it by law. ABDUL RAHIM *v.* RAGHA RAI . I. L. R., 1 All., 363

85. ———— It may be competent to a Judge to entertain an application for a review, although such application contains no distinct allegation of an error in law in the order sought to be reviewed, nor any suggestion of the discovery of new evidence. IN THE MATTER OF THE PETITION OF ABDOOLLAH. REASUT HOSSEIN *v.* ABDOOLLAH [I. L. R., 2 Calc., 131 : L. R., 3 I. A., 221

86. ———— Omission to examine witness—*Objection not taken on appeal.*—That the lower Court should have improperly neglected to examine a witness is not a ground for a review of judgment, if the objection was not taken when the case was heard by the Court in regular appeal. MUNSHAD BIBEE *v.* LUCHMEEPUT SINGH . 9 W. R., 129

87. ———— Error in not remanding case.—The fact that the High Court ought to have remanded the case on the ground that the Judge had wrongly decided a point of law is no ground for review. PROSUNNONATH DUTT *v.* JUDOONATH PAUL [9 W. R., 589

88. ———— Further consideration of evidence—*Probability of different conclusion.*—It is not a proper ground for granting a review of judgment that a Judge, by going through the evidence a second time, might arrive at a different conclusion. CHUNDER CHURN AUGGRODANY *v.* LOODUNRAM DEB . . . . . 25 W. R., 324

REVIEW—*continued*

5 GROUNDS FOR REVIEW—*continued*.

89 ——— Opportunity to re-argue case—*Chance of altering decision*—A review cannot be given merely for the purpose of allowing the parties to re-argue the case upon the evidence, upon the chance of eventually throwing doubt upon the decision already passed KOLEEMOODDEEN MUNDUL *v* HEERUN MUNDUL . 24 W. R., 186

90 — — Error in decision—*Additional evidence*—Where a Subordinate Judge admitted a review on the representation of plaintiff that he (the Judge) had made a mistake as to the subject of a certain dagh in a Government halabadee chitta, the applicant filing with his petition for review another chitta and other evidence for the

DASSEE . 14 W. R., [illegible]

91 Erroneous refusal to admit

92 ——— Decision of special appeal

93 ——— Necessity of review for ends of justice—*Omission to raise issue*—A case having been remanded for the trial of an issue under the specific provisions of cl 1, s. 4, Bengal Regulation XI of 1825 an application for review was made on the ground that it was requisite for the ends of

that, as the correctness of this ... be ascertained without going through the record again, the application could not be granted for to grant it would, in fact, be to grant a second special appeal, which is not the object of a review JUGGOBUNDHOO BOSE *v* WISE . 12 W. R., 400

94 Later Privy Council decision—*Facts not fully placed before Court*—A review cannot be granted on the ground that if the

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such as is contemplated in s 376 of Act VIII of 1859 JADUB RAM DEB *v* RAM LOCHUN MUDDUCK [10 W. R., 189

95 Subsequent Full Bench ruling—A lower Court admitted a review of judgment on the ground that the decision of a Divisional Bench of the High Court which it had followed in that judgment had subsequently been overruled by the Full Bench *Held* that the lower Court was not authorized to admit a review of judgment on such ground AMRIT LAL *v* MADHO DAS [I. L. R., 6 All., 232

96 ——— New contrary ruling—*Civil Procedure Code, 1882 s. 623*—Although the discovery of a new ruling may not entitle a party to a review of judgment, yet when a Court is satisfied that its judgment has proceeded upon an erroneous view of the law, the provisions of s 623 of the Code of Civil Procedure allow a review of judgment. VELLAYA *v* JAGANATHA I. L. R., 7 Mad., 307

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granting a review of judgment NOBEEN KISHEN MOOKERJEE *v* SHIB PERSHAD PATTUCK [6 W. R., 101

FERGUSSON *v* GOVERNMENT GOVERNMENT *v* FERGUSSON 9 W R, 168

98 ——— Production of authority on law not before produced—*Civil Procedure*

I. L. R., I C...

99. Errors of law—*Law, Mistaken view of—Civil Procedure Code (Act XIV of 1882), s. 623*—A review of judgment may be granted (if it is necessary for the ends of justice that the judgment should be reviewed) where there is an error of law on the face of the judgment, or where the decision of the Court has proceeded upon a mistaken view of the law. *Jeeo Mahton v. Ram Kishen Sing, I L R, 14 Calc, 18; L. R., 13 I A, 106, referred to.* In this case, without deciding whether there was or not any error in law, the application for review of judgment was refused on the ground that it did not appear there was any danger of its causing a miscarriage of justice IN THE MATTER OF THE PETITION OF SHARUP CHAND MALA. SHARUP CHAND MALA *v* PAT DASSEE [I L R., 14 Calc, 627

100 Subsequent publication of report of case—*Case not brought forward at hearing*—Where a review of judgment was applied for on the ground of the subsequent publication of the report of a High Court decision on a point of law

REVIEW—*continued.*

5. GROUNDS FOR REVIEW—*continued.*

which governed the case, but which had not been urged at the previous hearing, it was considered that the applicant was not to blame for his omission to bring the decision to the notice of the Court at the first hearing, and the application for review of judgment was granted. ACHUTA v. MAMMAVU

[I. L. R., 10 Mad., 357

101. "Any other sufficient reason"—*Civil Procedure Code, s. 623—Power to grant review.*—S. 623 gives a more extensive right of review than existed in England, where a review could only be obtained by showing that there was apparent on the record error in law, or that new and relevant matter had been discovered after the judgment which could not possibly have been used when the judgment was given, or that judgment was obtained by fraud. The words "or for any other sufficient reason" mean that the reason must be one sufficient to the Court or Judge to whom the application for review is made, and they cannot be held to be limited to the discovery of new and important matter or evidence or the occurring of a mistake or error apparent on the record. Whether or not there is in such cases "any other sufficient reason" may depend on a question of law or a question of fact, or a mixed question of law and fact. *Reasat Hosein v. Hadjee Abdullah, I. L. R., 2 Calc., 131*, referred to. In cases where a stay of execution or an injunction is granted on an *ex-parte* application, liberty to apply to the Judge to vary or set aside his order must be implied, if not expressed. *Fritz v. Hobson, L. R., 14 Ch. Div., 542*, referred to. On the 29th July 1886 an application was made by a party against whom the High Court, on second appeal, had passed a decree dated the 18th March 1886, for review of judgment. On the 28th August the applicant made a further application that execution of the decree might be stayed pending the determination of the application for review, and an order was passed *ex parte* granting this application. Subsequently the opposite party applied under s. 623 of the Civil Procedure Code for a review of the *ex-parte* order on the grounds (i) that the Court had no jurisdiction to make it, and (ii) that the application of the 29th July was beyond time, and therefore there could be no review of judgment, and no order for stay of execution pending such review. *Held* that the Court had power, under s. 623 of the Code, to review the *ex-parte* order of the 28th August, and that such order had been made without jurisdiction and ought to be reviewed. *Held* that, having regard to the circumstances that the order of the 28th August was made without jurisdiction, and upon an *ex-parte* application, of which the opposite party had no notice, and interfered perhaps indefinitely with his right to obtain the money in Court under the final and unappealable decree in his favour, as to which no application for review had been granted, and that the application for review of judgment was made after the statutory period of ninety days had expired, and contained no explanation of the delay, sufficient reason for reviewing the order of the 28th August had been shown. AMIR HASAN v. AHMAD ALI . . . . I. L. R., 9 All., 36

102. — — — — — *Civil Procedure Code, s. 623—Omission to serve notice of hearing of appeal on applicant—Practice—Notice to show cause—Right to begin.*—An appeal which was referred to the Full Bench for disposal was heard and determined by the Full Bench, and judgment given in favour of the appellant in the absence of the respondent. Subsequently the respondent applied for a review of judgment, and proved that his absence at the hearing before the Full Bench was due to a mistake which had been made in not serving him with notice of the reference. *Held* by the Full Bench that under the circumstances the applicant's absence at the hearing came within the words "any other sufficient reason" in s. 623 of the Civil Procedure Code, and the review should be granted and the appeal re-heard. Upon the hearing of an application for review of judgment, upon which an order has been passed directing the opposite party to show cause why the application should not be granted, counsel for the opposite party should begin. GHANSHAM SING v. LAL SING . . . I. L. R., 9 All., 61

103. — — Question of general commercial importance—*Special ground.*—Where the point sought to be raised in review had not been raised or argued by either party, but was first taken by the Court itself in giving its opinion upon the case referred to it, the Court granted a review, observing as follows: "The question arising in this case is not a question merely between two parties but is one of great general commercial importance, and under the circumstances, and on the very special grounds I have mentioned, we think that the review ought to be granted" SULLEMAN HUSSEIN v. NEW ORIENTAL BANK CORPORATION . I. L. R., 15 Bom., 267

104. — — — Application for review of an order contrary to law—*Attachment of person in execution of decree—Liability of married woman—Waiver.*—*R*, as surety for her husband, joined with him in executing a bond for R90. In a suit brought upon the bond, a decree was passed against both. *R* was arrested in execution of the decree, and brought before the Court. She was then asked if she desired to apply to be declared an insolvent under the insolvency sections of the Civil Procedure Code (Act XIV of 1882), but not doing so she was committed to jail. Subsequently, however, she applied to be declared an insolvent, but her application was rejected. She then claimed to be released on the ground of her coverture. The Judge rejected her application as being too late. On reference to the High Court,—*Held* that her application for release was virtually an application for review of the order for her imprisonment, on the ground that it was contrary to law; that her mere omission to take the objection at the time of her arrest could not be regarded as a waiver of her right of exemption from arrest; and having regard to the nature of the right claimed, it was one which the Court could not properly decline to consider on review, however late the application might have been. IN RE THE PETITION OF RADHI . . I. L. R., 12 Bom., 228

REVIEW—*continued*

5 GROUNDS FOR REVIEW—*continued.*

105. ——— Erroneous application of s 575, Civil Procedure Code—*Civil Procedure Code, s 623* — One of the cases to which s 575 of the Code does not apply is where, a preliminary

[illegible]

of the appeal, but precedes the hearing or determines that there is no appeal which the Court can hear or decide Where such a preliminary objection is allowed [illegible] reason [illegible] hear [illegible] decree of the Court below. In the case of such a preliminary objection and such a difference of opinion (the Bench being equally divided) the opinion of the senior Judge should, under s 27 of the Letters Patent, prevail. *Appaji Bhivrav* v *Shevlall Khubchand, I L R, 5 Bom, 204,* and *Gridharji Maharaj Tikait* v. *Purushotum Gossami, I. L. R, 10 Calc, 814,* distinguished Where, in such a case, the provisions of the second paragraph of s 575 of the Code were erroneously applied, and the judgment of the junior Judge, holding that the appeal should be dismissed as time-barred, prevailed, and the Court, on appeal under s 10 of the Letters Patent affirmed such judgment.—*Held* that, under the circumstances, there was a mistake or error apparent on the face of the record, and that there was sufficient cause for granting a review of the Court's decree under s. 623 of the Code HUSAINI BEGAM *v.* COLLECTOR OF MUZAFFARNAGAR . I. L. R., 11 All., 176

106 — Production of new document.—*The objection to the admission of a review of judgment on the strength of a new document was* not allowed to prevail in a case where the so-called new document was not the sole reason for the admission of the review HURO GOBIND PAL *v.* HURO SOONDAREE CHOWDHRAIN . . 18 W. R., 316

107. ——— Reversal of decree on which decision was based.—Where claims for rent were decreed by a Deputy Collector on the basis of a decree for a kabuliat which latter decree was subsequently set aside, the proper remedy was an application to the Deputy Collector for a review of his decision MOOBAREK MOOBAJIM *v* MAHOMED AKMAL . . . . . 23 W. R., 161

108 Discovery of new evidence —*Grounds for admission of review in special*

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CHUNDER CHOWDHRY . . . 10 W. R., 112

Ex-parte BASHITYÂGARULU NAYADU [1 Mad., 254

REVIEW—*continued.*

5 GROUNDS FOR REVIEW—*continued*

JACKAMMAL *v* PALNEAPPA CHETTY [5 Mad., 464

PANCHANAN MOOKERJEE *v* RADHA NATH MOOKERJEE . 4 B L. R., A. C, 213

109. ——— *Special Judge, Power of, to review his own order on ground of discovery of fresh evidence—Dekkan Agriculturists' Relief Act, s 53* The Code of Civil Procedure is not applicable to proceedings before the Special Judge under the Dekkan Agriculturists' Relief Act (XVII of 1879) The Special Judge has therefore no jurisdiction to grant a review of a decree or order once made by him on the ground of the discovery of new evidence BABAJI *v* BABAJI [I. L. R, 15 Bom, 650

110 ——— Discovery of fresh evidence —*Evidence showing want of jurisdiction—Ground of review* —As a general rule the discovery of new evidence is not a ground for the admission of a review of a judgment passed in special appeal *Quære*—Whether this is so when such new evidence might affect the jurisdiction of the Court which tried the case When new evidence is discovered, the proper course for the appellant to adopt is to ask leave to withdraw his special appeal and to apply to the lower Court for a review of its judgment NANABHAI VALLABHDAS *v* NATHABHAI HARIBHAI [9 Bom., 89

PANDURANG SADASHIV *v* MORO VASUDEV [6 Bom., A. C., 68

111 *Proof that evidence was not before available*—Before a review can be granted upon the ground of the discovery of new matter it must be stated in the petition and proved that the new matter was not within the applicant's knowledge, or could not be adduced at the time when the decree was passed. DWARKANATH CHOWDHRY *v* KISHENLAIL CHOWDHRY [Marsh., 563 : 2 Hay, 650

RADHEY KOONWER *v.* AJOODHYA PANDEY [3 Agra, 69

NUBO KISHORE BISWAS *v* JADUB CHUNDER SIRCAR . . . . 20 W R., 423

112. ——— *Act VIII of 1859, s. 376—Proof of alleged ground of review.*—A review of judgment under s. 376 of Act VIII of 1859, on the ground of discovery of new evidence not within the applicant's knowledge at the hearing of the case, should not be admitted without proof of the truth of the ground alleged. UMRAO THAKUR *v.* GAKUL MUNDAL [8 B. L. R., Ap., 34 : 16 W. R., 7

NOLITA MOHAN ROY CHOWDHRY *v.* DINONATH MOOKERJEE . 13 B. L. R., 427 note

KHELUT CHUNDER GHOSE *v* PRANKISTO GHOSE [11 B. L. R., 428 note : 12 W. R., 401

NAFFAR CHAND PAL CHOWDHRY *v* SANTEE [8 B. L. R., Ap., 35 note : 10 W. R., 432

REVIEW—*continued.*

5. GROUNDS FOR REVIEW—*continued.*

RAMDHAN CHUCKERBUTTY *v.* JAINARAYAN PANJA
[8 B. L. R., Ap., 36 note: 12 W. R., 536

SITANATH GHOSE *v.* SHAMASUNDARI DASI
[8 B. L. R., Ap., 37 note: 14 W. R., 26

NUDARCHAND BHOOYA *v.* REEDOY MUNDUL
[11 B. L. R., 424 note: 17 W. R., 458

SHUMSHEIR ALI KHAN *v.* RAM CHUNDER GOOPTO
[2 W. R., 174

Otherwise the application will be refused. RAKUB DOSS *v.* SOORAJ MULL . Bourke, O. C., 131

JHUBHOO SAHOO *v.* JUSODA KOER
[17 W. R., 230

AMRITRAV P. KOKDI *v.* MANAJI J. JAGTAP
[3 Bom., A. C., 49

BROJENDRO COOMAR ROY CHOWDHRY *v.* WISE
[19 W. R., 130

NISSA BIBEE *v.* ABDOOR RUHMAN
[18 W. R., 413

113. ——— *Civil Procedure Code, 1859, s. 376.*—During the pendency of a suit for rent a plaintiff applied for postponement on the ground that he was unable to obtain a copy of a document which he had applied for from the Collectorate. The Munsif refused postponement and gave him a modified decree. The plaintiff subsequently obtained a review of judgment and a decree in full. The Judge on appeal decided that the Munsif was wrong in admitting the review, because the plaintiff had not mentioned that he was previously unacquainted with the existence of the document. *Held* that the review was properly admitted under Act VIII of 1859, s. 376. GOOR DYAL ROY *v.* DEKA NOONYA
[22 W. R., 446

114. ——— *Nature of evidence—Civil Procedure Code, 1859, s. 376.*—The new evidence referred to in s. 376, Act VIII of 1859, is evidence that would probably alter the decision of the Court. The affidavit on which an application for review is grounded must state what the new evidence to be relied on is: in such an affidavit no reliance can be placed on a statement of belief of good defence on the merits, but the facts to be relied on as such must be set out. DHUNSOOK DASS *v.* HURRY BABOO
[Bourke, O. C., 115

115. ——— *Fresh evidence, Nature of, requisite for review.*—Where new evidence is adduced in an application for review, it need not be, *per se,* sufficient to show that the previous decision is wrong or such as to cause an overmastering balance of evidence. If there is sufficient ground for receiving the new evidence, the case is to be heard as if it were being originally heard with the materials then before the Court. SAHEBJAN BIBEE *v.* SUFDUR ALI . . . . . . 22 W. R., 288

116. ——— ——— *Civil Procedure Code (1882), s. 623—Review of judgment on second appeal—Alleged discovery of new and important documentary evidence—Ground which could not be relied on on second appeal.*—In a suit on a mortgage it was held by the lower Appellate Court and by the High Court on second appeal that the properties comprised therein were under attachment at the time of its execution, and that it was accordingly void under the Civil Procedure Code, s. 276, as against the claims of judgment-creditors enforceable under the attachment. The plaintiff, who was the appellant on second appeal, sought a review of the judgment pronounced therein on the ground of the discovery of new and important documentary evidence from which it would appear that the properties in question were not under attachment at the date of the mortgage. *Held* that the application for review could not be entertained for the reason that the ground relied upon could not be successfully relied upon on a second appeal. RARU KUTTI *v.* MAMAD
[I. L. R., 18 Mad., 480

117. ——— *Error in adjudication of costs—Other ground for application untenable—Civil Procedure Code, 1877, s. 206.*—When an application for a review of judgment is made upon several grounds, one of which refers only to the question of adjudication of costs, and the Court to whom the application is made holds all the other grounds to be untenable, but is of opinion that there has been a clerical mistake in that part of its order or judgment which refers to costs, it may reject the application absolutely and permit the applicant to apply, under s. 206 of the Civil Procedure Code, 1877, for a rectification of the clerical mistake. JOYKISHEN MOOKERJEE *v.* ATAOOR ROHOMAN
[I. L. R., 6 Calc., 22: 6 C. L. R., 575

6. REVIEWS AFTER TIME.

118. ——— **Power to grant review after time.**—A Judge has power to grant a review after the lapse of the ninety days within which the application ought to be made. RAMGUTTEE DOSS *v.* GHOLAM AHMED KHONDKAR . W. R., F. B., 84

119. ——— *Just and reasonable ground for delay.*—A Court has no jurisdiction to entertain an application for review after the lapse of ninety days of the judgment to be reviewed, unless just and reasonable cause for the delay be given. SHAMA CHURN CHUCKERBUTTY *v.* BINDABUN CHUNDER ROY
[B. L. R., Sup. Vol., 892: 9 W. R., 181

MAHOMED GAZI CHOWDHRY *v.* DULLAB BIBI
[5 B. L. R., 318 note: 11 W. R., 22

KASHEENATH ROY *v.* LUKHEENARAIN CHATTERJEE
[W. R., 1864, 91

JHUBHOO SAHOO *v.* JUSODA KOER
[17 W. R., 230

FAKIRA *v.* BASAPA MAHADAN SHETTI
[8 Bom., A. C., 234

120. ——— *Petition for correcting decree—Just and reasonable ground for delay.*—A petition for the rectification of a decree is not different from an application for a review when

REVIEW—*continued*

6. REVIEWS AFTER TIME—*continued.*

the object of the rectification is to alter the decision of the Court, and such a petition cannot be received after ninety days without just and reasonable cause for the delay being shown to the satisfaction of the Court ASSUR ALI *v.* WOOIFUTOONISSA [13 W. R., 33

121 ———— Improper grant of review after time—*Act VIII of 1859, s 377* —Where a party applying for a review of judgment after the expiry of the period of ninety days allowed by s 377,

S C LUCHMUN SINGH *v.* SHUMSHERE SINGH [L R., 2 I. A., 58

LUTEFTMOHUN ROY CHOWDHRY *v* SOWTRA BEEBEE . . . 10 W R., 42

GOUR PERSHAD SURMAH *v* ANJUB ALI [24 W R, 294

FAKIRA *v* BASAPA MAHADAY SHETTI [8 Bom, A. C, 234

GUNGANARAIN ROY *v* GOONOMONEE [8 W. R, 184

BETTS *v* BONSI MUNDUL . 25 W. R, 343

KRISTO GOBIND JOARDAR *v* JUGOBUNDHOO SIRCAR . . . . . 12 W. R., 94

SREENATH CHOWDHRY *v* KRITATTOMYEE DOSSEE [18 W. R., 286

122. ———— Admission of review after

[8 W. R., 483

had been reversed by the High Court,—*held* that the order admitting the review was open to appeal, and must be set aside ROY GOOLUB SUHAYE *v* ACHEEUB LALL . . 13 W. R., 120

124 ———— Different construction of

the cause alleged was no excuse for the delay PRAN KISHEN BHUTTACHARJEE *v* BUKSHEE CAZEE [10 W. R., 26

125 ———— — *Subsequent varying decision of law—Order on remand—Ground for review* —A remand order made on special appeal is (unless a review of it be obtained within the prescribed time) a conclusive determination of the points of law involved in it, and the correctness of the law laid down upon a remand cannot be questioned on a second special appeal, nor is the fact of the Courts adopting a different view of the law after an order has been made, in general a good ground for allowing a review of such order after the time for a review has elapsed RAMKUVARBAI *v* DAMODHAR NARBHERAM 6 Bom, A C., 146

126 ———— Subsequent Full Bench decision—*Ground for review* —A Full Bench judgment after the original judgment has been given in a suit is not a ground of review, a Full Bench judgment being prospective, and not retrospective MADHUB CHUNDER GHOSE *v* RADHIKA CHOWDHRAIN . 7 W. R, 405

DWARKANATH DOSS BISWAS v MANICK CHUNDER DOSS . . 9 W R., 103

Contra, FORBES *v* DYANUTOOLLAH [10 W R., 415

127 – – ———— — A new exposition of the law by a Full Bench after the passing of the original decree is not "just and reasonable cause" for admitting a review after the prescribed period When a review has been granted the Court is bound to decide the case according to any new exposition of the law by a Full Bench made since the original decision SHAMA CHURN CHUCKERBUTTY *v* BINDABUN CHUNDER ROY [B L. R., Sup. Vol., 893: 9 W. R., 181

BURA BOODHO *v* KOYLASH CHUNDER NUNDEE [6 W R., 100

ALLADMONEE DOSSIA *v* JOY SUNKER ROY [7 W R., 408

128 ———— *Ground for review—Suit by mortgagee to declare lien—Subsequent suit for possession* —The plaintiff, a mortgagee, obtained a money-decree against the defendant. A

ment-debtor in the property mortgaged to the plaintiff The plaintiff subsequently, in execution of his decree, bought in the same property himself, and brought a suit against the defendant and the third party to have it declared that the latter held the property subject to his mortgage The suit was decreed by the Subordinate Judge, but eventually dismissed by the High Court, on the ground that the plaintiff, by suing for his money-decree only, had deprived himself of the benefit of his lien as against the third party. The plaintiff thereupon brought

REVIEW—*continued.*

6. REVIEWS AFTER TIME—*continued.*

another suit against the same parties to recover possession of the mortgaged property, which suit eventually came up before a Full Bench, where it was decided that the plaintiff had no right to bring the suit for recovery of possession, but that his proper course was to sue to have his lien upon the property declared, the Court intimating that it would be open to the plaintiff to apply for a review of judgment in the suit originally brought by him. On the review coming on to be heard, it was held that the plaintiff was entitled to a review of that judgment, and that the case was distinguishable from the general rule as to reviews laid down in *Madhub Chunder Ghose* v. *Radhika Chowdhrain, 7 W. R., 405; Dwarkanath Doss Biswas* v. *Manick Chunder Doss, 9 W. R., 102;* and *Shama Churn Chuckerbutty* v *Bindabun Chunder Roy, B. L. R., Sup. Vol., 892,* inasmuch as the granting the review did not interfere with previous decisions of the Court in other cases between other parties. JONMENJOY MULLICK *v.* DASMONEY DASSEE . . I. L. R., 8 Calc., 700

129. ———— Decision of High Court or Privy Council modifying the law.—An application for review of judgment of a lower Court is not admissible after the limited period, y in consequence of a decision of the High Court or of the Privy Council modifying the law or practice which prevailed at the time when the judgment sought to be reviewed was passed. ONOOP CHUNDER PAUL *v.* EKKOWREE SINGH . . 6 W. R., 167

130. ———— Subsequent decision of Privy Council—*Right to re-trial of case.*—Where the decision of a lower Court follows a view of the law taken by the High Court, and that view is set aside by a ruling of Her Majesty in Council, the judgment-creditor has a right to have his case re-tried upon that ruling. BANEE PERSHAD *v.* RADHA PERSHAD SINGH . . . 15 W. R., 143

131. ———— Decision of Privy Council —*Civil Procedure Code, 1859, s. 379—Ground for review out of time.*—A decision of the Privy Council in 1871 as to a question of fact in another suit, or the pendency of the appeal in the High Court, was held to be no cause (under s. 379, Act VIII of 1859) for not having preferred an application for review of a judgment passed in May 1866 within ninety days from the date of the decree. BOLAKEE LALL *v.* MONJEE LALL . . . . 17 W. R., 163

132. ———— *Application for review after appeal by party who did not appeal—Act VIII of 1859, s. 377—Just and reasonable cause for delay in filing petition of review.*—Upon the appeal of one of the defendants to the Privy Council the judgment of the High Court was reversed. Another defendant, whose defence was the same as that of the defendant who had appealed, applied to the High Court to review its judgment after a lapse of several years from the date of the judgment of the High Court, but within three months from the date on which he became aware of the decision of the Privy Council. The application was refused, *Satto Saran Ghosal* v. *Tarini Charan Ghose, 3 B. L. R., A. C., 287,* doubted. PANCHANAN BOSE *v.* GURUDAS ROY

[9 B. L. R., 187 : 18 W. R., 317

133. ———— *Analogous cases.* —An application for review of judgment of three out of five analogous cases decided by the High Court, the judgment in two of which had been reversed by the Privy Council, was made after a lapse of more than ninety days from the date of judgment. *Held* that a lapse of ninety days, under the circumstances, would not be a bar to the granting of the review. SATTO SARAN GHOSAL *v.* TARINI CHARAN GHOSE

[3 B. L. R., A. C., 287

S. C. SUTTO SURRUN GOSHAL *v.* TARINEE CHURN GHOSE . . . . . 12 W. R., 154

134. ———— Execution of decree against wrong person—*Act VIII of 1859, ss. 376, 377—Reasonable ground for review—Appeal by one defendant, right of review by another.*—A decree for wasilat was passed against "the defendant" in a case where there were several defendants; and as soon as one of them, who was not the person against whom the plaintiff sought for wasilat in the original plaint, found that the decree was to be executed against him, he applied to the Court for a review, though after the time prescribed by s. 377, Act VIII of 1859. *Held* that the Court was quite right in holding that there was reasonale cause, within the meaning of that section, for the application for review not being preferred within the limited time. BUNKOO LALL SINGH *v.* BASOOMUNISSA BIBEE

[7 W. R., 166

135. ———— Pendency of special appeal —*Ground for delay—Civil Procedure Code, 1859, s. 377.*—Where an application for review is not made within the ninety days provided by Act VIII of 1859, the pendency of a special appeal is not "a just and reasonable cause" for the loss of time, such as the Court to which the application is made is bound to arrive at under s. 377, before it can entertain the application at all. LUCAS *v.* STEPHEN

[9 W. R., 301

FAKIRA *v.* BASAPA MAHADAN SHETTI

[8 Bom., A. C., 234

136. ———— Mistake of counsel—*Civil Procedure Code (Act XIV of 1882), s. 623—"Sufficient cause."*—In a suit between *A* and *B* heard to the 29th January 1883, a certain conveyance was filed with the plaint, but up to the hearing this conveyance had been protected from discovery. *B*'s counsel had, however, had a copy thereof delivered to him at the time *B*'s written statement was being drawn, and a copy briefed to him at the hearing. At the hearing, *A*'s counsel stated that the effect of the conveyance was to vest the entirety of a certain property in *A*; this view was accepted by *B*'s counsel, who did not read the conveyance The only issue in the case was "who was in possession of the property," and the Court decided this issue on the 5th February in favour of the plaintiff. On the 26th February *B* brought a suit against *A* to set aside this conveyance

REVIEW—*continued.*

6. REVIEWS AFTER TIME—*continued.*

on the ground of fraud. And in certain proceedings in this case taken on the 31st March, *B*'s counsel discovered, as he alleged for the first time that under the conveyance a moiety of a seven twenty-fourth share remained in *B*. On that day instructions were given to *B*'s counsel to draw up a petition of review of the judgment of the 5th February. This petition owing to the Easter vacation was not, and could not have been, presented till the 9th April. *Held* that the words "sufficient reason" in s. 623 of the Code should receive a liberal construction and should be construed so as to do substantial justice to the parties; that as in this case it appeared to the Court that the construction placed upon the conveyance by *B*'s counsel was the correct one "sufficient reason" had been shown for making the application. IN THE MATTER OF THE PETITION OF SOLOMON. GOPAUL CHUNDER LAHIRI *v.* SOLOMON

[I. L. R., 11 Calc., 767

Held, on the appeal, *per* GARTH, C.J.—Although it is difficult, and perhaps undesirable, to attempt to define precisely the meaning of the words "any other sufficient reason" in s. 623 of the Civil Procedure Code, yet from the earlier part of the clause it is clear that a point which might have been, but which was not, discovered at the trial by the exercise of due diligence, was not intended by the section to afford any sufficient reason for review. *Per* WILSON, J.—*Semble*—If at a trial all parties, counsel on both sides, and the Judge are under a misapprehension as to the contents of a document, or even if the Judge alone is misled on such a point, and in consequence a wrong decree is made, the mistake ought to be corrected on review. GOPAL CHANDRA LAHIRI *v.* SOLOMON . I. L. R., 13 Calc., 62

137. ——— Discovery of new evidence—*Lapse of time*.—The discovery of new evidence may make it proper to grant a review, but the circumstances must be very special—the more so when the application for review is made many years after the date of the decree and the evidence discovered must be of a clear and conclusive character. HEERA LALL GHOSE *v.* RAM TARUCK DEY

[23 W. R., 323

138. ——— Ground for delay—*Effect of ignorance of effect of judgment*.—An applicant for review cannot plead his ignorance of the effect of the judgment as a justification for his delay. GULAM HUSEN MAHAMED *v.* MUSA MIYA HAMAD ALI

[I. L. R., 8 Bom., 230

139. ——— *Adoption of daughter's son—Custom—Breaches of custom—Practice—New case set up in special appeal*.—An application for review was presented to the High Court more than eighteen months after time, the applicant alleging that soon after the decree sought to be reviewed he was engaged in collecting instances of the special custom relied upon by him in support of his claim. The special custom was not set up in the Courts below, but an objection was taken for the first time in special appeal that an issue regarding it should have been raised in the lower Courts. No instance of such special custom had been given in evidence. It was urged that the applicant was a minor until shortly before the making of the High [illegible] ted by his [illegible] High Court con[illegible] excuse for the [illegible] o saying that, unless upon very strong grounds and under very special circumstances, the Court would hesitate to permit a party at such a stage of his suit to set up a case which was not set up for him in the Courts below, where his professional representative must have been well aware whether such a case could be legitimately set up, and abstained from any attempt to do so. GOPAL SAFRAY *v.* HANMANT SAFRAY

[I. L. R., 6 Bom., 107

140. ——— *Just and reasonable cause—Civil Procedure Code, 1859, s. 377*.—The plaintiff in a suit applied more than two years after the proper time, for a review of judgment in such suit, filing with his application a copy of a decision by the High Court which had been passed subsequently to the date of such judgment, in support of a contention contained in his application which should have been but was not, urged at the hearing of his suit. Such contention and the other arguments and statements contained in his application might have been adduced within the time allowed by law for an application for a review of judgment. *Held* that as such contention might have been urged at the first hearing of the case there was no "just and reasonable cause" for preferring the application after time and the Court of first instance was therefore not warranted in granting the application and reviewing its judgment. MADHO DAS *v.* RUKMAN SEWAK SINGH I. L. R., 2 All., 287

141. ——— ——— Necessity for review not arising—*Civil Procedure Code, 1859, s. 376*.—Though a certain issue in a suit was decided against the plaintiff, the suit was decreed and the defendants obtained a review on which that decree was set aside and the plaintiff's suit declared barred by limitation. On this the plaintiff applied for a review of both judgments. *Held* that though his application in relation to the former judgment was not in time, yet as he had no occasion to ask for a review until the latter judgment was passed the words of s. 376, Civil Procedure Code, 1859, entitled him to ask the Court to reconsider both judgments. BAROO JAN *v.* CHOWDHRY ZUHOORUL HUQ 13 W. R., 60

7. QUESTIONS WHICH MAY BE RAISED ON REVIEW

142. ——— Raising new grounds—*Civil Procedure Code, 1859, s. 574*.—A party wishing to be heard in support of new grounds must apply for permission under s. 34, Act VIII of 1859; he cannot be permitted to raise them in an application for review. BYKUNTHPORE MAHOMED ANSAR CHOWDHRY *v.* ANNUNDNATH ROY 9 W. R., 370

REVIEW—*continued.*

7. QUESTIONS WHICH MAY BE RAISED ON REVIEW—*continued.*

143. ———— **Issue not raised in lower Courts**—*Application for review after special appeal.*—In an application for review after special appeal, the Court will not entertain a question not raised before at a former stage of the suit. IN RE TUFANI SINGH . . . . **6 B. L. R., Ap., 141**

144. ———— **New arguments**—*Matter previously adjudicated on.*—The Judges are not required to re-adjudicate points considered and adjudicated when brought before them by a pleader then employed, though they may be better argued, and put in a different light by another pleader subsequently, but are to be guided in their admission of reviews by the definite terms of ss. 377 and 378 of the Civil Procedure Code, 1859. CHOONEE MUNDUR *v.* CHUNDEE LALL DASS . . . . **14 W. R., 334**

145. ———— **Issue not noticed in the lower Court**—*Arguments on appeal and review.*—In the first Court an issue was raised whether or no the hearing of this suit was barred by the law of limitation. One of the grounds of appeal to the Judge was, that the Principal Sudder Ameen ought to have held the suit barred as regards the diaras under the special limitation of three years from the date of the Collector's settlement. The Judge did not notice this ground in his judgment. The same ground of appeal was repeated on the special appeal to the High Court, but that Court refused to entertain it, for the reason that it did not appear to have been raised in argument before the Judge or in the first Court. On application for review, it was urged that the Court ought to have listened to this ground, but the Court adhered to its former decision. Counsel should not be heard to re-argue a case on review upon the same points as were argued on special appeal. RAJ KUNWAR *v.* INDIRJIT KUNWAR
[**5 B. L. R., 585 : 13 W. R., 52**

146. ———— **Points for argument**—*Questions already discussed and decided—New points.*—On application for review of judgment,—*Held* a party applying for the review of judgment must show that there is good and sufficient cause for granting the review before he can be heard to argue that the decision is erroneous. In so showing cause, (first) no point can be raised which has been already discussed and decided on the original hearing of the appeal ; and (secondly) no new point which has not been raised at the hearing of the appeal can be argued on the application for review. BHAWABAL SINGH *v.* RAJENDRA PRATAP SAHOY
. [**5 B. L. R., 321**

RAJENDRO PROTAB SAHEE *v.* BHOWABUL SINGH
[**14 W. R., 105**

Upholding on review, BHOWABUL SINGH *v.* RAJENDRO PROTAB SINGH . . **13 W. R., 157**

JANAB ALI *v.* CHANDI CHARAN DEY
[**5 B. L. R., 334 note : 11 W. R., 202**

GUNGAPERSAD *v.* AGRA AND MASTERMAN'S BKAN
[**5 B. L. R., 340 note**

REVIEW—*continued.*

7. QUESTIONS WHICH MAY BE RAISED ON REVIEW—*concluded.*

S. C. AGRA AND MASTERMAN'S BANK *v.* GUNGA PERSHAD . . . **15 W. R., F. B., 5 note**

HAZRA BEGUM *v.* HOSSEIN ALI KHAN .
[**5 B. L. R., 341 note**

COLLECTOR OF TIPPERAH *v.* MAFZUNNISSA BIBI
[**5 B. L. R., 341 note : 14 W. R., 84**

GARIB HOSSEIN CHOWDHRY *v.* WISE
[**5 B. L. R., 342 note**

S. C. MEHUROONISSA KHATOON *v.* WISE
[**15 W. R., F. B., 2 note**

BENI MADHAB GHOSE *v.* GANGA GABIND MANDAL
[**5 B. L. R., 345 note : 15 W. R., F. B., 3 note**

147. ———— **Points for argument**—*Act VIII of 1859, s. 376—Arguments and grounds to be raised on review.*—It cannot be treated as a universal rule that no point can be raised on an application for a review which has been already discussed and decided on the original hearing of the appeal ; or that no new point which has not been raised on the hearing of the appeal can be argued on the application for a review. In each case the Court to which the application is made must consider and decide whether a review is necessary to correct any evident error or omission, or is otherwise requisite for the ends of justice IN THE MATTER OF THE PETITION OF CHINTAMANI PAL. CHINTAMANI PAL *v.* PYARI MOHUN MOOKERJEE. IN THE MATTER OF THE PETITION OF SALEH SHABI SABI-UD-DIN ABU SALEH. SALEH SHABI SABI-UD-DIN ABU SALEH *v.* ASADUNISSA BIBEE
[**6 B. L. R., 126 : 15 W. R., F. B., 1**

148. ———— *Points already decided — New points — Discretion of Court.* — Parties applying for a review of judgment are not absolutely debarred from asking for a re-hearing of a matter which has been already argued and considered, nor are they debarred from raising a point which has not, but which might have been, raised previously ; but in every such case it lies upon the party making the application to show the Court some good ground upon which that indulgence is asked for, and it is in the discretion of the Court to allow or to refuse such an application. HUREE PERSHAD MUNDUL *v.* NUND KISHORE SINGH . . . . **17 W. R., 479**

149. ———— *Question raised and abandoned.*—A party who not only had an opportunity of raising a question, but who did raise it on appeal and on argument abandoned it, cannot, under ordinary circumstances, be allowed to agitate the question on review. SABAPATHI *v.* SUBRAYA RAMANADHA . . . **I. L. R., 2 Mad., 58**

150. ———— *Admissibility of admitted documents.*—Whether certain documents which have already been admitted as evidence were so admissible or not, is not a point which can be urged in review. KOLLEEMOODDEEN MUNDUL *v.* HEERUN MUNDUL . . . . . . **24 W. R., 186**

REVIEW—*continued*

8. GRANT OR REFUSAL OF REVIEW.

151. ———— **Reasons for granting order for review** – *Record of reasons*. Before a review of judgment is granted, an order granting the application for review and the reasons for granting the same should be recorded BHAIROO DIN SINGH *v.* RAM SAHAI . . I L. R., 3 All., 316

152 ———— **Effect of refusal to grant review**—*Judgment of refusal* —A mere refusal to grant a review of judgment cannot alter the judgment's right to be reviewed or the decree founded on it, and nothing which the Judge says with reference to his refusal to grant review can be binding so as to alter such judgment or decree RAMHURRY MONDUL *v.* MOTHOOR MOHUN MONDUL

[20 W. R., P. C., 450

9 APPEALS AND PROCEDURE IN APPEALS

153. ———— **Orders rejecting review** —*Orders on review— Civil Procedure Code, 1859, s 378—Application of section* —S 378 (s 626 of Civil Procedure Code, 1882) does not apply to judgments on review, but only to orders rejecting reviews ATCAR *v.* HOWAH BYE 1 Ind. Jur., N. S., 231

RUGHOONATH ROY *v.* ANUNDO PATRAY

[10 W. R., 387

154. ———— **Appeal by some only of several defendants**—*Application for review by some only of defendants in separate interests—Effect of decree on review modifying decision on appeal* — In a suit in which several defendants were joined, to set aside alienations made at different times and to different persons plaintiff succeeded in the first Court partly, and on appeal wholly, and obtained a decree ordering the alienated property to be restored to him [illegible]

[18 W. R., 464

155. **Order other than order rejecting applications for review**—*Order modifying original decree—Right of appeal* —Any [illegible]

REVIEW—*continued*

9 APPEALS AND PROCEDURE IN APPEALS —*continued*

within thirty days from its date JOYKISHEN MOOKERJEE *v.* ATAOOR ROHOMAN

[I L. R., 6 Calc., 22: 6 C. L. R., 575

156. — **Order rejecting review— Finality of order** —An order rejecting a review is final NOBIN CHUNDER CHOWDHRY *v.* GRIDHAREE LALL . 11 W. R., 234

BANEE RAM *v.* HOSSEIN ALI 11 W. R., 184

157 — **Order granting review on insufficient ground** *Act VIII of 1859 ss 376 to 378—Appeal—'Final'* —Where a Subordinate Judge, after deciding a regular appeal granted an application for review of judgment on the ground that new evidence had been discovered but without any inquiry or proof that such evidence was not within the knowledge of the applicant or could not have been adduced by him at the time the decree was passed,—*Held* that this was an error or defect in the procedure or investigation of the case which affected the decision, and was a ground of appeal when the decision upon review was brought before the High Court on special appeal The word "final" in s 378 of Act VIII of 1859 means that the order rejecting the application or granting the review shall not by itself be open to appeal BHYRUB CHUNDER SURMAH CHOWDHRY *v.* MADHUBRAM SURMAH

[11 B L R., F B., 423
20 W. R., 84

NUBO KISHORE BISWAS *v.* JADUB CHUNDER SIRCAR . 20 W. R., 420

DHUNKA DEVLA *v.* HIRA RAMLA

[4 Bom., A C., 57

158 **Decision as to what is just and reasonable ground**— *Application for review after ninety days Act VIII of 1859 ss 363 377, and 378* —The decision of a subordinate Court as to what constitutes "just and reasonable cause" for admitting a review after the prescribed period is appealable The words in s 378, Act VIII of 1859, "its order in either case, whether for rejecting the application or granting the review, shall be final," are applicable only to the order for rejecting the application or granting the review, and not to the decision as to whether there was just and reasonable cause for allowing the application to be made after the period of ninety days prescribed by s. 377 had elapsed SHAMA CHURN CHUCKERBUTTY *v.* BINDABUN CHUNDER ROY

[B. L. R., Sup Vol., 892: 9 W. R., 181

GREGORY *v.* HAMILTON, BROWN & Co

[4 N. W., 74

159 ———— **Presumption as to performance of preliminaries to review** —The Court will presume that the proper preliminaries have been observed in admitting the review, and unless anything appears to have been done contrary to law, will not set aside the decision AKEEL SAHEB *v.* ABDOOL GUFFOOR . . 18 W. R., 15

See GURUMURTHI NAYUDU *v.* PAPPA NAYUDU

[1 Mad., 104

REVIEW—*continued.*

9. APPEALS AND PROCEDURE IN APPEALS —*concluded.*

160. ———— Objection taken on appeal —*Objection as to improper grant of review—Civil Procedure Code, 1859, s. 376.*—Although the order itself for granting a review of judgment is final, yet, on appeal against the decision passed in review, objection may be taken that the review was improperly granted. ABDUL RAHIM *v.* RAGHA RAI [I. L. R., 1 All., 363

161. ———— *Objection that evidence was within knowledge of applicant.*—Where, owing to the conduct of the opposite party, who, though served with notice, made no objection, an applicant for review had no opportunity of showing that a new piece of evidence which he adduced was not within his knowledge and could not be adduced by him when the decree was passed, such opposite party cannot afterwards be allowed to object on the ground of the Full Bench ruling in *Bhyrub Chunder Surmah Chowdhry v. Madhubram Surmah, 11 B. L. R., 423 : 20 W. R., 84.* RAM JOY GOOPTO *v.* JUGODESSUREE . . . . . 22 W. R., 399

162. ———— *Civil Procedure Code, 1859, s. 378—Appeal against review not justified by evidence.*—The Full Bench ruling, *Bhyrub Chunder Surmah Chowdhry v. Madhubram Surmah, 11 B. L. R., 423 : 20 W. R., 84,* that a special appeal would lie to determine whether in an order granting a review there had been any irregularity, and that the word "final" in the Civil Procedure Code, s. 378, would not prevent the Appellate Court from considering afterwards the legality of the order, was held to apply to cases in which a regular appeal is preferred on the ground that the admission of the review was not justified by the evidence. JOY KISHEN MOOKERJEE *v.* PARBUTTY CHURN GHOSSAL [22 W. R., 183

163. ———— *Fresh evidence —Error in granting review.*—The Munsif dismissed a suit. Afterwards he issued a rule calling upon the defendant to show cause why a review of judgment should not be granted. The defendant showed cause, but his objections were overruled; the review was granted, both plaintiff and defendant adduced new evidence, and a decree was given for the plaintiff. On appeal, the Subordinate Judge reversed this decision on the ground relied upon by the defendant in showing cause in the lower Court, namely, that the defendant had not established that with due diligence he could not have brought forward in the original trial the evidence upon which his application for review was based. *Held* on special appeal that the fact of the defendant having adduced fresh evidence in the Court below did not debar him from objecting before the Subordinate Judge that the review was wrongly granted, because the order admitting it was final. PRANNATH BHADOORY *v.* SREEKANT LAHOORY [2 C. L. R., 257

10. PROCEDURE ON RE-HEARING OF CASE.

164. ———— Effect of order for review —*Re-opening of whole case.*—When a review of a decision has been admitted, the whole case is thereby re-opened. SAINAL RANCHHOD *v.* DULLABH DVARKA [10 Bom., 360

165. ———— Re-trial by different Judge —*Point directed by order of review.*—When a case is admitted to review by the deciding Judge, and tried afterwards by another Judge, the new Judge ought to try only the point directed by the order of review. HURRO CHUNDER CHUCKERBUTTY *v.* RAMKISHORE CHUCKERBUTTY W. R., 1864, 142

166. ———— Review granted on particular ground—*Civil Procedure Code (Act X of 1877), s. 630—Discretion of Court as to re-hearing whole case or not.*—Where a review of judgment is granted on a particular ground, the Court is not bound to re-hear the whole case under s. 630 of the Civil Procedure Code: it is in the discretion of the Court to re-hear the whole case, or only the particular point on which the review has been granted. HURBANS SAHYE *v.* THAKOOR PURSHAD [I. L. R., 9 Calc., 209

S. C. THACOOR PROSAD *v.* BALUCK RAM [12 C. L. R., 64

167. ———— *Review of portion of case—Power to re-hear case on another point.*—Where a Judge, who had ordered a certificate of guardianship to be granted under Act XL of 1858, granted a review of his order on one point,—*Held* that he had no power to re-open another question which he had already decided finally, and on which no application for review was made. BYJNATH SAHOY *v.* WUZEER NARAIN . 24 W. R., 427

168. ———— *Power to entertain another objection without remand.*—In a suit to recover possession of certain land, which, though described in the plaint as partly bastoo and partly agricultural land, was treated by both parties as agricultural only, it was found by the Court of first instance that the defendants had acquired a right of occupancy. This finding having been confirmed by the lower Appellate Court, an application was made for a review, and on review that Court reversed its former decree on the ground that no right of occupancy could be acquired. *Held* that on review the lower Appellate Court ought not to have entertained the objection that the land was not agricultural without remanding the case for the trial of a fresh issue on that point. KHORESH MAHOMED *v.* MAHOMED TAKEE . . . . . 10 C. L. R., 106

169. ———— Power to reverse order for re hearing of suit—*Re-hearing before another Judge.*—Where one Judge decided that the suit was not barred as a *res judicata,* and directed the suit to be re-tried on the merits, and after another trial it came on appeal to the same Court before another Judge,—*Held,* whatever power he would have had to review the order of his predecessor had nothing been done on it, he could not reverse the order at that stage, one Court having no power to reverse an order

REVIEW—*continued*

10 PROCEDURE ON RE-HEARING OF CASE —*continued.*

of a co-ordinate Court PALAVARAPU MUTANNA v. CHANDURI NARAPPA . . . 2 Mad., 340

But see MURDAN ALI v. TUFUZZUL HOSSEIN [16 W.R., 78

SALAHMUNISSA KHATOON v. MOHESH CHUNDER ROY . . . . . 16 W. R., 85

170. ——— **Admission of review by one Judge only of Bench who heard the case**—*Objection to propriety of order admitting review*.—Where a review has been admitted by the [illegible] ich heard the [illegible] insel on the [illegible] propriety of [illegible] is wrong the error cannot be corrected by the Bench appointed to hear the appeal after its restoration to its original number on the file. JARDINE, SKINNER & Co. v. DHUN KISHEN SEIN . . . 13 W. R., 82

171. ——— **Qualified order for admission of review**—*Discretion of Court as to extent case should be reopened*.—*Held* that Judges of the Sudder Court admitting an application for review were competent to make a qualified order leaving in the Court which was to review the decision a discretion as to the extent to which the review should be carried. BHUGWANDEEN DOOBEY v. MYNA BAEE [9 W. R., P. C., 23: 11 Moore's I. A., 487

172. ——— **Admission of additional evidence on re-hearing**—*Act VIII of 1859, s. 376*.—When an application for review is admitted upon other grounds, fresh evidence not produced at the trial may be received, although no reason as required by s. 376, Act VIII of 1859, had been assigned for the non-production at the trial. BIHARI LAL NANDI v. TRAILAKHOMAYI BARMANI [3 B. L. R., A. C., 346

173. ——— *Question as to genuineness of pottah*.—In a suit for confirmation of title to a village alleged to be in the possession of plaintiff under a mokurari pottah, the first Court found the pottah to be genuine and gave plaintiff a decree. The lower Appellate Court at first doubted the genuineness of the pottah and reversed that decision, but, on an application for review, admitted additional evidence on both sides and dismissed the [illegible]

174. ——— **Reasons for different opinion**—*Duty of Court on review*.—A Court should give reasons, on review of judgment, for coming to a different conclusion from that which it had previously formed. ANUNDMOYEE DOSSIA v. KALEE COOMAR LOKHEETY . . . 6 W. R., 18

175. ——— **Notice of proceedings**—*Special Judge appointed under Dekkhan Agriculturists' Relief Act*.—It is illegal on the part of the Special Judge, appointed under Act XVII of 1879, to reverse the decree of a Subordinate Judge on review without giving a proper and sufficient notice to the party in whose favour the decree was passed. RUPCHAND KHEMCHAND v. BALVANT NARAYAN [I. L. R., 11 Bom., 591

176. ——— **Admission of review and dismissal of appeal, Effect of.**—One of the Judges of a Division Bench which gave a decision on special appeal in favour of plaintiff having left the Court, the remaining Judge heard an application for the admission of a review. The review having been admitted, the case was re-heard before the Judge last mentioned and another Judge, and a conclusion was arrived at contrary to the former decision. An application was made by the plaintiff for a review of this judgment, and notice was issued to the defendant, who came in thereupon, and judgment was then delivered at considerable length, in which the Judge delivering it said that no sufficient ground had been made out for the admission of a review, and that he dismissed the appeal. *Held* that the last judgment was a re-hearing, and that it dismissed not the application for the admission of a review, but the case itself on its merits. LEKRAJ ROY v. KANHYA SINGH . . . 18 W. R., 491

11. CRIMINAL CASES.

See CHARGE TO JURY—MISDIRECTION [I. L. R., 17 Calc., 642

177. ——— **Power of review**—*Judgment in criminal appeal*.—The High Court cannot review its judgment passed in a criminal case before it on appeal. QUEEN v. GODAI RAUT [B. L. R., Sup. Vol., 436: 5 W. R., 61

KRISTO CHUNDER MAHATA v. ODINESSUREE DEBIA . . . 11 W. R., 532

IN THE MATTER OF THE PETITION OF KRISHNO CHURN . . . . 17 W. R., Cr., 2

178. ——— *Criminal Procedure Code*.—The Code of Criminal Procedure contains no provision for a review of an order passed in a criminal case. [illegible] v. MEHTABJI [illegible] [7 Bom., Cr., 67

QUEEN v. TILOKE CHUND . . 3 N. W., 273

179. ——— *Review of judgment of High Court—Criminal Procedure Code (Act X of 1882), s. 369*.—The verdict and judgment of a Divisional Bench of a High Court, coupled with the sentence in a criminal case, are absolutely final, and as soon as they have been pronounced and signed by the Judges, the High Court is *functus officio*, and neither the Court itself nor any Bench of it has any power to revise that decision or to interfere with it in any way. IN THE MATTER OF THE PETITION OF GIBBONS . I. L. R., 14 Calc., 42

180. ——— *Application to set aside order of third Judge agreeing with*

REVIEW—*continued.*

11. CRIMINAL CASES—*continued.*

junior Judge where there is difference of opinion between the Judges of Division Bench.—*Held* by MORGAN, C.J., and TURNER, J. (ROSS and SPANKIE, JJ, dissenting), that an application to set aside an order made by the junior Judge of a Division Bench and a third Judge contrary to the opinion of the senior Judge of the Division Court in a case where the two Judges differed in opinion is not in the nature of a review of judgment, and is cognizable by the Court. Where an order has been actually issued by the High Court, a Division Bench will not disturb the same, unless in the opinion of a majority of the Court the order is bad. QUEEN *v.* NYN SINGH
[2 N. W., 117 : S. C. Agra, F. B., Ed. 1874, 196

181. ———— Review of sentence once passed.—A sentence duly passed and recorded cannot be revised by the Judge. ANONYMOUS
[4 Mad., Ap., 19

ANONYMOUS . . . **5 Mad., Ap., 18**

ANONYMOUS . . . . **6 Mad., Ap., 8**

Contra, ANONYMOUS . **5 Mad., Ap., 20**

182. ———— Order obtained on misstatement of facts—*Forfeited property—Criminal Procedure Code (Act XXV of 1861), ss. 184, 185.*—Where an order for the release of the property of an absconding offender, which had been attached under s. 184 of the Criminal Procedure Code (Act XXV of 1861), had been obtained from the High Court on an *ex-parte* application, and on an incorrect statement of facts, the High Court, on the application of the Government, cancelled such order. IN THE MATTER OF THE PETITION OF THE GOVERNMENT OF BENGAL . . . **9 B. L. R., 342**

183. ———— Order dismissing application by accused person for revision—*Criminal Procedure Code, ss. 369, 434 - Letters Patent, High Court, N.-W. P., cls. 18 and 19.*—The High Court had no power under s. 369 of the Criminal Procedure Code to review an order dismissing an application for revision made by an accused person, and the only remedy was by an appeal to the prerogative of the Crown as exercised by the Local Government. *Per* BRODHURST, J.—The Legislature has not conferred in express words upon a High Court the power of reviewing its judgments in all criminal cases as it has done under the Civil Procedure Code in civil cases; and the provisions of s. 369 of the Criminal Procedure Code, so far as they affect the High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and are subsequently disposed of under the provisions of s. 434 of the Criminal Procedure Code and ss 18 and 19 of the Letters Patent for the High Court of the N.-W. P. *Queen* v. *Godai Raout, B. L. R., Sup. Vol., 436,* referred to. QUEEN-EMPRESS *v.* DURGA CHARAN
[I. L. R., 7 All., 672

184. ———— Order made on revision—*Power of High Court—Criminal Procedure Code, s. 439.*—A Division Bench of the High Court has

REVIEW—*concluded.*

11. CRIMINAL CASES—*concluded.*

not, under s. 439 of the Code of Criminal Procedure (Act X of 1882), any power to review its judgment pronounced on revision in a criminal case. *Queen-Empress* v. *Durga Charan, I. L. R., 7 All., 672,* followed. QUEEN-EMPRESS *v.* FOX
[I. L. R., 10 Bom., 176

See QUEEN-EMPRESS *v.* GANESH RAM KRISHNA
[I. L. R., 23 Bom., 50

185. ———— *Order rejecting appeal as barred by limitaton—Review of such order—Finality of judgments in criminal matters—Criminal Procedure Code (1882), ss. 421 and 430.*—A Sessions Judge dismissed an appeal on the ground that it was barred by limitation. On a subsequent application by the accused, the Judge admitted the appeal and at the hearing acquitted him. The High Court sent for the record in the exercise of its revisional jurisdiction. *Held* that the order of acquittal was *ultra vires* under s. 430 of the Code of Criminal Procedure. The order dismissing the appeal was final and not open to review. It was argued that s. 421 of the Criminal Procedure Code only applies to orders passed on the merits, and that, as the order rejecting the appeal was not of that class, it was not an order "upon appeal" and wa not final under s. 430. *Held* that s. 421 was not limited to orders passed on the merits, and that the order in question was an order upon appeal and final under s. 430. The Criminal Procedure Code makes no provision for review of judgments in criminal matters by subordinate Appellate Courts. The jurisdiction of revision is vested in the High Court, which has ample powers under Ch. XXXII to rectify any inadvertent failure of justice. QUEEN-EMPRESS *v.* BHIMAPPA BIN RAMANNA
[I. L. R., 19 Bom., 732

186. ———— *Power of review in criminal cases.*—Where a District Magistrate on 12th June 1897 made an order after hearing an inquiry as to the possession of some missing property supposed to have been stolen, and afterwards on 3rd August 1897 reversed the order as erroneous,—*Held, per* RANADE, J., the District Magistrate had no power to review his own previous order of the 12th June 1897, passed on full inquiry and after hearing both parties. The power of revision in criminal cases is very strictly confined, and the same considerations which prevent subordinate Courts from altering their judgments on review hold good in respect of final orders which are of the nature of a judgment. IN RE HARILAL BUCH . **I. L. R., 22 Bom., 949**

REVISION—CIVIL CASES.

See DEKKAN AGRICULTURISTS' RELIEF ACT, S. 3 . **I. L. R., 14 Bom., 387**

REVISION - CIVIL CASES—*continued*

See DEKKAN AGRICULTURISTS' RELIEF ACT, s 53 I. L. R., 15 Bom., 180
[I. L. R., 19 Bom., 236

See JUDGMENT—CIVIL CASES
[I. L. R., 13 All., 533

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s 15—CIVIL CASES

See CASES UNDER SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, *s 622*

Order on—

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW
[I. L. R., 16 Bom., 550

See LETTERS PATENT, HIGH COURT, N W P, cl. 10 I. L. R., 15 All., 373

Power of—

See HIGH COURT JURISDICTION OF—BOMBAY—CIVIL I. L. R., 20 Bom., 680

1 GENERAL CASES

1. —Power of High Court—*Rules 18, 20 made under Act XXIV of 1839—Agent to the Governor at Vizagapatam*—The Agent to the Governor at Vizagapatam dismissed an appeal under the Agency Rules No. 18 The appellant preferred a petition to the High Court against the order of the Agent *Held* that the High Court had no power to interfere. JAGANNADHA *v* GOPANNA . . I. L. R., 16 Mad., 229

2 SMALL CAUSE COURT CASES

2. Provincial Small Cause Courts Act (IX of 1887) s. 25—*Circumstances under which the High Court will exercise its revisional powers*—S 25 of the Provincial Small Cause Courts Act (IX of 1887) was not intended to give in effect a right of appeal in all Small Cause Court cases, either on law or fact The revisional powers given by that section are *only* exercisable where it appears that some substantial injustice to a party to the litigation has directly [illegible]

[illegible]

3 *Civil Procedure Code s 622—Superintendence of High Court—Wrong decision on a question of limitation*—An application under s 25 of Act IX of 1887 to set aside a decree ought not to be entertained except in cases in which a similar application under s 622 of the Code of Civil Procedure would be allowed. Such an application will not lie where the sole ground is whether the first Court was or was not right in its

REVISION—CIVIL CASES—*continued*

2 SMALL CAUSE COURT CASES—*continued.*

decision on a question of limitation *Amir Hasan Khan v Sheo Baksh Singh I L R 11 Calc., 6*, referred to RAGHU NATH SAHAI *v* OFFICIAL LIQUIDATOR OF THE HIMALAYA BANK
[I. L. R., 15 All., 130

4. — *Discretion of Court—Superintendence of High Court under Civil Procedure Code, s 622*—S 25 of Act IX of 1887 was not intended to give what would practically be an appeal in every case from the decision of a Court of Small Causes, but the discretion t be [illegible]

Raghunath Sahai v Official Liquidator of the Himalaya Bank, I L R, 15 All, 130, referred to SARMAN LAL *v* KHUBAN I. L. R., 16 All., 476

5 — *Civil Procedure Code, s 622—Superintendence of High Court—Ground for revision—Question of limitation* It is no ground for revision under s 25 of Act IX of 1887 that the Court whose order it is sought to revise may have come to an erroneous decision on a point of limitation *Amir Hasan Khan v Sheo Baksh Singh, I L R, 11 Calc, 6* referred to SARMAN LAL *v* KHUBAN . I. L. R., 17 All., 422

6 — *Jurisdiction and superintendence of the High Court Civil Procedure Code (1882), s 622—Practice* An error of law or procedure in the Small Cause Court confers jurisdiction upon the High Court to exercise the power committed by s. 25 of the Provincial Small Cause Courts Act (IX of 1887) The powers con[illegible]

fact The High Court is to decide [illegible] it shall exercise the powers conferred upon it. It is not the practice of the Bombay High Court to interfere under s 25 of the Act when there are no substantial merits in the case of the applicant It interferes to remedy injustice. It is slow to interfere where substantial justice has been done by the sub[illegible]

[illegible]

Cause Courts Act [illegible] and conferring the most ample discretion on the High Court, while it has been held by the Privy Council that s 622 of the Civil Procedure Code ought to be construed in a very restricted and limited sense POONA CITY MUNICIPALITY *v* RAMJI [illegible]
[I. L. R., 21 Bom., 250

7. *Civil Procedure Code, s 622—Discretion of Court in dealing with applications under s. 25 of Act IX of 1887.*—Although s. 622 of the Code of Civil Procedure may

REVISION—CIVIL CASES—*continued.*

2. SMALL CAUSE COURT CASES—*continued.*

properly be taken as indicating the lines along which a Judge would do well to exercise his discretion in admitting an application under s. 25 of the Small Cause Courts Act, a Judge is not absolutely bound to refuse any application under s. 25 of the latter Act which could not be admitted under s. 622 of the Code of Civil Procedure. *Sarman Lal v. Khuban, I. L. R., 17 All., 422,* referred to and explained. VIAS RAM SHANKAR *v.* RALLA RAM MISIR

[I. L. R., 21 All., 89

8. ———— *Civil Procedure Code (Act XIV of 1882), s. 203—Decree not according to law—Substantial failure of justice—Interference under extraordinary jurisdiction.*—The plaintiff, a Hindu widow sued for R74-4-0, being the balance due on an account. She called six witnesses to prove her claim. The defendant did not appear to defend the suit. The Judge, however, dismissed the suit, the only judgment recorded by him being as follows: "Claim not proved. Claim rejected with costs." The plaintiff thereupon applied to the High Court under its extraordinary jurisdiction and the above decree was set aside, and a decree passed for the plaintiff with costs. *Held* that the decree, being founded on a judgment not in accordance with s. 203 of the Civil Procedure Code, was not according to law, and therefore the High Court, under s. 25 of the Provincial Small Cause Courts Act, had jurisdiction to pass such order in the matter as it thought fit. *Per* FARRAN, *C.J.*—In a case where there is nothing to excite suspicion, and where the plaintiff had given such proof of her claim as the law requires, the plaintiff is entitled, and this Court is entitled, to have some indication from the Judge of the point upon which he dismisses the suit, to show that he is not acting from mere caprice or in ignorance of the rules of law which regulate the proof requisite to establish a plaintiff's claim. *Per* FULTON, *J.*—The ground on which I would base our decision is that the error under s. 203 brings the case within our jurisdiction, and that the case being thus before us we are entitled, on being convinced that a failure of justice has occurred, to pass an order which will rectify the mistake. BAI JASODA *v.* BAMANSHA MANCHERJI

[I. L. R., 23 Bom., 334

9. ———— *Calcutta Municipal Consolidation Act (1888), ss. 135 and 157—"Valuation," Meaning of—Re-valuation made by the Municipality within six years from the date of the valuation made after hearing objection, Legality of—Code of Civil Procedure (Act XIV of 1882), s. 622—Stat. 24 & 25 Vict., c. 104, s. 15—Superintendence of High Court.*—The word "valuation" in s. 135 of the Calcutta Municipal Consolidation Act (Bengal Act II of 1888) means, not "the amount of the valuation" only, but also the process or act of valuation. A valuation was made by the Calcutta Municipality of a holding, the rate-prayer objected to the amount, and the Vice-Chairman of the Municipality, on hearing the objection, fixed the valuation at a certain amount. Within six years from this valuation fixed after objection, a re-valuation was made by the Municipality, and the rate-payer objected to the legality of such valuation on the ground that the Municipality had no power to make a re-valuation within six years from the date of the last valuation. The Vice-Chairman overruled the objection, and the rate-payer appealed under s. 157 of the Act to the Judge of the Court of Small Causes at Sealdah, who allowed the appeal. *Held* that, inasmuch as the objection raised by the rate-payer was an objection to the valuation within the meaning of s. 135 of the Act, the Judge of the Small Cause Court had jurisdiction to deal with it. That being so, it was not open to the High Court to interfere either under s. 25 of the Provincial Small Cause Courts Act, or under s. 622 of the Code of Civil Procedure, or under s. 15 of 24 & 25 Vict., c. 104. CORPORATION OF CALCUTTA *v.* BHUPATI ROY CHOWDHURY . . . I. L. R., 26 Calc., 74

[3 C. W. N., 70

REVISION—CRIMINAL CASES.

See ABSCONDING OFFENDER.

[I. L. R., 19 Mad., 3
I. L. R., 20 Mad., 88

See ACCOMPLICE.

[I. L. R., 14 Bom., 115

See ACCUSED PERSON, RIGHT OF.

[I. L. R., 19 Mad., 14

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[I. L. R., 15 All., 61

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R., 2 Bom., 564

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

[4 C. W. N., 825

REVISION—CRIMINAL CASES —continued

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL.
[I. L. R., 9 Calc., 288
I. L. R., 26 Calc., 746

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS
[I. L. R., 12 Bom., 561

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 6 B. L. R., 74
[I. L. R., 19 Calc., 127

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—COSTS
[I. L. R., 22 Calc., 387

See PRACTICE—CRIMINAL CASES—REVISION . I. L. R., 21 Calc., 827

See REFORMATORY SCHOOLS ACT, 1876 s 8
[I. L. R., 14 Bom., 3-1

See REFORMATORY SCHOOLS ACT 1897, s 16 I. L. R., 20 All., 158, 159, 160
[3 C. W. N., 576
I. L. R., 21 All., 391

See SANCTION TO PROSECUTE—DISCRETION IN GRANTING SANCTION.
[I. L. R., 15 Mad., 224

See SECURITY FOR GOOD BEHAVIOUR.
[I. L. R., 16 Bom., 372

See SENTENCE—POWER OF HIGH COURT AS TO SENTENCES—MITIGATION
[B. L. R., Sup. Vol., 484

See SESSIONS JUDGE, JURISDICTION OF
[I. L. R., 20 Calc., 633
I. L. R., 23 Bom., 50
I. L. R., 23 Mad., 205, 225

See VILLAGE CHOWKIDARS ACT s 8
[I. L. R., 23 Calc., 421

1. GENERAL RULES FOR EXERCISE OF POWER.

1. ——— Cases where appeal lies—*Appeal preliminary to application for revision*—Where there is a Court of appeal, resort should be had thereto before application is made to the High Court for the exercise of its powers of revision EMPRESS *v.* NILAMBHAR BABU
[I. L. R., 2 All., 276

2. ——————— *Appeal by Local Government—Application for revision by Local Government—Criminal Procedure Code, 1882, ss. 417, 439.*—It is not an inflexible rule that where either Government on the one side or an accused on the other has a right of appeal, and does not exercise it, the powers of the High Court under s. 439 of the Criminal Procedure Code cannot be exercised; but in such cases these powers should be sparingly used and save in very exceptional circumstances not at all in reference to questions of fact QUEEN EMPRESS *v.* ALA BUKSH . . . I. L. R., 6 All., 484

3. ——— Error which cannot be corrected by appeal—*Power of High Court.*—

REVISION—CRIMINAL CASES —continued

1. GENERAL RULES FOR EXERCISE OF POWER—continued

The High Court may act as a Court of revision after [illegible]

[illegible] C. W. R., Cr., 40

4. ——— Power of High Court on revision—*Letters Patent, High Court N. W. P., cl. 27, 24 & 25 Vict. c 104, s 13.*—S. 13 of 24 & 25 Vict., c 104, and s 27 of the Letters Patent of the High Court, apply to the High Court in its revisional as well as in its appellate jurisdiction. QUEEN *v.* NYN SINGH
[2 N. W., 117: S. C. Agra, F. B. Ed. 1874, 190

5. ——————— *Criminal Procedure Code, 1882, s 439*—The provisions of s 439 of the Criminal Procedure Code in no way affect the powers of the High Court as a Court of revision vested in it by the High Courts Act. CHAKOWRI LALL *v.* MOTI KURMI . 13 C. L. R., 275

6. ——— Irregularity or illegality in proceedings—*Ground for revision*—A fair *primâ facie* case as to the irregularity of these proceedings, or the illegality or impropriety of the sentence or order, must appear before the Court will call for or direct a return of the record of the proceedings QUEEN *v.* SUBBAYYA GAUNDAN 1 Mad., 138

7. ——— Application by private prosecutor—*Act X of 1872 s 297—Power of private prosecutor to move the Court in a case of acquittal.*—A private prosecutor can move the High Court, in the case of an acquittal, to exercise its powers of revision under s 297 of Act X of 1872. SIKHO *v.* DURGA PRASAD . . I. L. R., 2 All., 448

See IN THE MATTER OF HARDEO
[I. L. R., 1 All., 139

8. ——— Power of High Court to act on private information—*Revision by High Court, Power of—Ground for revision.* In the course of a serious riot one S was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased praying the Court to exercise their powers of revision—*Held* that, under the provisions of s 297 of the Criminal Procedure Code the High Court might exercise its powers of revision upon information in whatever way received. IN THE MATTER OF ACHOKIAM . . I. L. R., 2 Mad., 38

9. ——— Revision by the High Court—*Practice—Criminal Procedure Code (Act X of 1882), s 435—Revision where lower Court has concurrent jurisdiction with High Court.*—The High Court will not entertain an application for revision in cases where the District Court or Magistrate has concurrent revisional jurisdiction with the High Court, save on some special ground shown.

REVISION—CRIMINAL CASES —*continued.*

3. QUESTION OF FACT—*concluded.*

is not shown to be clearly and manifestly wrong. QUEEN-EMPRESS *v.* CHAGAN DAYARAM [I. L. R., 14 Bom., 331

27. ———— *Criminal Procedure Code (Act X of 1882), s. 439.*—Although it is not usual for the High Court to interfere in revision with the decision of the lower Courts, when it is based on a consideration of the evidence, yet where the lower Courts have not considered the evidence from the point of view that the witnesses were accomplices, and where hearsay evidence has been improperly admitted on important points, the Court will go into the facts of the case. ROJONI KANT BOSE *v.* ASAN MULLICK . **2 C. W. N., 672**

4. EVIDENCE AND WITNESSES

28. ———— **Conviction inconsistent with evidence**—*Criminal Procedure Code (Act X of 1882), ss. 439 and 423—Court of Appeal—Appellate powers—Discretion.*—In cases in which the law allows no appeal, the High Court, as a Court of revision, will not, except on very exceptional grounds, exercise the powers of an Appellate Court; but where such exceptional grounds exist, as where the conviction is not in any degree supported by the evidence, the High Court will exercise its discretion under s. 439 of the Code of Criminal Procedure, and reverse the conviction and sentence. EMPRESS *v.* BADRUDIN . . . **I. L. R., 8 Bom., 197**

Also where there is no evidence to support the conviction. IN THE MATTER OF THE PETITION OF RAMJOY KURMOKAR . . **25 W. R., Cr., 10**

IN THE MATTER OF KRISHNANAND BHUTTACHARJEE . . . **3 B. L. R., A. Cr., 50**

S. C. IN THE MATTER OF KISHEN SOONDUR BHUTTACHARJEE . . . **12 W. R., Cr., 47**

EMPRESS *v.* NAROTAM DAS **I. L. R., 6 All., 98**

REG. *v.* GANU BIN KRISHNA GURAV [4 Bom., Cr., 25

29. ———— **Laxity in weighing and testing evidence.**—Under the former Code, the Court would interfere in the case of great laxity in weighing and testing evidence. EMPRESS OF INDIA *v.* MURLI . . . **I. L. R., 2 All., 336**

But not on a mere error in the appreciation of evidence. REG. *v* SAKHARAM MANOHAR [11 Bom., 125

IN THE MATTER OF AUROKIAM [I. L. R., 2 Mad., 38

ANONYMOUS CASE . . . **5 Mad., Ap., 10**

30. ———— **Case depending on consideration and appreciation of evidence**—*Abatement of appeal.* Two persons, *M* and *N*, were convicted of criminal breach of trust, and each was sentenced to one year's rigorous imprisonment and a fine of R1,000. Both prisoners filed an appeal to the High Court. *N* died pending his appeal. On *M*'s

REVISION—CRIMINAL CASES —*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

appeal, the High Court passed an order acquitting him and reversing his conviction and sentence. Thereupon one of the relatives of the deceased *N* applied to the High Court to set aside the conviction and sentence passed in his case and order the fine to be refunded. *Held* that on *N*'s death his appeal abated under s. 431 of the Code of Criminal Procedure (Act X of 1882), and as the case turned on the appreciation of evidence, the High Court declined to interfere in the exercise of its revisional jurisdiction, referring the legal representatives of the deceased to the Governor in Council for redress. IN RE NABISHAH [I. L. R., 19 Bom., 714

31. ———— **Improper estimate of evidence by the Magistrate.**—The High Court would only interfere on revision if it came to the conclusion that the Magistrate had illegally and improperly underrated the value of the evidence. LACHMAN *v.* JAULA . . . **I. L. R., 5 All., 161**

32. ———— **Decision that evidence is insufficient**—*Refusal of Magistrate to proceed further in revision case.*—As a Court of revision, the High Court will not enter upon a consideration of the value of the evidence on which the Magistrate decided not to proceed further in a case under s. 521, Criminal Procedure Code, 1872. SHONAI PORAMANICK *v.* JOGENDRO SHAHA . **1 C. L. R., 486**

33. ———— **Questions depending on conflict of evidence.**—Questions of fact depending upon conflicting evidence which has been considered by the Judge who has given his opinion upon it are not cases for revision. IN THE MATTER OF THE PETITION OF DEBI CHURN BISWAS [20 W. R., Cr., 40

See BHARUT CHUNDER BOSE *v.* DWARKANATH CHOWDRY . . . . **15 W. R., Cr., 86**

34. ———— **Conflict of opinion on evidence**—*Ground for exercise of power of revision—Difference of opinion between Magistrates.*—The difference of opinion on a question of proof between a Magistrate who did, and another who did not, hear the witnesses, is not a ground on which the High Court will be disposed to exercise its powers of revision. NUNDO KISHORE HALDAR *v.* ANUNDO CHUNDER CHATTERJEE . **23 W. R., Cr., 64**

Nor are questions of the credibility of evidence. IN THE MATTER OF the PETITION OF HURI PERSHAD [24 W. R., Cr., 60

S. C. on further hearing. IN THE MATTER OF THE PETITION OF HURRIPROSAD DUTTA [25 W. R., Cr., 61

GOVERNMENT OF BENGAL *v.* KAZIMUDDIN [18 W. R., Cr., 3

35. ———— **Omission to take material evidence**—*Decision on discrepant evidence.*—Omission to take very material evidence proffered by the accused was held to have prejudiced him and to afford ground for the High Court's interference

REVISION - CRIMINAL CASES —*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

under *the Code of Criminal Procedure, 1872, s* 297. IN THE MATTER OF THE PETITION OF HURPERSHAD . . . . 24 W. R., Cr., 60

36. ———— **Omission to give available evidence for prosecution**—*Material "error"—Error in appreciation of evidence—Act X of 1872, s. 297.*—It was not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Sessions Judge had not been brought before him. The words "material error" in that section could not be held to include error in the appreciation of evidence Under *the 1st clause of s. 297, Act X of 1872, the High* Court could not set aside findings of fact except in case of an appeal from a conviction IN THE MATTER OF AUROKIAM . . I. L. R., 2 Mad, 38

37. ———— **Irregularity in dealing with evidence**—*Withholding admissib e statement of witness from the jury*—Where a statement by a witness for the defence, that a witness for the prosecution was at a particular place at a particular time, and consequently could not then have been at another place where the latter states he was and saw the accused persons, after being admitted, was withheld from the jury, the High Court ordered a new trial. REG. *v.* SAKHARAM MUKUNDJI [11 Bom., 166

38. ———— *Criminal Procedure Code, 1861, ss. 426, 439—Misconception of evidence.*- Misconception of evidence was a defect or irregularity within the meaning of ss 426 and 439 of the Code of Criminal Procedure, 1861. QUEEN *v.* BEHAREE DOSADH . 7 W. R., Cr., 7

39. ———— *Criminal Procedure Code, 1861, s. 426—Admission of illegal evidence—Act II of 1855, s. 57—New trial.*—The Appellate Court, where it finds that illegal evidence has been admitted, should consider whether it is such as is likely to have exercised prejudicial influence on the minds of the jury; and if the Court be of opinion that it is so, it will treat the case as if it had been tried by a Sessions Judge with the aid of assessors [illegible]

real value cannot fairly be appreciated except by a Court which has heard that evidence given, a new trial will be directed. REG. *v.* RAMSWAMI MUTLIAR [6 Bom, Cr., 47

40 ———— **Discretion of** *Sessions Judge—Power of Appellate Court.*—The exercise of the discretion which the Sessions Judge had under s. 249 of the Criminal Procedure Code, 1872, to determine whether the depositions taken before the Magistrate at the preliminary inquiry are to be evidence at the hearing before the Sessions Court, was open to review by the High Court on appeal. REG *v.* ABAJI MAONA . 11 Bom., 281

REVISION—CRIMINAL CASES —*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

41. ———— *Improper admission in evidence of examination of prisoner.*—When the examination of the prisoner by the Magistrate had not been recorded in full as required by s 205 of the Criminal Procedure Code, 1861 and was therefore inadmissible in evidence, and the other evidence was sufficient to support the conviction, the fact that such examination had been admitted by the Sessions Court was not a ground for setting aside the trial on revision REG *v.* KALLA LAKHMAJI . . . 2 Bom., 419: 2nd Ed., 395

REG *v.* PEYADI BIN BASSAPPA [2 Bom., 421: 2nd Ed., 397

REG *v.* VITHAJI . 2 Bom., 422: 2nd Ed., 398

REG *v.* GANU BAPU [2 Bom, 422: 2nd Ed., 398

42. ———— **Error in mode of recording evidence.**—Where the evidence was taken down by the Magistrate in English and no memorandum was attached to it (as required by s. 199 Code of Criminal Procedure, 1861) stating that the evidence was read over to the witness in a language which he understood it was held that the accused was materially prejudiced, and the Court interfered on revision. QUEEN *v.* ISSUR RAUT [6 W. R., Cr., 63

43. ———— *Criminal Procedure Code, 1872, s 297—Evidence in dispute regarding land.*—In a case of a dispute regarding land commenced under the Code of Criminal Procedure, 1861, but continued under the Code of 1872, where the evidence was not recorded in the manner provided for by s. 334 and the following sections of the Code, the Court set the order aside on revision KHETTROMONY DASI *v.* SREENATH SIRCAR [20 W. R., Cr., 14

44. ———— *Criminal Procedure Code, 1861, ss. 426, 439—Irregularity not prejudicing prisoner—Madras Police Act, 1859, s. 44.*—A police constable was tried and convicted by the Assistant Agent of Vizagapatam under s 44 of Act XXIV of 1859, and sentenced to fine and imprisonment. On appeal, the Agent reversed the conviction and sentence, on the ground that there had been irregularity of procedure on the part of his assistant in not recording evidence for the prosecution, and in only taking down the substance of the prisoner's statement, and not the full statement as made. *Held* that the question was whether there had been such error and irregularity on the part of the Assistant Agent as to prejudice the accused and to occasion a failure of justice; that if not, the order reversing the conviction was rendered bad in law by ss. 426 and 439 of the Criminal Procedure Code; that the accused did not appear to have been prejudiced: consequently the order of the Appellate Court was set aside, and a rehearing directed. ANONYMOUS . . . 6 Mad., Ap., 45

45. ———— **Irregularities concerning witnesses**—*Irregularity in taking evidence of*

REVISION—CRIMINAL CASES —*continued.*

4. EVIDENCE AND WITNESSES—*continued.*

witnesses.—The High Court refused to interfere where a witness for the prosecution was examined after the defence was over, where the prisoner had notice of the evidence to be given by the witness, and therefore was not prejudiced by it in his defence. QUEEN *v.* SHAM KISHORE HOLDAR [13 W. R., Cr., 36

But *see* QUEEN *v.* ASSANOOLLAH [13 W. R., Cr., 15

46. ———— *Omission to examine and reduce to writing evidence of complainant.*—The not examining a complainant and not reducing his examination into writing is not such an irregularity as to require the interference of the High Court in a trivial case, unless it appears probable (of which there was no suggestion in the present case) that a fresh investigation would produce a different result. KABIL NUSYO *v.* BAHARULLAH [17 W. R., Cr., 37

47. ———— *Omission to examine witnesses.*—Where a Magistrate omitted to examine all the complainant's witnesses before declaring the accused not guilty, the Court dealt on revision with the omission. SREENATH MUNDLE *v.* SREERAM RAJPUT . . 24 W. R., Cr., 62

SANTOO MUNDLE *v.* ABDOOL BISWAS [13 W. R., Cr., 35

48. ———— *Omission to give opportunity to produce witnesses—Error or defect in trial—Criminal Procedure Code, 1861, s. 426.*—Where the accused had not his witnesses in attendance, and did not apply to the Magistrate to summon them (ss. 352 and 353, Code of Criminal Procedure), the omission of the Magistrate to require him to produce his witnesses was held not to prejudice the accused, or so as to call for interference on revision. QUEEN *v.* TOTARAM . . 11 W. R., Cr., 15

49. ———— *Power of High Court—Criminal Procedure Code (Act XXV of 1861), s. 366—Examination of accused—Postponement of trial for summoning a witness—Discretion of Judge.*—A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it as required by s. 205 of the Code of Criminal Procedure. The Sessions Judge therefore refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate and taking his evidence in the matter. *Held* that, it being wholly within the discretion of the Judge, under s. 366, to say whether or not he should postpone the trial, or summon any witness to give his evidence, the High Court as a Court of revision would not interfere or order a new trial. QUEEN *v.* RADHA JANA [3 B. L. R., A. Cr., 59: 12 W. R., Cr., 44

REVISION—CRIMINAL CASES —*continued.*

4. EVIDENCE AND WITNESSES—*concluded.*

50. ———— *Criminal Procedure Code, 1861, ss. 426, 439.*—Where the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*, the High Court declined to interfere, as the irregularity of procedure was one by which the prisoners were not prejudiced. PURMESSUR SINGH *v.* SOROOP AUDHIKAREE [13 W. R., Cr., 40

51. ———— *Refusal to allow witnesses to be cross-examined by accused.*—The refusal of the Judge to allow to be cross-examined, by the accused, witnesses whose depositions have been taken by the Magistrate, but whose evidence is dispensed with at the trial, was held not to be a matter for revision. REG. *v.* FATTECHAND VASTACHAND . . . . . 5 Bom., Cr., 85

52. ———— *Order of Magistrate refusing to recall witnesses for prosecution for cross-examination.*—An order of the Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination is one which can be immediately corrected by the High Court under its general powers of superintendence and revision. IN THE MATTER OF THE PETITION OF BELILIOS. BELILIOS *v.* QUEEN 19 W. R., Cr., 53

53. ———— *Power of High Court—Penal Code, ss. 283, 291—Evidence not taken on oath.*—In exercise of its powers as a Court of revision, the High Court quashed convictions by a Joint Magistrate and Assistant Magistrate of certain persons for offences under s. 283 (danger, obstruction, or injury to any person in a public way or line of navigation) and s. 291 (repeating or continuing public nuisance) of the Penal Code, in which it appeared that the complainants' statement was not made on oath or before a Magistrate, and in which there was no statement of charge or evidence of any kind. IN THE MATTER OF MOHESH CHUNDER [20 W. R., Cr., 55

5. ACQUITTALS.

54. ———— **Acquittal from which Government may appeal**—*Criminal Procedure Code, 1872, s. 297.*—It is not the practice of the High Court to interfere by way of revision under s. 297 of the Code of Criminal Procedure, 1872, with an acquittal against which the Government may appeal. EMPRESS *v.* CHEDI RAI . 7 C. L. R., 142

55. **Improper acquittal**—*Acquittal on erroneous ground.*—Where the senior Assistant Sessions Judge, on the hearing of a charge of false evidence, without taking evidence acquitted the accused after calling upon him to plead, the prosecutor being unable to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal, and directed the trial to be

REVISION—CRIMINAL CASES —continued

5. ACQUITTALS—concluded.

proceeded with. REG. v. DAMODHAR RAM CHANDRA 5 Bom., Cr., 68

56. ———— *Trial on evidence taken in another case.*—The Court set aside an order of acquittal passed by a Deputy Magistrate in a case which he tried not on evidence taken before himself in the case, but entirely on evidence in another case before another officer (the Joint Magistrate). TUKHEYA LAL v. TUPSEE KOOER [15 W. R., Cr., 23

57. ——— **Order for detention of accused pending appeal from acquittal**—*Power of High Court on revision.*—Where an appeal having been preferred to the High Court against a judgment of acquittal a Magistrate made an order on the [illegible]

v. GHOLAM ISMAIL I. L. R., 1 All., 1

58. — **Order of acquittal**—*Criminal Procedure Code, s. 423 (a), s. 439—High Court's powers of revision—Order by High Court for re-trial after acquittal on appeal.*—The High Court [illegible]

Session in appeal the High Court may, under s. 439, reverse such order and direct a re-trial of the appeal by the proper tribunal to conduct which is the Sessions Court of appeal or such other Court of equal jurisdiction as the High Court may entrust under s. 526 of the Code with the trial of the appeal. QUEEN-EMPRESS v. BALWANT I. L. R., 9 All., 134

59. **Petition to revise a judgment of acquittal**—*Criminal Procedure Code, ss. 435, 439, 440.*—An appeal against an acquittal by way of revision is not contemplated by the Code, and it should on public grounds be discouraged. THANDAVAN v. PERIANNA I. L. R., 14 Mad., 363

60. ——— **High Court's power of revision**—*Criminal Procedure Code, 1882, s. 439—Practice.*—Though the High Court has the power under s. 439 of the Code of Criminal Procedure (Act X of 1882) to revise an order of acquittal, yet ordinarily it does not interfere with such an order in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government under s. 417 of the Code. HEERABAI v. BHAMJI BHILAJI I. L. R., 15 Bom., 349

6. COMMITMENTS.

61. — **Power to quash commitments**—*Power of revision by High Court—Criminal Procedure Code, 1872, s. 472.*—*Held per* STUART, C.J. (SPANKIE, J., doubting), that the High Court

6. COMMITMENTS—concluded.

was competent in the exercise of its power of revision under s. 297 of Act X of 1872 to quash a commitment made by a Court of Session under the provisions of s. 472 of that Act. EMPRESS v. LACHMAN SINGH I. L. R., 2 All., 398

But *see* QUEEN v. SHAMA SUNKER BISWAS [10 W. R., Cr., 25

and QUEEN v. SHEETARAM CHOWDHRY [2 W. R., Cr., 44

62. ——— **Power of High Court in revision to order person convicted and sentenced to be committed for trial**—*Penal Code (Act XLV of 1860), s. 326—Grievous hurt—Inadequate sentence—Presidency Magistrate, Duty of—Criminal Procedure Code, ss. 423, 439.*—The accused was tried by a Presidency Magistrate on a charge of voluntarily causing grievous hurt with an instrument for cutting. He was convicted and sentenced under s. 326 of the Penal Code to rigorous imprisonment for two years. The Local Government being of opinion that the sentence was inadequate moved the High Court under s. 439 of the Code of Criminal Procedure (Act X of 1882) to quash the Magistrate's proceedings, and ordered the accused to be committed for trial to the High Court. It was contended for the prisoner that as the offence was not exclusively triable by the Court of Session the High Court had no power under s. 423 (b) of the Code to order the accused to be committed for trial. *Held*, dissenting from *Queen-Empress v. Sukha, I. L. R., 8 All., 14*, that s. 423 (b) gives to an Appellate Court the power to order an accused person to be committed for trial when it considers that that is the procedure that should have been adopted by the Magistrate in the case. *Held* also that the offence of which the prisoner was convicted being one punishable under s. 326 of the Penal Code with transportation for life or rigorous imprisonment for ten years and fine, the Presidency Magistrate ought to have committed the accused for trial to the High Court. QUEEN-EMPRESS v. ABDUL LATIWAN [I. L. R., 16 Bom., 580

7. DISCHARGE OF ACCUSED.

63. ——— **Improper discharge**—*High Court's powers of revision—Criminal Procedure Code, 1882, s. 439—Power to order commitment—Revival of prosecution.*—The High Court has power under s. 439 of the Criminal Procedure Code, 1882, if it considers that an accused person has been improperly discharged, to order him to be committed for trial. EMPRESS v. RAM LAL SINGH [I. L. R., 6 All., 40

This was also the case under the former Act. IN THE MATTER OF THE PETITION OF [illegible] COOMAR GHOSE 10 W. R., Cr., 60

EMPRESS v. GOWLAPA I. L. R., 2 Bom., 534

IN THE MATTER OF THE PETITION OF MOHESH MISTREE [I. L. R., 1 Calc., 282: 25 W. R., Cr., 30, 67

REVISION—CRIMINAL CASES —*continued.*

7. DISCHARGE OF ACCUSED—*concluded.*

EMPRESS *v.* DONNELLY. IN THE MATTER OF THE PETITION OF DONNELLY I. L. R., 2 Calc., 405

EMPRESS *v.* HARY DOYAL KARMOKAR [I. L. R., 4 Calc., 16

S. C. ISHEN CHUNDER KURMOKAR *v* HURRY DOYAL KURMOKAR . . . 3 C. L. R., 263

IN THE MATTER OF TROYLOKHYANATH MITTER [1 C. L. R., 83

64. ———— **Dismissal of charge against accused**—*Dismissal of case of breach of contract on the ground that Act XIII of 1859 did not apply.*—The High Court declined to exercise their extraordinary powers of revision in a case in which the Joint Magistrate dismissed a complaint of breach of contract under Act XIII of 1859, on the ground that that Act did not apply to the contract, which was a contract to work at a certain factory. LYALL & Co. *v.* RAM CHUNDER BAGDEE [18 W. R., Cr., 53

8. REVIVAL OF COMPLAINT AND RE-TRIAL.

65. ———— **Power of High Court to revise order reviving a complaint after discharge**—*High Court Charter Act (24 & 25 Vict., c. 104), s. 15 Criminal Procedure Code, 1882, s. 439.*—The High Court has ample powers, under the Charter Act, if not under the Code, to revise an order reviving a complaint after discharge by a Presidency Magistrate. In this particular case it was held that the Presidency Magistrate has exercised a proper discretion in reviving the complaint. OPOORBA KUMAR SETT *v.* PROBOD KUMARY DASSI [1 C. W. N., 49

See CHAROOBALA DABEE *v.* BARENDRA NATH MAJOOMDAR . . I. L. R., 27 Calc., 126 [3 C. W. N., 601

66. ———— **Power of High Court to re try case after setting aside a conviction on ground of misdirection to jury.**—*Quære*—Whether in setting aside a conviction on the ground of misdirection to the jury, the High Court has any power to re-try the case having regard to s. 423 of the Criminal Procedure Code. SADHEE SHEIKH *v.* EMPRESS . . . . 4 C. W. N., 576

67. ———— **Power to order re-trial**—*Power of High Court as Court of revision and appeal—Act XI of 1874, s. 28.*—The High Court has full power as a Court of revision to order a re-trial when necessary. As a Court of appeal, it has the like power under Act XI of 1874, s. 28, in cases tried with assessors. IN THE MATTER OF THE PETITION OF LUCKHY NARAYAN NAGORY 24 W. R., Cr., 24

68. ———— **Ground for re-trial**—*Improper discharge of accused.*—*Per* MARKBY, J.—When the discharge has been improper, the only proper course open to a Magistrate is to report the case to the High Court for orders, and that Court, if of

REVISION—CRIMINAL CASES —*continued.*

8. REVIVAL OF COMPLAINT AND RE-TRIAL —*concluded.*

opinion that the accused has been improperly discharged, will order a re-trial. EMPRESS *v* DONNELLY. IN THE MATTER OF THE PETITION OF DONNELLY [I. L. R., 2 Calc., 405

69. ———— *Improper discharge of accused.*—As the case was one of improper discharge and came before the Magistrate under s 295 of the Criminal Procedure Code, 1872, the proper and only course for him was to report it for orders to the High Court, which, if of opinion that the accused were improperly discharged, might, under s. 297, have directed a re-trial. The case of *Sidya bin Satya* differed from. IN THE MATTER OF THE PETITION OF MOHESH MISTREE [I. L. R., 1 Calc., 282: 25 W. R., Cr., 30, 67

70. ———— *Sentence almost undergone—Ground for not ordering re-trial.*—Where a rule was issued to show cause why the conviction should not be set aside and a re-trial ordered, and it appeared that the accused had already suffered the whole imprisonment, less one day, the Court in setting aside the conviction did not direct a re-trial. ABDOOL BISWAS *v.* KHATER MONDAL [3 C. W. N., 332

9. JUDGMENTS, DEFECTS IN.

71. ———— **Judgment without giving reasons**—*Criminal Procedure Code, 1882, s. 421—Appeal, Summary rejection of—Judgment of Criminal Appellate Court.*—The powers conferred by s. 421 of the Criminal Procedure Code should be exercised sparingly and with great caution, and reasons, however concise, should be given for rejecting an appeal under that section. Where a Sessions Judge rejected an appeal summarily under s. 421 by an order consisting merely of the words "Appeal rejected," and an application for revision of such order was made to the High Court after great delay,—*Held* that the Judge was wrong in rejecting the appeal without assigning any reasons for so doing, and if it had been taken within a reasonable time it would have been a valid objection QUEEN-EMPRESS *v.* RAM NARAIN . . . . I. L. R., 8 All., 514

72. ———— **Judgment not containing substance of evidence relied on**—*Omission to comply with s. 228, Criminal Procedure Code—Irregularity in proceedings—Error or defect.*—*K* was tried by a Magistrate in a summary way and convicted. He appealed to the Court of Session, which quashed his conviction, on the ground merely that the substance of the evidence on which the conviction was had was not embodied in the Magistrate's judgment. *Held* that the Court of Session should not have quashed the conviction merely by reason of such defect, but, if it found it impossible to dispose of the appeal because of such defect, it should have required the Magistrate to repair the same by recording a judgment in which the substance of the evidence should be fully embodied, and,

REVISION—CRIMINAL CASES
—*continued*

9 JUDGMENTS, DEFECTS IN—*concluded*

if necessary, re examining the witnesses for that purpose, or to have ordered a re-trial with that view EMPRESS OF INDIA v KARAN SINGH

[I. L R, 1 All, 680

73. ——— **Judgments not giving the best reasons for conviction.**—Where the record contains ample evidence of the guilt of the accused, the conviction ought not to be set aside merely on account of the weakness of the reasons assigned for it. QUEEN v PEARI RAUR . 8 W R., Cr, 40

74 ——— **Omission to record reasons for conviction**—*Omission to take notes of evidence in non-appealable case – Criminal Procedure Code, 1882, ss 370, 537* – In a case where the accused was ... months' rig r ... dence taken ... cient materials upon which the prisoner could be legally convicted and the Magistrate had omitted to record his reasons for the conviction under s 370, cl (i), of the Code of Criminal Procedure *Held* by the High Court as a Court of revision that the conviction and sentence must be set aside, notwithstanding the provisions of s 537 of the Code of Criminal Procedure IN THE MATTER OF THE PETITION OF YACOOB YACOOB v ADAMSON

[I L. R, 13 Calc, 272

10 SENTENCES

See CASES UNDER SENTENCE—POWER OF HIGH COURT AS TO SENTENCES

75. ——— **Case in which sentence has** ... 1882 s 439 ...

Procedure ... though in ... it may not ... QUEEN EMPRESS v SINHA I L. R., ... All, ...

76 ——— **Enhancement of sentence** ...

imprisonment ... Court, in dismissing the appeal, directed, as a Court of revision, that the sentence passed should be enhanced METHER ALI v QUEEN EMPRESS

[I. L. R, 11 Calc, 530

See QUEEN v GORACHAND GOPE

[B L. R, Sup. Vol., 443

77. ——— **Enhancement of sentence so as to alter its nature**—*Criminal Procedure Code, 1882 s 439* —The High Court, in the exercise of its powers of revision, can enhance a sentence so as to alter its nature QUEEN-EMPRESS v RAM KURIA

[I. L. R., 6 All., 622

REVISION—CRIMINAL CASES
—*continued*

10 SENTENCES—*continued*

78 — ——— **Setting aside conviction and sentence, and directing trial on graver offence**—*Power of High Court—Conviction of lesser offence by Court having no jurisdiction to convict of a graver one.* —When the evidence upon ... subordinate tribu... discloses an ... jurisdiction ... with the con... rect ... the ... is a ... ts of ...

... , 5

79 ——— **Ground for enhancing sentence** ... inadequate—*Charge im-* ... Magistrate ... urt with a ... de because ... it is not ... Magistrate ... re sentence or a different charge ... urt should interfere There must be matter on the record of the case showing that a charge has been improperly framed, or that the sentence passed is clearly inadequate to the offence QUEEN v HARNATH SINGH

[20 W R, Cr., 22

80 ——— **Ground for refusing to enhance sentence**—*Reference by Commissioner having jurisdiction—Inadequate sentence* —The reference made ...

81 ——— **Setting aside improper sentence** ...—Where a ... rate to ten ... a confinement ... warrant of law and without having committed an offence, the High Court, in the exercise of its powers of interference, set aside the order QUEEN v. RUGHOOBUR SINGH . . . . 25 W. R, Cr, 1

82. ——— **Severity of sentence**—*Criminal Procedure Code, 1861, s. 404* —The severity of a sentence is not of itself a ground on which the High Court should call for the record of a trial or other judicial proceeding, under the general power of revision. QUEEN v. NARAPUREDDY . 4 Mad, 212

See IN THE MATTER OF KRISHNANAND BHUTTACHARJEE . . . 3 B. L. R, A Cr., 50

REVISION—CRIMINAL CASES —*continued.*

10. SENTENCES—*continued.*

S. C. IN THE MATTER OF KISHEN SOONDUR BHUTTACHARJEE . . . . 12 W. R., Cr., 47

83. ——— **Necessity for alteration of conviction from one section of Penal Code to another** —*Reference to High Court.*—The necessity for altering a conviction from one section to another for cognate offences, when the accused has not been prejudiced by any such error, is no sufficient ground for a reference to the Court of revision. EMPRESS *v.* ISHAN CHUNDRA DE [I. L. R., 8 Calc., 847 : 12 C. L. R., 451

84. ——— **Conviction under repealed law**—*Criminal Procedure Code, 1861, s. 426.*—Where a Magistrate convicted under certain repealed sections of law, the High Court refused to set aside the conviction, having regard to s. 426, Code of Criminal Procedure, as the conviction and sentence might have been passed under sections of the Penal Code and no substantial injury had been done to the accused. RUGHOONATH DASS *v.* CHUCKERDHUN RAUT [15 W. R., Cr., 49

85. ——— **Conviction under Penal Code of offence committed before Penal Code came into operation**—*Criminal Procedure Code, 1861, s. 426—Act XVII of 1862, s. 4.*—In a case in which the accused was charged under the Penal Code with an offence which was committed before the Penal Code came into operation, it was held that, having regard to s. 4, Act XVII of 1862, and s. 426 of the Code of Criminal Procedure, the error of procedure was not sufficient to vitiate the conviction so long as the punishment awarded as under the Penal Code did not exceed that which was a legal penalty for the offence before the Penal Code became law. IN THE MATTER OF THE PETITION OF MOHABEER SINGH . . . 15 W. R., Cr., 48

86. ——— **Conviction for separate offences** —*Penal Code (Act XLV of 1860), ss. 380, 456, 457—New trial.*—The prisoner was convicted by the Magistrate of two separate offences under ss. 456 and 380 of the Penal Code, and sentenced for both. On appeal, the Sessions Judge, holding that the offence proved was under s. 457, ordered a new trial for offences under ss. 457 and 380. *Held* that there ought not to be a new trial, but that the conviction and sentence under s. 380 should be set aside. QUEEN *v.* RAMCHARAN KAIRI [B. L. R., Sup. Vol., 488 : 6 W. R., Cr., 39

87. ——— **Sentence for different offence than that committed**—*Criminal Procedure Code, 1861, s. 426.*—On reference by a Sessions Judge in reviewing the monthly magisterial returns, where the conviction by the Magistrate was for cheating by personation, and the offence appeared to the High Court to be furnishing false information for which the punishment awarded was legal,—*Held* that the Court, under s. 426 of the Criminal Procedure Code, ought not to interfere with the conviction or sentence. REG. *v.* RAGHOJI BIN KANOJI [3 Bom., Cr., 42

REG. *v.* BABAJI BIN BHAU . 4 Bom., Cr., 16

88. ——— **Conviction without jurisdiction**—*Criminal Procedure Code, 1861, ss. 426, 434—Revision by High Court.*—In a case referred by a District Magistrate under s. 434 of the Criminal Procedure Code, on the ground that the sentence was illegal, because the charge should have been under s. 324 of the Penal Code, for causing hurt by means of a heated substance, an offence which the 2nd class Subordinate Magistrate had no jurisdiction to try, and not under s. 323, for causing hurt, of which offence the accused had been convicted, the Court passed no order, as it did not think it right, under the circumstances of the case, to direct the re-trial of the accused on the proper charge. REG. *v.* AMPA KOM GIRSOJI [4 Bom., Cr., 1

89. ——— *Offence not cognizable by Magistrate convicting.*—In a case referred by a District Magistrate under s. 427 of the Criminal Procedure Code, 1861, on the ground that the charge should have been under s. 324 of the Penal Code—an offence not within the cognizance of a 2nd class Subordinate Magistrate, and not under s. 323—the Court passed no order, and remarked that the case should not have been referred under s. 427, which applies only to the Court of Session acting on appeal from a Court subordinate to it. REG. *v.* NABAJI VALAD VITHOJI . 4 Bom., Cr., 2

90. ——— **Trial on wrong charge**—*Criminal Procedure Code, 1861, s. 404.*—Where a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under s. 323, Penal Code) and extortion (s. 384), although the accused ought to have been charged under s. 327, and tried by the Court of Session, the High Court declined to interfere under s. 404, Code of Criminal Procedure, and direct a new trial, believing that substantial justice had been done in the case. IN THE MATTER OF THE PETITION OF TARINEE PROSAUD BANERJEE [18 W. R., Cr., 8

IN THE MATTER OF THE PETITION OF BUNKA BEHAREE SEIN . . 18 W. R., Cr., 23

IN THE MATTER OF ROOPNARAIN DUTT [18 W. R., Cr., 38

91. ——— **Trial under wrong charge** —*Conviction of non-cognizable offence.*—In a case referred by a District Magistrate, on the ground that the accused had been convicted, under s. 403 of the Penal Code, of dishonest misappropriation of property, whereas the charge should have been, under s. 406, of criminal breach of trust an offence not within the cognizance of the 2nd class Subordinate Magistrate who passed the sentence, the Court annulled the conviction and sentence, and directed the case to be tried before a proper Court. REG. *v.* GANU VALAD RAMCHANDRA . 4 Bom., Cr., 3

92. ——— **Sentence under special Act instead of Penal Code**—*Criminal Procedure Code, 1872, s. 297—Criminal Procedure Code, 1861, s. 426—Sentence under Post Office Act (XIV*

REVISION—CRIMINAL CASES—*continued*

10 SENTENCES—*concluded*

of 1866)—The accused, being entrusted to put a

Penal Code for criminal breach of trust As the

See IN THE MATTER OF THE PETITION OF TARINEE PROSAD BANERJEE . 18 W. R, Cr, 8

93.——— Erroneous conviction under wrong section of Penal Code —Where a Magistrate erroneously holding that the offence committed was one under s 406, Penal Code, over which he has jurisdiction, instead of under s 409, which was cognizable only by the Court of Session, tried and sentenced the accused it was held by the High Court as a Court of revision that his proceedings were contrary to law, and he was directed to commit the case for trial by the Court of Session IN THE MATTER OF RAM SOONDER PODDAR

[2 C. L. R., 515

11 VERDICT OF JURY AND MISDIRECTION

94 ——— Ground for interference with verdict *Power of High Court—Verdict of jury not manifestly erroneous* —The Court will not interfere with the finding of a jury unless their verdict is shown to be manifestly erroneous A prisoner was charged under ss 302 and 304 of the Penal Code, and the Judge at the trial added a further charge under s 325 The Judge in his charge to the jury directed them that in the event of their finding the charges under ss 302 and 304 unsustainable they might find the prisoner guilty under s 325 The jury unanimously acquitted the prisoner under the charge framed under s 302, and a majority of them acquitted him under the charge framed under s 304, but a majority of them found him guilty under the charge framed under s 325 The Judge disagreed with their finding as regarded the charge framed under s 304, and referred the case to the High Court under s 307 of the Criminal ... ed to interfere with the verdict ... oneous, the having ex... might find ... EMPRESS v JACQUIET I. L. R., 11 Calc, 85

REVISION—CRIMINAL CAS[ES]—*continued*

11 VERDICT OF JURY AND MISDIREC[TION]—*continued*

95 ——— Conviction on evidence amounting to proof—A jury may be sati[sfied] with a minimum of proof and it is beyond [the] power of the High Court in such cases to inter[fere] with its verdict; but when there is nothing wh[ich] can if believed amount to proof the case should [not] be put to the jury at all as a verdict of gu[ilty] cannot under such circumstances be sustai[ned] Under such circumstances the Court will se[t the] conviction aside QUEEN v RUTTON DASS

[16 W. R, Cr.

96 Finding of jury as to gr[ave] and sudden provocation *Criminal Procedure Code 1872, s 237—Criminal Procedure Co[de] 1861, s 426—Question of fact—Power of H[igh] Court.*—Under excep 1, s 300 of the I...

97. Omission to charge ju[ry] properly—*Power of High Court to set as[ide] verdict* – Omission to sum up properly to the j[ury] is if ... error ... law su... n sett... aside ... VAS... CHAND ... , Cr,

98 ——— Misdirection—*Trial by j[ury] —Power to go into facts of case Mode of deal[ing] with directions of Judge to jury* —In a case t[ried] by jury the High Court has no power to go i[nto] the facts of the case in order to see whether or [not] the conviction was right, that standing entir[ely] upon the verdict of the jury The Court has only [to] consider the facts in order to see whether the Ju[dge] has done his duty in laying the case before the ju[ry] for their consideration The mode of dealing by [the] High Court with the Judge's summing up to [the] jury pointed out, first as regards the law and th[en] *as regards the facts* QUEEN v NIMCHA[ND] MOOKERJEE 20 W R., Cr.,

99. ——— *Error in law—Prejudice to accused—New trial* Improper adv[ice] given by the Judge to the jury upon a question [of] fact or the omission of the Judge to give that adv[ice] which a Judge in the exercise of a sound judic[ial] discretion ought to give the jury upon questions [of] fact, amounts to such an error in law in summi[ng] up as to justify the High Court on appeal or revisi[on] in setting aside a verdict of guilty. The power [of] setting aside convictions and ordering new trials f[or] any error or defect in the summing up will be exe[r]cised by the High Court only when the Court [is] satisfied that the accused person has been prejudic[ed] by the error or defect or that a failure of justi[ce] has been occasioned thereby QUEEN v FLAHI BA[...]

[B. L. R., Sup Vol, 459: 5 W. R., Cr., 8

REVISION—CRIMINAL CASES —*continued.*

11. VERDICT OF JURY AND MISDIRECTION—*concluded.*

100. ——————— *Omission to leave material facts to jury.*—The verdict of the jury was reversed, on the ground of misdirection by the Judicial Commissioner in not having left the cause of death and the prisoner's connection with certain attempts at bribery as questions for the consideration of the jury. QUEEN *v.* KALI CHURN GANGOOLY . . . **7 W. R., Cr., 2**

101. ——— ——— ——— *Prejudice to prisoner from erroneous summing up.*—Where there is a failure of justice, or where the prisoner has been prejudiced by the defective summing up of the Judge, the High Court can interfere either by discharging the prisoner, if the evidence on the record is not sufficient to convict him, supposing the trial to have taken place with the aid of assessors, or to direct a fresh trial. QUEEN *v.* MUTHOORA SINGH **[18 W. R., Cr., 66**

102. ——————**Sessions Judge, Opinion of** —*Criminal Procedure Code, s 307—High Court, Power of.*—In the exercise of its powers under s. 307 of the Code of Criminal Procedure, the High Court will form and act upon its own view of what the evidence in its judgment proves; but in doing so the opinion of the Sessions Judge, no less than verdict of the jury, is entitled to its proper weight. *Reg.* v. *Khanderav Bajirav, I. L. R., 1 Bom., 10; Queen* v. *Mukhan Kumar, 1 C. L. R., 275; Empress* v. *Dhunum Kazee, I. L. R., 9 Calc., 53; Queen-Empress* v. *Mania Dayal, I. L. R., 10 Bom., 497; Queen* v. *Ram Churn Ghose, 20 W. R., Cr., 33; Queen* v. *Sham Bagdi, 13 B. L. R., Ap., 19: 20 W. R., Cr., 73; Queen* v. *Huro Manjhee, 14 B. L. R., Ap., 2: 21 W. R., Cr., 4; Queen* v. *Wuzir Mundal, 25 W. R., Cr., 25; Queen* v. *Nobin Chunder Banerjee, 13 B. L. R., Ap., 20: 20 W. R., Cr., 70,* referred to. QUEEN-EMPRESS *v.* ITWARI SAHO **[I. L. R., 15 Calc., 239**

12. MISCELLANEOUS CASES.

103. ——————— **Order by Collector under Penal Code** *Power of revision by High Court.*—A Collector as such not being subject to the revisional jurisdiction of the High Court in criminal matters, that Court, in the exercise of such jurisdiction, is not competent to deal with an alleged illegal order made under the Penal Code by a Collector. IN THE MATTER OF DIANUT HOSEN . **10 C. L. R., 14**

104. ——————— **Order made under s 58 of the Forests Act (VII of 1878) for confiscation**—*Criminal Procedure Code, 1872, s. 297.*—The High Court was competent, under s. 297 of Act X of 1872, to revise an order made by a District Judge under s. 58 of the Forests Act, 1878, on appeal from the order of a Magistrate made under s. 54 of that Act, the jurisdiction of the High Court under s. 297 of Act X of 1872 not being expressly taken away by s. 58 of the Forests Act, 1878. EMPRESS *v.* NATHU KHAN . . . . **I. L. R, 4 All., 417**

REVISION—CRIMINAL CASES —*continued.*

12. MISCELLANEOUS CASES—*continued.*

105. ——— ——— **Valid conviction in case improperly instituted**—*Reference to Local Government.*—*Per* MACLEAN, J.—The High Court has power, without reference to the Local Government, to set aside a conviction in a case improperly originated. IN THE MATTER OF THE PETITION OF NOBIN CHUNDRA BANIKYA. EMPRESS *v.* NOBIN CHUNDRA BANIKYA . **I. L. R., 8 Calc., 560**

S. C. NOBIN CHUNDER BANIKYA *v.* EMPRESS **[10 C. L. R., 369**

106. ——————**Acting without proper discretion**—*Order for prosecution.*—That a Magistrate has acted without proper discretion in ordering a prosecution is no ground for reversing his order. EMAM ALI *v.* SUDDERUDDEEN **9 W. R., Cr., 18**

107. ——————**Order in bonâ fide exercise of discretion**—*Conviction under Municipal Act (III of 1864).*—The Court declined to quash proceedings held under a *bonâ fide* exercise of discretion in a case where a fine was imposed under Bengal Act III of 1864, s. 68, for keeping a piggery in a filthy state. IN THE MATTER OF AMAN CHINAMAN **[17 W. R., Cr., 58**

108. ——————**Order passed by Magistrate without jurisdiction.**—The High Court may interfere with and quash an order passed by a Magistrate when the order is one that was beyond the power and out of the jurisdiction of the Magistrate to make. LALOO *v.* ADAM SIRCAR GOVERNMENT *v.* SURJAKANT ACHARJIA. DENGOO SHAIKH *v.* ADAM SIRCAR . . . . . **17 W. R., Cr., 37**

EMPRESS OF INDIA *v.* BERRILL **[I. L. R., 4 All., 141**

109. ——————— The Deputy Magistrate adjourned the case to the 21st, on which day he ordered the case to be dismissed for non-attendance of the complainant; but on the following day cancelled the order, and revived the case on the ground of his having dismissed it by mistake in ignorance of the complainant having petitioned for an adjournment by reason of sickness. The Magistrate on appeal reversed the order of the Deputy Magistrate. As the order of the Deputy Magistrate was manifestly wrong, the High Court set aside the whole of the proceedings, and restored the case to the position in which it stood before the 21st. QUEEN *v.* RAM NARAIN GHOSE . . **8 W. R., Cr., 5**

110. ——————— *Magistrate acting under section of Code under which he has no jurisdiction.*—*Held* that where a Magistrate professes to act under one section of the Criminal Procedure Code under which he has no jurisdiction, but it is found that he has jurisdiction under some other section of the Code, the mistake is one which does not justify interference with the Magistrate's order, if otherwise good, and if the accused has not been prejudiced thereby. QUEEN *v.* PRANKISTO PAL **[14 W. R., Cr., 41**

REVISION—CRIMINAL CASES—*continued*

12 MISCELLANEOUS CASES—*continued*

111 ———— Order passed under s 146 on proceedings taken under s 145, Criminal Procedure Code—*Criminal Procedure Code (Act X of 1882), s. 145—Power of Court on revision—Evidence on revision* —Where a Magistrate has passed an order under s 145 of the Criminal Procedure Code, whereas the proper order in the case should have been one und[illegible]
will make th[illegible]
have made
entered into
Raja Baboo v Muddun Mohun Lall, I L R, 14 Calc, 169, explained REID *v* RICHARDSON
[I. L R, 14 Calc, 361

112 ———— Unreasonable order for security to keep the peace—*Power of revision* [illegible]
whole to Rs 60,000 or upwards The High Court quashed the order holding that it was altogether unreasonable IN THE MATTER OF JUGGUT CHUNDER CHUCKERBUTTY I L R, 2 Calc, 110

113 ———— Alteration of conviction—*Setting aside proceedings—Trial by jury where case was not so triable* —The High Court will not alter a conviction by a Sessions Court aided by a jury on a charge only triable by a jury, to one of a nature not triable by such a tribunal but will annul the proceedings and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised REG *v* NARO GOPAL
[5 Bom, Cr, 56

114. ———— Conviction in case where no appeal is given by Act on point of repeal—*New Act giving appeal Criminal Procedure Code, 1882 ss 408 and 439—Jurisdiction of High Court* —On the 9th December 1882 a person was convicted under ss 457 and 109 of the Penal Code and sentenced to three years' rigorous imprisonment by a Deputy Magistrate in Assam exercising special powers under s 36 of the old Code of Criminal Procedure (Act X of 1872) The new Code came into force on the 1st January 1883 The prisoner presented an appeal to the High Court from the conviction and sentence above mentioned on the 23rd January 1883 *Held* [illegible]

conferred on the High Court by virtue of that jurisdiction RONGAI *v* EMPRESS
[I L R, 9 Calc, 513

S C IN THE MATTER OF RANGAI
[12 C L R, 500

115. ———— Defect in form of summons to persons to show cause why they should not give security for keeping the peace—*Defect not prejudicing persons required to show cause* —Certain persons were convicted by a Magistrate of the 1st class of assault an offence punishable under s 352 of Act X of 1877 The case was brought to the knowledge of the High Court by the complainant preferring a petition to it together with a copy of the Magistrate's order This petition was laid before STRAIGHT J, who observing that the case was one in which the Magistrate should have taken security from such persons for keeping the peace as provided by s 489 of Act X of 1872 directed the Magistrate to summon such persons to show cause why they should not be required under s 491 of [illegible]

and eventually made an order requiring such persons to enter into a bond to keep the peace Such persons were fully aware of the order made by STRAIGHT J [illegible]

STRAIGHT J which was made without jurisdiction, and on the ground that the summonses had not set forth the report or information on which they were issued *Held* by STUART, C J that inasmuch as STRAIGHT J when he made his order represented the full authority and jurisdiction of the High Court, such order was final and the application could not be entertained *Held* by PEARSON J SPANKIE J, and OLDFIELD J (SPANKIE J doubting whether such order could be questioned) that the order of STRAIGHT J was one which he was competent to make as a Court of revision under s 297 of Act X of 1872 *Held* by PEARSON J and SPANKIE J that inasmuch as such persons had not been in the slightest degree prejudiced by the defect in the summonses which were issued to them such defect was not a ground on which to set aside the Magistrate's order requiring them to enter into a bond to keep the peace EMPRESS *v* MUHAMMAD JAFIR
[I L R., 3 All, 545

116 ———— Order confirming order for security for good behaviour—*Criminal Procedure Code, 1861 ss 404, 408* —An order of a Sessions Judge confirming an order directing security for good behaviour made by the Magistrate was held to be open to revision IN RE JUSWUNT SINGH
[1 Ind. Jur, N. S, 301 6 W R, Cr, 18

Also an order for maintenance REG *v* THAKU BIN IBA 5 Bom. Cr, 81

117 ———— Order rejecting appeal without calling for record and proceedings—*Criminal Procedure Code 1872 ss 278 295—Order under s 278* —An order under s 278 of the Code [illegible]

REVISION—CRIMINAL CASES
—*continued.*

12. MISCELLANEOUS CASES—*continued.*

proceedings of the case, is a final order falling within the scope of s. 285, and is not subject to revision. EMPRESS v. MAHOMED YASHIN
[I. L. R., 4 Bom., 101

118. ———— **Jurisdiction of High Court in revision to quash orders under s. 476 of the Criminal Procedure Code**—*Criminal Procedure Code (Act X of 1882), ss. 195, 423, 439, 476.*—The High Court is competent, in the exercise of its revisional powers, to interfere with an order of a subordinate Court, whether made under s. 195 or under s. 476 of the Criminal Procedure Code, directing the prosecution of any person for offences referred to in those sections. The High Court under s. 439 has the powers conferred on a Court of appeal by s. 523 to alter or reverse any such order. IN THE MATTER OF THE PETITION OF KHEPU NATH SIKDAR. KHEPU NATH SIKDAR v. GRISH CHUNDER MUKERJI
[I. L. R., 16 Calc., 730

119. ———— **Order directing prosecution**—*Criminal Procedure Code (1882), ss. 195, 439, and 476.*—Under the general revisional powers conferred by s. 439 of the Code of Criminal Procedure, a High Court has power to consider the propriety of an order which purports to be passed under s. 476 of the Code. *Queen-Empress* v. *Rachappa, I. L. R., 13 Bom., 109,* dissented from. IN THE MATTER OF THE PETITION OF MATHURA DAS
[I. L. R., 16 All., 80

120. ———— **Jurisdiction of High Court to quash orders under s. 476 of the Criminal Procedure Code**—*Criminal Procedure Code, ss. 195, 476—Sanction to prosecution—Preliminary inquiry.* The High Court has jurisdiction to interpose in the case of an order made by a Court under s. 476 of the Criminal Procedure Code, and has also the power to determine whether the discretion given by that section has or has not been properly exercised. *In the matter of the petition of Khepu Nath Sikdar* v *Girish Chunder Mukerjee, I. L. R., 16 Calc., 730,* relied on. CHAUDHARI MAHOMED IZHARUL HUQ v. QUEEN-EMPRESS
[I. L. R., 20 Calc., 349

121. ———— **Power of High Court in revision to revoke an order of a subordinate Court under ss. 195, 476, Code of Criminal Procedure**—*Order sanctioning prosecution—Criminal Procedure Code, s. 439.*—A High Court, as a Court of revision, has power under s. 439 to revoke an order made by a subordinate Court under s. 476 of the Code of Criminal Procedure. QUEEN-EMPRESS v. SRINIVASALU NAIDU . I. L. R., 21 Mad., 124

122. ———— **Power of High Court to revise an order as to sanction under s. 197 of the Criminal Procedure Code**—*Criminal Procedure Code (Act V of 1898), s. 197 and s. 439—Charter Act (24 & 25 Vict., c. 104), s. 15.*—A pleader applied to the Chief Presidency Magistrate for sanction under s. 197 of the Criminal Procedure Code to prosecute an Honorary Magistrate for using insulting and defamatory language towards him in the course of the trial of a case and sanction was refused. On application to the High Court,—*Held* under the revisional powers conferred by the Criminal Procedure Code, the High Court has no authority to interfere with an order made by a subordinate Court granting or refusing sanction under s. 197 of the Code, but it has sufficient authority for that purpose under s. 15 of the Charter Act (24 & 25 Vict., c. 104). NANDO LAL BASAK v. MITTER
[I. L. R., 26 Calc., 869
3 C. W. N., 539

123. ———— **Order under s. 144 of the Criminal Procedure Code**—*Criminal Procedure Code (1882), s. 435—Disputed possession of temple—Magistrate, Jurisdiction of.*—The District Temple Committee dismissed the trustees of a certain temple and appointed others. The dismissed trustees retained possession. A breach of the peace having become imminent in the opinion of a Deputy Magistrate, he made an order under the Criminal Procedure Code, s. 144, directing the newly-appointed trustees not to interfere with the temple or its management. *Held* that the Magistrate had jurisdiction to make the order, and therefore the High Court had no power to interfere in revision under the Criminal Procedure Code, s. 435. PALANIAPPA CHETTI v. DORASAMI AYYAR . . . . I. L. R., 18 Mad., 402

124. ———— **High Court's criminal revisional jurisdiction**—*Criminal Procedure Code (Act V of 1898), ss. 144, 145, 435, and 439—Dispute about right to perform service in a public temple.*—The High Court ordinarily has no jurisdiction to interfere with an order under Ch. XII of the Criminal Procedure Code (Act V of 1898), which is not a proceeding within the meaning of s. 435 of the Code; but when the Magistrate exceeds his jurisdiction under s. 144 or 145, the High Court has power to interfere under its revisional jurisdiction (s. 439). IN RE PANDURANG GOVIND
[I. L. R., 24 Bom., 527

125. ———— **Power to revise Presidency Magistrate's proceedings**—*Order for further inquiry—Criminal Procedure Code (Act V of 1898), ss. 423, 435, and 439—Letters Patent, High Court, 1865, cl. 28.*—The High Court has, under ss. 435 and 439, read with s. 423 of the Criminal Procedure Code, the power to revise the proceedings of a Presidency Magistrate and order a further inquiry to be made. It has the same power under cl. 28 of the Letters Patent of 1865. COLVILLE v. KRISTO KISHORE BOSE
[I. L. R., 26 Calc., 746
3 C. W. N., 598

126. ———— **High Court's power of revision**—*Presidency Magistrate, Proceedings of—Order for further inquiry—Criminal Procedure Code (Act V of 1898), ss. 423, 435, 439—Charter Act (24 & 25 Vict., c. 104), s. 15—Letters Patent, High Court, 1865, cl. 28.*—The High Court has powers of revision in respect of an order of discharge passed by a Presidency Magistrate by reason not of

REVISION—CRIMINAL CASES —*concluded*.

12 MISCELLANEOUS CASES—*concluded*

s 28 of the Letters Patent 1865 but of s 15 of the Charter Act (24 & 25 Vict c. 104) That section has always been interpreted in a very extended meaning so as to give ample powers of superintendence, that is to say, powers of revision over proceedings of subordinate Courts But the High Court has no power under the Code of Criminal Procedure to interfere in revision with an order of dismissal or discharge passed by a Presidency Magistrate. *Colvil e* v. *Kristo Kishore Bose, I. L R, 26 Calc, 746,* dissented from *Opoorba Kumar Sett* v *Probod Kumary Dassi, 1 C. W. N, 49,* referred to. A Presidency Magistrate acting under s. 203 of the Criminal Procedure Code dismissed a complaint on

CHAROBALA DABEE *v* EMPRESS 3 C. W. N, 601

127 ——— Act XIII of 1859, ss 2 and 3 —*Breach of contract by workmen—Procedure—*

the Criminal Procedure Code are therefore inapplicable to a case of this nature, and the High Court will not interfere in revision with the Presidency Magistrate's proceedings on the ground that he has not followed the provisions of that section AVERAM DAS MOCHI *v* ABDUL RAHIM

I. L R., 27 Calc, 131
4 C. W. N, 201

REVIVOR

See PRIVY COUNCIL, PRACTICE OF—REVIVOR OF APPEAL
[I. L. R, 21 Calc., 997
L. R., 21 I. A., 163

——— Substitution of parties as—

See PRIVY COUNCIL, PRACTICE OF—DEATH OF PARTY ON RECORD
[I. L R, 16 Calc, 184

RIGHT OF APPEAL.

See CASES UNDER APPEAL—RIGHT OF APPEAL, EFFECT OF REPEAL ON.

RIGHT OF APPEAL—*continued*

See CASES UNDER ASSIGNMENT OF CHOSE IN ACTION

See CIVIL PROCEDURE CODE, 1882, s. 3
[I L R, 4 Calc, 825

See CIVIL PROCEDURE CODE 1882 s 244 —PARTIES TO SUIT 2 C L R., 545

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES
[I L R., 3 Calc., 371

See NAWAB NAZIM OF BENGAL DEBTS ACT
[21 W R., 59

See PRACTICE—CIVIL CASES—APPEAL.
[I L R, 3 Calc, 228
I L R, 9 Calc, 738
I L. R, 18 Bom, 520

See SUPERINTENDENCE OF HIGH COURT——CIVIL PROCEDURE CODE, s 622
[I L R, 8 Mad, 192
I L. R, 18 Bom, 454

— Deprivation of—

See CRIMINAL PROCEEDINGS
[I L R, 4 Calc., 18

1 ——— Appeal from favourable decision —There is nothing in strict law to prevent a party, acting for himself or through his guardian from appealing against a decision in his favour STEPHENSON UNNODA DOSSEE
[6 W R, Mis., 18

2 ——— Appeal by defendant from

Contra, CHOWDHRY MAHOMED MOMIN *v* LUTAFUT HOSSEIN . . . 13 W. R., 239

Contra, SHAMA SOONDUREE DEBIA *v* DIGAMBUREE DEBIA . . . . . . 13 W. R., 1

of a Munsif with the powers of a Small Cause Court

RIGHT OF APPEAL—*continued.*

4. ———— **Right of new relators to appeal.**—As to the terms on which new relators will be allowed to come in after decree to prosecute an appeal. ADVOCATE GENERAL *v.* MUHAMMAD HUSEIN HUSENI . . 4 Bom., O. C., 203

5. ———— **Appeal by party struck out of suit in lower Court.**—A person was once made a party to a suit, but the decree was set aside, the suit as against him dismissed, and the case remanded for trial. From this last decision he appealed. The Court ordered the appeal to be struck off as made by a party no longer a party to the suit. GOKOOL PERSHAD DISCHEET *v.* BROJO MONEE DEBIA [24 W. R., 259

6. ———— **Appeal after intervenor had appealed and his name taken off record of suit**—*Re opening of case on remand.*—A suit having been decided by the first Court after an intervenor had been made a party under s 73, Code of Civil Procedure, 1859, it was remanded on the appeal of the intervenor, whose name was ordered to be expunged from the record. The suit was decided again in favour of the plaintiff, but the decision was reversed on appeal. *Held* that the fact of the defendant having, in the first instance, allowed the intervenor alone to appeal, did not debar him, after the case was re-opened by remand, from appealing in his own person. BUCHA SINGH *v.* MASHOOK ALI BEG [15 W. R., 572

7. ———— **Right of pro formâ defendant to appeal.** A *pro formâ* defendant against whom no judgment has been given has no right to appeal, even if another party has been found to be the owner of land which he claims; for such finding carries with it no legal consequence as against him RAM DOSS LUSHKUR *v.* HUREEHUR MOOKERJEE [23 W. R., 86

8. ———— **Right of party opposing will in case of application for certificate under Act XXVII, of 1860**—*Party not opposing grant of certificate.*—A widow having applied, under Act XXVII of 1860, for a certificate under her deceased husband's will, his brother came in not as a claimant of the certificate, and impugned the widow's allegation that the deceased husband had made a will. The Judge upon this went into the evidence, found in favour of the will, and granted the certificate applied for. Against this order the brother appealed to the High Court. *Held* that the appellant had no *locus standi*, as the appeal contemplated in s. 6 was limited to persons in conflict with the original petitioner as claimants. RAM LALL MOOKERJEE *v.* KOMOLA KAMINEE DEBEE . . . . 24 W. R., 92

9. ———— **Appeal brought by principal in suit where agents have sued.**—The plaintiffs, karindas of the appellant, having brought a suit in their own name, the suit was dismissed on the merits, and appeals preferred by the appellant in his own name to the Judge and to the High Court. *Held* that the procedure was illegal, and the decrees of the lower Courts must be set aside. FYAZ-OOD-DEEN *v.* PUDMEE . . 4 N. W., 68

RIGHT OF APPEAL—*continued.*

10. ———— **Right of appeal by heirs**—*Appeal against joint heirs—Civil Procedure Code, 1859, s. 102—Continuance.*—S. 102, Act VIII of 1859, does not bar the right of heirs to proceed with an appeal as against joint heirs. LUTEEFOONISSA BIBEE *v.* RAJAOOR RUHMAN . . 8 W. R., 84

11. ———— **Want of interest in subject of appeal**—*Appeal by sons of Hindu widow after finding adverse to her right.*—Where a Hindu widow jointly with her sons sued for confirmation of title, and both the Courts below found adversely to her title to hold the land in dispute as separate property, it was held that her sons, who had no interest in the result of the suit, were not competent without her to prefer a special appeal. DOORGA PERSHAD MOHAPATTUR *v.* RADHAMOHUN MYTEE 15 W. R., 536

12. ———— **Right of co-mortgagor to appeal**—*Sale of equity of redemption.*—One of several co mortgagors cannot appeal against a foreclosure decree when the equity of redemption has been sold before the institution of the suit. KOTTALE UPPI *v.* KALLIYATT PANOLI KUNNI KUTTI [1 Mad., 7

13. ———— **Right of appeal as to costs**—*Disclaimer of interest in subject-matter of suit.*—The fact of a defendant having, in the Court of first instance, disclaimed any right or interest in the land in a suit does not deprive him of the right to appeal, if a judgment is given against him with costs. NUND COOMAR SINGH *v.* GUNGA PERSHAD NARAIN SINGH . . . . . 10 W. R., 94

14. ———— **Right of purchaser to appeal on death of assignor**—*Assignment of interest in subject-matter of suit.*—*A* sued *B* in the Court of first instance, and obtained a decree declaring *A*'s right to a house. The District Court on appeal reversed this decree and rejected *A*'s claim. The High Court reversed the decree of the District Court and remanded the appeal. The District Court on remand made a decree confirming the original decree of the Court of first instance in *A*'s favour. Subsequently to the last-mentioned decree of the District Court, *B* sold the house to *C*. *B* then preferred a special appeal to the High Court, but died before it was heard. *Held*, under Act VIII of 1859, that *C* could not carry on the special appeal after *B*'s death. MORESHWAR BAPUJI PHATAK *v.* CUSHABA SHANKROJI . . . I. L. R., 2 Bom., 248

15. ———— **Appeal from order prior to decree**—*Civil Procedure Code, 1859, s. 363.*—Objections having been successfully raised, under s. 246, Act VIII of 1859, against a decree-holder's attachment of a tenure as the property of his judgment-debtor, he brought a regular suit and obtained a declaratory decree that the property belonged to his debtor. He then took out execution, attached, sold, and, himself purchased the property in question. The objector meantime appealed to the Privy Council, and, having obtained a decree reversing the declaratory decree, took out execution against the opposite party for costs and wasilat. The opposite party objected, but the Judge allowed the execution to

RIGHT OF APPEAL—*continued.*

roceed and deputed an Ameen to ascertain the ... of mesne profits collected. *Held* that the ...

16. ——— Right of party to suit not party to compromise to appeal from order ...

RASAMYA ... al from original deci- ... has been ... nt law was ... w of judg ... ing himself ... that it had been out of plaintiff's power to produce such evidence at first—*Held* that the Munsif had acted illegally and without jurisdiction, and that the Subordinate Judge was right in reversing his judg- ... re hearing, but that the decision ...

18. ——— Second appeal—*Rent suit—Beng. Act VIII of 1869, s 102—Bengal Tenancy Act (VIII of 1885), s 153—General Clauses Act (I of 1868) s 6.*—The word 'Proceedings' in s 6 of Act I of 1868, as applied to a suit, means the suit as an entirety, that is, down to the final decree A second appeal therefore to the High Court, on a question of the amount due as rent, will not lie when the s ... of Act VII ... suit was ... heard, subsequently to the pa ... *Hurrosundari Debi* v. *Bhojohari Das Manji, I. L. R., 13 Calc., 86*, approved. SATGHURI v. MUJIDAN [I. L. R., 15 Calc., 107

19. ——— Surety in execution proceed- ... A surety against whom a decree is sought ... against ... SULEMAN v. SHIVRAM BHIKAJI [I. L. R., 12 Bom., 71

20. ——— Death of one of several appellants pending appeal—*Death of one of several respondents pending appeal—Civil Procedure Code (Act XIV of 1882), ss. 366, 368, 544, and*

RIGHT OF APPEAL—*continued.*

... an appellant was rejected as ... pondents (plaintiffs) also died pending the hearing of the appeal, and an application to enter the name of his heir as respondent was rejected for the same reason. When the appeal came on for hearing, it was dis ...

and proceed ... against the ...

BHAI ... I. L. ...

See HEM KUNWAR v. AMBA PRASAD [I. L. R., 22 All., 430

21. ——— Death of plaintiff appellant —*Rival applicants for substitution—Order under ... final decree on appeal—Civil Procedure Code, s 591—"Error, defect, or irregularity affecting the decision of the case"*—Pending an appeal before the ...

Appellate Court decided the appeal ... the unsuccessful ... was ... her opponent was not. She attempted to appeal to the High Court against the lower Appellate Court's decree dismissing the appeal. *Held* that the appellant, not having been a party to the decree below, and the order below having decided that she was not en- ... of the lower ...

... Procedure Code was not applicable to the case. ... *Narain* v. *Kharag Singh, I. L. R., 9 All., 447*, distinguished. Where an order under the group of sections in the Civil Procedure Code relating to representatives has been made excluding a person from the record, that person must seek his remedy by

RIGHT OF APPEAL—*continued.*

an appeal against the order, and is not entitled to appeal against the decree so long as the order stands. Error, defect, or irregularity within the meaning of s. 591 of the Code means error, defect, or irregularity in procedure or in law, and not in matters of fact. In the present case there was no error, defect, or irregularity within the meaning of the section, and, even if there were, it did not affect the decision of the case in appeal below. SANKALI *v.* MURLIDHAR

[I. L. R., 12 All., 200

22. ——— **Plaint, Amendment of**—*Adding a defendant in a suit where leave to sue under cl. 12 of the Letters Patent, 1865, was necessary—Alternative liability—Order to add new defendant—Appeal against such order by original defendant.*—The plaintiff filed this suit against the defendant *F* alleging that she had a firm and carried on business at Sihore, in the territory of Bhopal. Before the suit was filed, leave was duly obtained under cl. 12 of the Letters Patent, 1865. In her written statement, *F* denied that she was the owner of the Sihore firm, or that she was responsible for any of its dealings with the plaintiffs. She alleged that the Sihore firm had belonged to her son *P*, who died in Samvat 1943, leaving a daughter named *G*, a minor, who was still living. The plaintiff then obtained a summons calling on the defendant *F* to show cause why the plaint and proceedings should not be amended by adding the name of *G* as a party-defendant. The summons was made absolute, and an order was made to add *G* as a defendant. The defendant *F* appealed, contending that the effect of adding a defendant would be to institute a new suit against *G* without obtaining the necessary leave under the Letters Patent. She relied on *Rampurtab* v. *Premsukh Chandamal, I. L. R., 15 Bom., 93. Held*, dismissing the appeal, that the defendant *F* could not appeal against the order making *G* a party. It might be that *G* might object to the order either before or at the hearing, but she only could take the objection. The defendant *F* could not take it for her. The case of *Rampurtab* v. *Premsukh Chandamal* did not apply. In that case the proposed amendment altered the cause of action. Here it was left unaffected. On the cause of action as set forth in the plaint leave had been given under cl 12 of the Letters Patent to sue the defendant *F*, and, so far as she was concerned, there was no objection to the form of the suit. If her allegation was true, *G*, and not *F*, was liable. That question would be decided at the trial. FOOLIBAI *v.* RAMPRATAB SAMRATRAI

[I. L. R., 17 Bom., 466

23. ——— **Appeal by defendants against whom specifically no decree was made, but whose defence to the suit was necessarily disposed of by the decree.**—Certain plaintiffs sued as second assignees of a debt to recover the debt, and made defendants to the suit their assignors, the original debtors, and certain persons whom they alleged to have been prior assignees of the debt, but whose assignment, according to them, had become void through non-fulfilment of the conditions upon which it was made. The Court of first instance gave a decree to the plaintiffs against the original debtors. An appeal by the first assignees was dismissed by the lower Appellate Court, on the ground that, there being no decree against the appellants, their appeal would not lie. On second appeal it was held that the appeal would lie, inasmuch as the decree, though not a decree against the appellants by name, necessarily implied a finding that the assignment to the appellants, upon the basis of which they resisted the plaintiff's claim, had become void. JAMNA DAS *v.* UDEY RAM I. L. R., 21 All., 117

RIGHT OF OCCUPANCY.

See LANDLORD AND TENANT—MIRASIDARS.
[1 Mad., 264
I. L. R., 1 Mad., 205

See LANDLORD AND TENANT—NATURE OF TENANCY . I. L. R., 16 Mad., 131

See RES JUDICATA—MATTERS IN ISSUE
[I. L. R., 18 Calc., 647

See SALE FOR ARREARS OF RENT—INCUMBRANCES . 5 B. L. R., Ap., 18, 20
[19 W. R., 106
22 W. R., 133

Devolution of—

See LANDLORD AND TENANT—TRANSFER BY TENANT I. L. R., 15 All., 219, 231
I. L. R., 18 All., 354

See ONUS OF PROOF—LANDLORD AND TENANT . . I. L. R., 11 Mad., 77
[I. L. R., 15 Mad., 95
I. L. R., 16 Mad., 271

See RIGHT OF SUIT—ACCRUAL OF RIGHT.
[I. L. R., 15 All., 399

——— **Transfer of**—

See EJECTMENT . I. L. R., 13 All., 403

1. ACQUISITION OF RIGHT.

(a) PERSONS BY WHOM RIGHT MAY BE ACQUIRED

1. ——— **Cultivating raiyats at fixed rates**—*Act X of 1859, s. 6—Raiyats holding since permanent settlement at varying rates of rent.*—Act X of 1859 provided for two classes of raiyats only, *viz.*, those who have held and cultivated the land for a period of twelve years and those who have held at fixed rates from the time of the permanent settlement; it made no provision for raiyats who have held since the time of the permanent settlement at varying rates. Such a raiyat acquired no right of occupancy

RIGHT OF OCCUPANCY—*continued*

1 ACQUISITION OF RIGHT—*continued*

on that ground DINOBUNDHOO DEY v RAMDHONE ROY 9 W. R., 522

rights of occupancy under s 6 Act X of 1859 BINDRABUN CHUNDER CHOWDHRY v ISSUR CHUNDER BISWAS W R, 1864, Act X, 1

3 ——— *Act X of 1859* ... *profits* ... s 6 of ... who with ... those who ... ing their ... ECHURN SINGH v AMEEROODDEEN 9 W R., 579

4 ——— Permanent cultivator—*Paracudi*—The defendant's ancestors or predecessors in title were the cultivating tenants of the lands of a certain temple from a date not later than 1827, in which year they were so described in the paimaish accounts In 1850 they executed a muchalka to the Collector who then managed the temple whereby they agreed among other thing to pay certain dues They were described in the muchalka as paracudis In 1865 the plaintiff's predecessors took over the management of the temple from and executed a muchalka to the Collector whereby he agreed among other things not to eject the raiyats as long as they paid kist In 1882 the dues (which were payable separately) having fallen into arrear the manager of the temple sued to eject the defendants *Held* that there was nothing to show that the defendants were more than tenants from year to year and they had not acquired a right of occupancy *Chockalinga Pillai v Vythealinga Pundara Sunnady 6 Mad 164*, and *Krishnasami v Varadaraja I L R 5 Mad 345* discussed and distinguished THIAGARAJA v GIYANA SAMBANDHA PANDARA SANNADHI [I L R, 11 Mad, 77

5 ——— Holders of land—*Act X of* ... *other than raiyat*— ... land held" as

6 ——— Possessors of raiyati tenure—*Test of raiyati interest as distinguished from mere right to collect rent*—*Per* FIELD J—The only test of a raiyati interest is to see in what condition the ... was created If raiyats ... collect the rents from the raiyats ... raiyati If, on the other hand, the land was jungle, or

RIGHT OF OCCUPANCY—*continued*

1 ACQUISITION OF RIGHT—*continued*

7 ——— Holder of raiyati jote—*Act X of 1859, s 6*—*Right against purchaser of patni talukh*—The holder of a raiyati jote was protected by s 6 Act X of 1859 and had a clear right of occupancy against the purchaser of the patni talukh fourteen years after his purchase WOOMANATH ROY CHOWDHRY v ROGHOONATH MITTER [5 W R., Act X, 63

8 ———Persons not holding as raiyats or middlemen—*Act X of 1859 s 6*—Persons who are not shown to have held possession of lands of which they complain they have been illegally dispossessed as raiyats, or in any other sense than as middlemen receiving rents from the actual cultivators, did not come under s 6 Act X of 1859 and cannot acquire any rights of occupancy GOPEE MOHUN ROY v SIB CHUNDER SEN 1 W R., 68

9 ——— Tenant holding a term under a farming lease—*Act X of 1859 s 6*—A tenant holding a term under a farming lease of land which he might sub let is not a raiyat and therefore did not by twelve years occupation acquire a right of occupancy under Act X of 1859 s 6 HURRISH CHUNDER KOONDOO v ALEXANDER Marsh., 479

10 ——— Middleman—*Party sub letting*—*Act X of 1859, s 6*—The mere fact of a party ... supervision as a superior cultivator ... he was a middleman because he really did not cultivate in the sense of s 6 but was a general leaseholder or a speculator in land rent RAM MUNGUL GHOSE v LAKHEENARAIN SHAHA 1 W R., 71

11 ——— ... of cultivating raiyat— ... acquire a r ... MISTREE

12 ——— Sub-lessee from occupancy raiyat—*Act X of 1859 s 6*—A sub lessee from a ...

NIL KOMUL SEIN v DANESH SHAIKH [15 W R., 469

UNNOPOORNA DOSSEE v RADHA MOHUN PATTRO [19 W. R., 95

HARAN CHUNDRA PAL v MUKTA SUNDARI CHOWDHRAIN 1 B L R., A C, 81 10 W. R., 113

11 v

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

Contra, ABDOOL JUBBAR *v.* KALEE CHURN DUTT [7 W. R., 81

RAMDHUN KHAN *v.* HARADHAN PARAMANICK [9 B. L. R., 107 note: 12 W. R., 404

13. ———— Raiyat brought on zerait land by lessee, Right of, on expiry of lease—*Bengal Tenancy Act (VIII of 1885), s. 116—Trespasser—Right of occupancy—Liability to ejectment.*—S. 116 of the Bengal Tenancy Act applies even in a case where a person is brought on the malik's zerait land as a raiyat by a lessee for a term of years; therefore such a person cannot acquire any right of occupancy or non-occupancy on the said land, and he, being a trespasser only on the expiry of the lease of the lessee, is liable to ejectment. *Henderson* v. *Squire, L.R., 4 Q. B., 170; Oomatara Debia* v. *Peena Bibee, 2 W. R., 155;* and *Huris Chunder Roy Chowdhry* v. *Sree Kalee Mookerjee, 22 W. R., 274,* referred to. *Binod Lal Pakrashi* v. *Kalu Pramanik, I. L. R., 20 Calc., 708,* distinguished. SHEO NANDAN ROY *v.* AJODH ROY [I. L. R., 26 Calc., 546 3 C. W. N., 336

14. ———— Raiyat holding over after sub-lease—*Act X of 1859, s. 6.*—A right of occupancy under s. 6, Act X of 1859 could not be acquired by a raiyat holding over for more than twelve years after the expiration of a sub-lease for a term by a raiyat having a right of occupancy. JUMMEEUTUNNISSA *v.* NOOR MAHOMED [W. R., 1864, Act X, 77

15. ———— Ticcadar—*Obligation on ticcadar to restore tenure.*—A ticcadar is bound to restore his holding to the zamindar in the condition in which he got it when his lease is over, and cannot acquire a right of occupancy under it. RAM SARUN SAHOO *v.* VERYAG MAHTON . . . 25 W. R., 554

16. ———— Purchasers from neem howladars—*Neem howlas, Nature of—Transferable tenures.*—Neem howlas (even though they may not comprise the right of holding at a fixed rent) and all other such rights of occupancy established by the ancient prescription and custom of the country are transferable tenures. Purchasers from neem howladars are consequently entitled to rights of occupancy. JUGGUT CHUNDER ROY *v.* RAMNARAIN BHUTTACHARJEE . . . . 1 W. R., 126

17. ———— Tenants of temple lands at a specified rent so long as they hold—*Occupancy rights, Proof of—Tenancy from year to year—Fifty years' tenure—Purakudi.*—In a suit brought in 1882 by the trustee of a temple to eject tenants upon notice to quit, the tenants pleaded that they were entitled to occupy the lands permanently, and proved that their predecessors had cultivated since 1830. In that year a muchalka had been executed by which the tenants who were therein styled purakudis (a term which does not usually denote tenants with right of occupancy) bound themselves to pay a specified rent so long as they held the lands of the temple. *Held* that the tenants had not acquired a right of occupancy, and were merely tenants from year to year. THIAGARAJA *v.* GNANASAMBANTHA. SABRAMANYA *v.* GNANASAMBANTHA [I. L. R., 7 Mad., 374

18. ———— Government raiyat in Assam—*Act X of 1859, s. 6.*—A Government raiyat can acquire a right of occupancy in respect of lands cultivated by him under the rent law in force in Assam. KONARAM GAONBURAH *v.* DHATOARAM THAKOOR [I. L. R., 6 Calc., 196: 7 C. L. R., 47

But *see* PRASIDHA NARAYAN KOER *v.* MANKOCH [I. L. R., 9 Calc., 330: 11 C. L. R., 554

19. ———— Right of occupancy in Assam—*Pykes, their rights and privileges.*—The plaintiff, who held land in Assam under a settlement from Government, sued to eject the defendant from certain lands within his holding. It was proved that the defendant was a descendant from one of the pykes who held lands under the Assam Rajas; that the Assam Rajas granted the pykes to a certain lakhirajdar; that the pykes held the land in suit as before under the lakhirajdar; that the lakhiraj was subsequently resumed by Government; and that the defendant had his house and gardens on the land for a long time, and had paid rent for many years at Government rates. *Held* that the defendant was not liable to ejectment. The rights of such tenants explained and discussed. DINABUNDHU SURMA *v.* BODIA KOCH . I. L. R., 15 Calc., 100

20. ———— Farmer of revenue or proprietary right.—A mere farmer of revenue or proprietary right cannot acquire a permanent right of occupancy. KRISHNASAMI PILLAI *v.* VARADARAJA. VARADARAJA *v.* VENKATACHALA PILLAI [I. L. R., 5 Mad., 345

21. ———— Zamindar occupying his own lands—*Transfer of zamindari.*—A zamindar occupying his own lands as nij-jote cannot, when the zamindari passes into other hands, lay claim to them on the ground that he is a raiyat with rights of occupancy. REED *v.* SREE KISHEN SINGH [15 W. R., 430

22. ———— Occupant of land rent-free—*Beng. Act VIII of 1869, ss. 6 and 22.*—A party who has been in the occupancy of land without paying any rent is not entitled to the protection of Bengal Act VIII of 1869, s. 6, or of s. 22, even on the ground of right to hold the land rent-free. KALEE KRISHNA DEB *v.* SHASHONEE DASSEE [25 W. R., 42

23. ———— Assignee of zamindar—*Act X of 1859, s. 6.*—A person occupying land merely as the assignee of the zamindar and cultivating because of the opportunity thus afforded cannot, under colour of that character, acquire the rights adverse to the zamindar or claim the benefit of Act X of 1859, s. 6. WOOMANATH TEWAREE *v.* KOONDUN TEWAREE . . . . . 19 W. R., 177

24. ———— Person holding as raiyat and as farming tenant *Assignee of landlord's interest.*—Where a person holding land at first as a

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

raiyat subsequently obtained a farming lease of it, and thus became assignee of the landlord's interests, he was held at the expiration of the lease not to have acquired an occupancy right Where a raiyati interest co exists with a farming lease, the raiyati interest remains unchanged in character during the curre of the lease SAVI v PUNCHANUN ROY [25 W. R., 503

25. ——— Possession as servant—*Act X of 1859, s 6—Possession without payment of rent*—Mere possession for twelve years in the capacity of a servant did not create a right of occupancy under s. 6, Act X of 1859; rent must be shown to have been paid so as to make the occupier a raiyat. WOOMA MOYEE BURMONYA v. BOROO BEHARA [13 W. R., 333

26. ——— Heir to tenant at-will—A person cannot claim a right of occupancy as heir of a tenant at-will BUSHEEROODDEEN v DAL CHUND [3 Agra, 236

27 ——— Firm, Members of—*Trans-* ... a ... ing members of the ... f occupation, acquire occupancy rights under s 6 of Act X of 1859, or Bengal Act VIII of 1869 RAI KOMUL DOSSEE v LAIDLEY [I. L R., 4 Calc, 957

28. ——— Indigo concern—*Power to acquire right of occupancy—Corporation*—An "Indigo Concern" or "Firm" has no corporate or legal existence so far as the question of a right of occupancy is concerned, which can only be recognized in particular individuals CANNAN v KYLASH CHUNDER ROY CHOWDHRY . 25 W. R, 117

29 ——— *Partnership holding a cultivating lease—Indigo concern as a cultivating raiyat—Beng Act VIII of 1869, s 6*—A firm own... ndigo concern, and carrying on the manufactu... of Robert... tain lands... than twel... carried ou... sub tenants *Held* that the lease ... be a lease to the individuals who were at the time of ... members of the firm and that under the ... be obtained, whether such ... the locality be transferred to persons ... The ... has been ... ion, and ... raiyati

lease, though the lessee may happen subsequently to sub let LAIDLEY v GOUR GOBIND SARKAR [I. L. R., 11 Calc, 501

30. ——— Liability to assessment of rent—*Char land—Junglebari tenure*—*R*, a Hindu ... tenure to certain tenants ... and a estate ... signed by ... *R* died ... by *J* and *P* two daughters, the last of whom died on the 31st December 1880 On her death her grandsons succeeded to the estate On *R*'s death, *J* and *P* got possession of all estate papers, and amongst them ... granted by the tenants in return for the ... not bind them ... *J* and *P* had all along been aware of the claim made by the tenants that they held a permanent tenure, and the suits were dismissed on the ground that it was too late for *J* and *P*, after the lapse of twelve years from *R*'s death, to raise the question In 1884 *D*, a receiver instituted a suit in the names of the grandsons to eject the tenants on amongst other grounds that the grandsons, reversioners, were not bound by *R*'s acts and that the junglebari tenure was not binding on them, that the tenants were middlemen and had no right of occupancy, that at all events the plaintiffs were entitled to rent on the area of land then held by the defendants as there had been large accretions to the amount covered by the amalnama and dowl *Held* that, being middlemen, the defendants had no right of occupancy, and that, were the suit not dismissed for other grounds, they were liable to have the rent assessed on the whole amount of lands held by them, which was in excess of that covered by amalnama and dowl DROBOMOYI GUPTA v DAVIS [I. L R., 14 Calc., 323

(b) SUBJECTS OF ACQUISITION.

31 ——— Land to which addition has been made—*Addition creating fresh tenure of whole*—Land which is held as one tenure is either subject to a right of occupancy as a whole, or it is not subject to any right of occupancy as to any part of it If the whole land has been held for more than twelve years, then the tenant has a right of occupancy; but if within twelve years the tenant has been allowed ... of fresh lands, and such addition ... then as regards ... not been acquired, although ... held for more than twelve years AMIR CHAND LAHATA v BUKSHEE PREKAR . . . . 23 W. R., 228

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

32. ——— Land of which cultivation is changed—*Nature of right of occupancy—Enhancement, Liability to—Landlord and tenant.*—The statutory right of occupancy under Bengal Act VIII of 1869 cannot be extended so as to make it include complete dominion over the land, subject only to the payment of a rent liable to enhancement. The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted; and although the Court in such cases will be disposed to place a liberal interpretation on the rights of the tenant, it will not sanction a complete change in the mode of enjoyment. LAL SAHOO v. DEO NARAIN SINGH . I. L. R., 3 Calc., 781: 2 C. L. R., 294

33. ——— Land held for agricultural purposes—*Act X of 1859, s. 6—Dwelling-house, Occupation of land for.*—The occupation intended to be protected by s. 6, Act X of 1859, was occupation of land subject to agricultural or horticultural cultivation, and used for purposes incidental thereto, and did not include occupation, the main object of which is the dwelling house itself, and where the cultivation of the soil, if any there be, is entirely subordinate thereto. KALEE KISHEN BISWAS v. JANKEE . . . . . 8 W. R., 250

34. ——— Land used for habitation and cultivation—*Act X of 1859, s. 6—Beng. Act VIII of 1869, s. 6.*—The right of occupancy acquired by a cultivator under Act X of 1859, or Bengal Act VIII of 1869, was as applicable to that portion of the land which is used for his habitation as for that portion which is cultivated. MOHESH CHUNDER GUNGOPADHYA v. BISHONATH DOSS [24 W. R., 402

35. ——— Land occupied by buildings—*Beng. Act VIII of 1869, s. 6.*—The words "cultivated or held" in Bengal Act VIII of 1869, s. 6, have the effect of excluding lands occupied exclusively by buildings from the right of occupancy there declared. MOHUR ALI KHAN v. RAM RUTTUN SEIN [21 W. R., 400

36. ——— Waste land brought under cultivation—*Shikmi cultivation.*—*Held* that land newly broken and brought under cultivation by a raiyat cannot be received as zamindar's sír land, nor can the former be held to be a mere shikmi cultivator incapable of acquiring right of occupancy in the land. JHUGRO v. LAUTOO PANDEY [1 Agra, Rev., 32

37. ——— Nij-jote land—*Act X of 1859, s. 6.*—A cultivator of nij-jote land could acquire a right of occupancy under s. 6, Act X of 1859, when it had not been let under a lease for a term of years, or year by year. GAURHARI SINGH v. BEHARI RAUT . 3 B. L. R., Ap., 138: 12 W. R., 277

38. ——— *Beng. Act VIII of 1869, s. 6.*—The nij-jote land referred to in Bengal Act VIII of 1869, s. 6, as land in which a right of occupancy could not be acquired, is land which is the nij-jote of the zamindar, and not that which is merely the nij-jote of a sarbarakar holding under the zamindars. OBHOY CHURN MOHAPATTUR v. KANYE RAWUT . . . 1 C. L. R., 394

39. ——— Khamar land—*Land in possession of zamindar.*—Land in the possession of the zamindar, whether cultivated or uncultivated, is khamar land, and a right of occupancy cannot be acquired upon it by a raiyat, except under some special arrangement. HURISH CHUNDER DAM v. GUNGA DHUR BHUDDRO . . 25 W. R., 181

40. ——— *Beng. Act VIII of 1869, s. 6.*—Where a raiyat proves possession for upwards of twelve years, the mere fact of his land being khamar does not deprive him of the right of occupancy. Before his case can be brought within the exception in Bengal Act VIII of 1869, s. 6, it must be shown whether he has held on a lease for a term or year by year. ASHRUF v. RAM KISHORE GHOSE . . . . . 23 W. R., 268

41. ——— Khamat land—*Land on expiration of lease.*—Where khamat land is let by a zamindar for a term of years, and upon the expiration of that term tacitly let to the same tenant from year to year for a long period, the tenant does not thereby acquire a right of occupancy. BHUGWAN BHAGUT v. JUG MOHUN ROY . 20 W. R., 308

42. ——— Sir land—*N.-W. P. Rent Act (XII of 1881), s. 8—Act X of 1859, s. 6—Occupancy tenure.*—Where land, originally the sír of a proprietor, has been transferred to a mortgagee, and has in his hands lost its character of sír, and has been leased to a tenant on the usual conditions of a tenancy, which otherwise do not bar the acquisition of a right of occupancy in the land, such a right will be acquired by twelve years' occupancy under s. 8 of the Rent Act. In 1846 *B* mortgaged a share in a village, together with certain land which was recorded as his sír, and which was so described in the deed of mortgage. After the mortgage it ceased to be recorded as his sír, and was recorded as land held by tenants in the same way as other lands in the estate. In 1857 it was leased to *S*, and in 1863 to *H*, and from 1863 to 1882 remained in the possession of the last-mentioned lessee. In 1882 *B* redeemed the mortgage, and subsequently brought a suit against *H* to establish that the land was his sír, and for possession of it. *Held* by the Full Bench that there being nothing in terms of the mortgage-deed to indicate that the land was transferred to the mortgagee to be held as sír and the land having ceased to be recorded as the sír of the proprietor, and not having been leased as the sír of the lessor, it had not retained its character as sír when the defendant's tenancy commenced, so as to prevent him from acquiring a right of occupancy therein under the provisions of s. 8 of the Rent Act. *Per* MAHMOOD, *J.*, that there is nothing in the law to prevent a zamindar from relinquishing his rights in sír land and converting it into land held by ordinary tenants; that the mortgage-deed of 1846 showed that the sír right in the land in suit had been relinquished by the mortgagor; and that the sír land once relinquished

RIGHT OF OCCUPANCY—*continued*

1 ACQUISITION OF RIGHT—*continued*

by the zamindar ceases to have that character, and cannot prevent the accrual of the occupancy right within the meaning either of s 6 of Act X of 1859 or of s 8 of Act XII of 1881 HARPAL SINGH *v* BAL GOBIND . . . I L R, 7 All, 586

43 ———— **Holding commenced under a mortgagee**—*Act X of 1859, s 6*—Holdings which have commenced or continued under a mortgagee in possession were not within any exception to the general rule contained in s 6 of Act X of 1859, that a raiyat who has held or cultivated a holding for twelve years is entitled to a right of occupancy therein HEEROO *v* DHOREE

[2 N. W., 129 . S C Agra, F B, Ed 1874, 204

44 **Land held as a grove**—*Act X of 1859 s 6*—*Kashtkari land*—Land held as a grove *upon the terms which have been heretofore* customary in this country was not subject to the provisions of s 6 of Act X of 1859 By an occupancy thereof for twelve years no right of occupancy can accrue The provisions of s 6 of Act X of 1859 were intended to apply to kashtakari lands PIRTUM KOORMY *v* BHIKAREE . 2 N. W, 364

45 ———— **Holding of trees under lease of their produce** *Act X of 1859, s 6*—The possession of twelve years of the trees in a bag under a lease which only entitled the lessees to the produce of the trees, and not to cultivate the land, would not be a holding of the land within the meaning of s 6, Act X of 1859, so as to confer upon the lessees a right of occupancy in the land ROOKMIN KOOER *v* BUKSHEE 5 N. W, 155

46 ———— **Bunker tenure**—*Act X of 1859, s 6*— from the pr cutting gras lands did enjoyment, acquire any right of occupancy in respect to such holding, that the tenure under which they claimed to hold was not a holding of land within the meaning of s 6, Act X of 1859 and they must, in the absence of an express condition otherwise determining the period of lease, be held to be tenants at will holding year by year at the pleasure of the landlord GOOR DIAL *v* RAMDUT

[Agra, F. B, 15 · Ed. 1874, 11

47. ———— **Land let for grazing cattle.**—*Semble*—A right of occupancy can be gained in land let for the purposes of grazing cattle or horses FITZPATRICK *v* WALLACE

[2 B. L. R, A. C., 317: 11 W. R., 231

48. ———— **Tank producing water-nuts**—*Growth of plant not spontaneous, but from cultivation*—In the land in suit a tank producing water nuts which do not grow spontaneously, but are the result of sowing or planting, a right of occupancy can be acquired MOOLCHAND *v* CHEETREE

[1 N W., 175 ; Ed. 1873, 254

49 ———— **Tank not appurtenant to land** *Beng Reg XIX of 1793* A right of occupancy in land includes the same right in respect of a tank appurtenant to the land, but a right of occupancy cannot be acquired in a tank with only so *much land as is necessary* for the banks, and the lease of such tank is terminable on the sale of the lessee's tenure for arrears of rent, the purchaser under Regulation XIX of 1793 receiving the tenure free of encumbrances NIDHI KRISHNA BOSE *v* RAM DASS SEIN 20 W R., 341

50 ———————— *Act X of 1859, s 6*—The provisions of Act X of 1859 with respect *to acquiring a right of occupancy did not apply to a* tank which was not shown to form part of any grant of land, nor to be appurtenant to any land SIBU JELYA *v* GOPAL CHANDRA CHOWDHRY

[13 B L R, 423 note · 19 W R., 200

51 ———— **Right of fishery**—*Julkur not appurtenant to jote*—Where a jotedar had exercised rights of fishery over two julkurs for more than twelve years not as the owner of the jote (with which the julkurs were not connected) but as a tenant under a landlord,—*Held* that such possession did not confer upon him a right of occupancy SHAM NARAIN CHOWDHRY *v* COURT OF WARDS

[23 W R, 432

52. ———————— *Julkur*—The right of occupancy which accrues to tenants who have occupied or cultivated land for twelve years or upwards does not arise in respect of the right called julkur or fishery That is a right which may be let out by ijaradars under the landlord, and may be enjoyed under them so long as their ijara continues, but is liable to be determined at the expiration of the ijara JUGGOBUNDHOO SHAHA *v* PROMOTHONATH ROY . I. L R., 4 Calc, 767

The lessee of a julkur cannot acquire any right of occupancy BOLLYE SATEE *v* AKRAM ALLY

[I. L R, 4 Calc, 961

WOOMAKANT SIRCAR *v* GOPAL SINGH

[2 W. R., Act X, 19

53 ———— **Lands held on service tenure**—*Semble*—No rights of occupancy accrue in lands held under a service tenure HURROGOBIND RAHA *v* RAMRUTNO DEY . I. L. R, 4 Calc., 67

54 ———— **Land in Assam**—*Act X of 1859*—*Ejectment, suit for*—*Per* MITTER and WHITE, JJ (MACPHERSON, J, dissenting—Act X of 1859 does not apply to lands situated in the Assam tenant nd that he had r a con- ide over nge for

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

apply to lands situated in Assam, no such right could be claimed; and the suit being properly framed, the plaintiff was entitled to the relief he asked for. PRASIDHA NARAYAN KOER *v.* MAN KOCH

[I. L. R., 9 Calc., 330 : 11 C. L. R., 554

But *see* KONARAM GAONBURAH *v.* DHATOARAM THAKOOR . I. L. R., 6 Calc., 196 : 7 C. L. R., 47

55. ———— Suburban lands let for building purposes.—There is no authority for the proposition "that there may be rights of occupancy in suburban lands let for purposes of building, though these rights may be cognizable under a law intended only for agricultural landlords and tenants." *Gungadhur Shikdar* v. *Azimuddin Shah Biswas, I. L. R., 8 Calc., 960,* explained. *Ramdhun Khan* v. *Haradhun Puramanick, 12 W. R., 404: 9 B. L. R., 107 note,* relied on. RAKHAL DASS ADDY *v.* DINOMOYI DEBI

[I. L. R., 16 Calc., 652

(*c*) MODE OF ACQUISITION.

56. ———— Nature of right—*Right independent of wish of zamindar or mortgagee—Acquisition under usufructuary mortgage.*—The right of occupancy conferred by the Legislature upon cultivators of more than twelve years' standing is a right wholly independent of the wishes either of the zamindar or his mortgagee in possession, and when a cultivator acquires such a right it cannot be taken as in the nature of a grant from either of them. The right of occupancy may thus be acquired during the currency of a usufructuary mortgage and during the period of the mortgagee's possession of the zamindari rights, and the zamindar upon redeeming the mortgage cannot disturb the possession of such occupancy tenants on the ground that, when he mortgaged the zamindari, it was free of such occupancy tenures. *Heeroo* v. *Dhoree, 2 N. W., 129,* referred to. HARPAL SINGH *v.* BAL GOBIND . I. L. R., 7 All., 586

57. ———— Conditions necessary for acquisition—*Non-payment of rent—Beng. Act VIII of 1869, ss. 6, 22, and 52.*—Two conditions only are necessary for the acquiring of a right of occupancy,—*viz.*, (1) the cultivation or holding of land for a period of twelve years; and (2) that the person holding or cultivating the land should be a raiyat. The essential conditions of s. 6, Bengal Act VIII of 1869, are fulfilled without showing the payment of rent, that only being a condition necessary for the maintaining of the right when created. In a suit brought to evict a tenant who had been in possession of certain land for a longer period than twelve years, when it was shown that rent had not been paid, and notice to quit had been given,—*Held* that a right of occupancy had been acquired, and that the raiyat had the power to prevent forfeiture under the provisions of s. 52, Bengal Act VIII of 1869. NARAIN ROY *v.* OPNIT MISSER

[I. L. R., 9 Calc., 304 : 11 C. L. R., 417

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

58. ———— Holding and cultivating for twelve years—*Acquisition previous to Rent Act, 1859.*—After the permanent settlement and before Act X of 1859 a right of occupancy was not acquired by a raiyat merely by holding or cultivating land for a period of twelve years. When there is no contract, and the statute of limitation does not apply, the raiyat cannot, by occupying and cultivating, become the proprietor of the soil; neither can he, by occupying with the consent of the zamindar and paying rent for the land to him, become entitled to the proprietorship of the soil, even though he should acquire a right of occupancy by virtue of Act X of 1859. ISHORE GHOSE *v.* HILLS . . . W. R., F. B., 148

59. ———— Holding for twelve years partly before and partly after Rent Act—*Act X of 1859, s. 6—Raiyat.*—A holding for twelve years, whether wholly before or wholly after, or partly before and partly after, the passing of the Rent Act, entitled a raiyat to a right of occupancy under s. 6, Act X of 1859. THAKOORANEE DOSSEE *v.* BISHESHUR MOOKERJEE

[B. L. R., Sup. Vol., 202 : 3 W. R., Act X, 29

60. ———— Suits pending at time Act came into force—*Bengal Tenancy Act (VIII of 1885), ss. 20, 21—Suit for ejectment.*—S. 21 of the Bengal Tenancy Act applies to suits pending at the time the Act came into force, *viz.*, 1st November 1885, which had not then resulted in a decree. In a suit instituted on 8th October 1885 to eject the defendants after notice to quit it was held that, although the defendant had held the land from which it was sought to eject him for less than twelve years, and therefore would not, if the Bengal Rent Act VIII of 1869 had been applicable, have acquired a right of occupancy, yet the effect of ss. 20 and 21 of the Bengal Tenancy Act was to give him a right of occupancy, and therefore he could not be ejected. JOGESSUR DAS *v.* AISANI KOYBURTO

[I. L. R., 14 Calc., 553

61. ———— Holding under purchaser of permanent transferable interest in land—*Reservation of rent—Relinquishment.*—Any raiyat, holding under any purchaser of a permanent transferable interest in land can acquire a right of occupancy if he fulfil the other conditions required by the law; and the mere fact that a certain rent is reserved year by year does not interfere with his right unless something in his pottah is fatal to it. But the right may be extinguished by a relinquishment of the land. RUGHOONATH SONAR *v.* MOKOOND DOSS

[25 W. R., 213

62. ———— Possession for twenty years under mirasi lease—*Act X of 1859, s. 6.*—When possession for twenty years, as on a mirasi lease, is found, the right of occupancy is inherent under the lease and under s. 6, Act X of 1859. GOUREE KANT BANERJEE *v.* GOLUCK CHUNDER

[4 W. R., Act X, 49

63. ———— Occupation for twelve years under lease—*Suit for abatement of rent.*—A right of occupancy may be acquired by a raiyat holding

RIGHT OF OCCUPANCY—*continued*

I ACQUISITION OF RIGHT—*continued*

lands for more than twelve years under a pottah, and he is therefore entitled to sue for abatement of rent SHAM LALL SAHOO v HADY BUNJARA [2 Hay, 522

64 ——— Occupation by virtue of lease for term of years—*Act X of 1859, s 6* — A right of occupancy could not be acquired by occupation for twelve years under s 6, Act X of 1859, when such occupation has been by virtue of a lease *granting a term of years, and during the whole or* part of such occupation the term had not expired HURRISH CHUNDER KOONDOO v ALEXANDER [Marsh., 479

65. ——— Occupation under lease for fixed term—*Act X of 1859, s 6* — While land is held under a pottah which defines the period for which the land is to be held, no right of occupancy can accrue, although such a right may accrue under s 6 in certain cases SHADHOO JHA v BHUGWAN CHUNDER OPADHIA

[1 Ind. Jur, N. S, 75: 5 W. R., Act X, 17

66 ——— Holding on after expired farming lease—*Act X of 1859, s 6* —A right of occupancy under s 6 of Act X of 1859 could not be acquired by holding under a farming lease which has expired GILMORE v SREEMUNT BROOMICK [W R, 1864, Act X, 77

67. ——— Holding under customary right—*Farmer of revenue—Duration of tenancy how regulated* —The principle laid down in *Chocka linga Pillai v Vythealinga Pundarasannady*, 6

68 ——— Holding as ijaradars during lease—*Contract for renewal of lease— Beng Act VIII of 1869 and Act X of 1859, s 6* —By the terms of an ijara (1865) the defendants were entitled at the end of a term of five years to a renewal of

defendants claimed a right of occupancy acquired under Bengal Act VIII of 1869 or under Act X of 1859 *Held* that the defendants' holding as ijaradars prior

renewal, that the defendants, at the expiration of that lease, had an equitable right to a renewal not exceeding five years, according to the stipulations in

RIGHT OF OCCUPANCY—*continued*

I ACQUISITION OF RIGHT—*continued.*

the agreement, but that it was too late to rely up their title to a renewal which, if it had been grant would now have expired JARDINE, SKINNER & C v SARUT SOONDARI DEBI

[L. R., 5 I A, 164: 3 C L R, 1

69 ——— Holding on payment of re in kind—*Goozasta tenure* — A bhauli tenure m be a goozasta tenure, and a raiyat who pays rent in k and is in possession of, or cultivates land for a per

70 ——— Holding as bhagdari te ure—*Act X of 1859, s 6* —Ordinarily a holdi under a bhagdari tenure (i e, upon a rent consisti of a portion of the produce) would establish a ri of occupancy under s 6, Act X of 1859 HUREEH MOOKERJEE v BIRESSUR BANERJEE

[6 W. R, Act X,

71 ——— Holding for long period *Payment of rent to one of several proprietors*—*A X of 1859, s 6* —A holding for twelve years und one of several proprietors gave a right of occupan under s 6, Act X of 1859, provided the tena had paid the rent, which payment he may in t absence of fraud make to any one of the co-propri tors whom he chooses. MOOKTAKESHEE DOSSEE KOYLASH CHUNDER MITTER 7 W. R, 4

72 ——— Holding under permissi possession—*Bengal Rent Act 1869, s 6* —M possession of a permissive character and without a right cannot confer a right of occupancy MOH ALI KHAN v RAM RUTTUN SEIN 21 W. R, 40

73. ——— *Act X of 185 s 6* —During the plaintiff's absence on imprisonme and transportation, the defendant took possession land which previously belonged to him as a tena

74. ——— Possession as intruder *Right of intruder to hold house of abscondi raiyat* —*Held* that the defendant, having failed

v ZUMAN KHAN 1 Agra,

75. ——— Possession obtained b fraud—*Act X of 1859, s 6* —Possession obtaine and continued by fraud was not possession with the meaning of Act X of 1859, s 6, so as to gi a right of occupancy BHOOBUNJOY ACHARJEE RAM NARAIN CHOWDHRY . . 9 W. R, 44

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

76. ———— Possession and payment of rent to party without title—*Act X of 1859, s. 6.*—The mere fact that the person to whom he for some years paid rent had no title could not prevent his counting those years towards a right of occupancy under Act X of 1859. AMEER HOSSEIN *v.* SHEO SUHAE . . . . . . 19 W. R., 338

77. ———— Occupying and cultivating land under person without title—*Nature of raiyat's right.*—A raiyat occupying and cultivating land for more than twelve years under a landlord who has no title to the land, nevertheless acquires a right of occupancy. The right is not one conferred by any lessor. It is a right which, by virtue of the law, grows up in the raiyat from the mere circumstance of cultivating the land for twelve years or upwards and paying rent due thereon. ZOOLFUN BIBEE *v.* RADHICA PROSONNO CHUNDER

[I. L. R., 3 Calc., 560 : 1 C. L. R., 388

78. ———— Necessity of continuous possession.—To enable a tenant to acquire a right of occupancy, the twelve years' possession must be continuous. DEBIA *v.* BRIJ LAL 3 N. W., 50

79. ———— Possession under lease containing proviso for re-entry—*Beng. Act VIII of 1869, s. 7—Stipulation to negative right.*—Where a lease contained a provision to the effect that at the expiration of the term the landlord should be at liberty to enter into a settlement with any one he pleased, and so put an end to the lessee's tenure, and the landlord notwithstanding allowed the tenant to continue his occupation, paying rent as before,—*Held* that, under the circumstances, there was nothing in the stipulation itself which operated to negative or destroy the tenant's right of occupancy. EBADUTOOLLAH *v.* MAHOMED ALI 25 W. R., 114

80. ———— *Beng. Act VIII of 1869, s. 6—Effect of such proviso on acquisition of right.*—The mere fact of a lease being granted for a particular term, even where there is an express provision for re-entry by the lessor, does not prevent the accrual of an occupancy right under s. 6 of Bengal Act VIII of 1869 to a raiyat who continuously occupies for more than twelve years, nor is a right of occupancy already acquired destroyed by a grant of such lease. MUKHTAR BAHADUR *v.* BROJRAJ SINGH CHOWDHRY . . . . 9 C. L. R., 143

81. ———— Computation of time necessary for right—*Period during which land is held under lease.*—Ordinarily the period during which lands are held under a pottah or lease is not to be excluded from the computation of the time necessary to give to the raiyat a right of occupancy. HOOBA KHAN *v.* MUNSUB ALI . . . 3 N. W., 37

82. ———— *N.-W. P. Rent Act (XVIII of 1873), s. 8—Holding under a lease—Deduction of time lease was running.*—In a suit in which the matter in dispute was whether the plaintiff was entitled to eject the defendants from their holding on the ground of their not holding a right of occupancy, and having retained possession of the holding wrongfully after the expiry of the terms of a lease granted to their father, the lower Courts were bound at the time of deciding the case by the provisions of s. 8 of the N.-W. P. Rent Act, and should have excluded from the calculation of the period necessary for acquiring a right of occupancy the term of the lease under which the occupancy commenced. RADHAPARSHAD SINGH *v.* BALMUKAND OJHA . . . . . . 7 N. W., 318

83. ———— *Jotedari right under expired ijara—Act X of 1859, ss. 6 and 7—Express stipulation.*—*Per* MITTER, *J.*—The expiration of the lease of the ijaradar under whom the raiyat's possession under jotedari right commenced cannot affect the application of s. 6 of Act X of 1859. A tacit understanding that the ijaradar should give up possession on the expiry of his lease is not an express stipulation within the meaning of s. 7. *Quære*—Whether such an understanding between the zamindar's predecessors and the ijaradar can affect the raiyat. GOLAM PANJA *v.* HURRISH CHUNDER GHOSE . . . . . . 17 W. R., 552

84. ———— *Cultivating raiyat under several leases, each for a specific term—Act X of 1859, ss. 6 and 7—Beng. Act VIII of 1869, ss. 6 and 7.*—A raiyat who has held or cultivated a piece of land continuously for more than twelve years, but under several written leases or pottahs, each for a specific term of years, is entitled to claim a right of occupancy in that land, unless there is in the pottah an express stipulation contrary thereto. SHEO PROKASH MISSER *v.* RAM SAHOY SINGH

[8 B. L. R., F. B., 165 : 17 W. R., 62

KHAJURANNISSA BEGUM *v.* AHMED REZA

[8 B. L. R., 166 note : 11 W. R., 88

NARAIN SINGH *v.* MUNSUR RAOOT

[25 W. R., 155

Contra, DAMUNULLA SIRKAR *v.* MAMUDI NASHIO

[3 B. L. R., A. C., 178 : 11 W. R., 556

KEBUL MAHTON *v.* SUNNOO

[5 W. R., Act X, 80

85. ———— *Bengal Rent Act (X of 1859), ss. 6 and 7—Bengal Rent Act (Beng. Act VIII of 1869), ss. 6 and 7—Mostajiri lease—Cultivating possession—Onus probandi.*—Under Bengal Act VIII of 1869, ss. 6 and 7, as well as previously under the similar ss. 6 and 7 of the Rent Act (X of 1859), a raiyat paying rent for, and cultivating, land continuously for a period of twelve years had a right of occupancy, whether he held under a pottah or not. In reference to this, it was held that a lessee of land continuously in cultivating possession for a period of twelve years, under several written leases or pottahs which were for specified terms of years, but in which there was no express stipulation for the landlord's re entry on their expiration, had a right of occupancy. The mere existence of a term in a lease was not an "express stipulation" to the contrary, within the meaning of s. 7, so as to exclude the right of occupancy. The

RIGHT OF OCCUPANCY—*continued*

1 ACQUISITION OF RIGHT—*continued*

decision of the Full Bench in *Sheo Prokash Misser v Ram Sahai Singh 8 B L R 165* approved and held applicable In a suit for the recovery of possession with mesne profits of land brought by a lessor against the tenant holding over the defence was as to part of the land that the tenant had

pr of as to this the suit was remanded CHANDRABATI KOERI v HARRINGTON

[I L R., 18 Calc, 349
L R, 18 I A, 27

86 ———— *Holding under leases—Act X of 1859 s 6—Beng Act VIII of 1869 s 6—Cultivating raiyat*—From 1824 to 1832

zamindar for possession, on the ground that the defendant was holding over after the expiry of his lease—*Held* that the defendant had acquired a right of occupancy under s 6 Act X of 1859 MOKANDI LAL DUBEI v CROWDY

[8 B L R, Ap, 95

S C MOKOONDY LALL DOOBEY v CROWDY

[17 W R, 274

87 ———— *Act X of 1859 s 6—Setting aside pottah as void*—Even if a

88 ———— *Occupation or*

occupied as a raiyat for twelve years ... v MEAHJAN W R, F. B, 146

GHOLAM HYDER v POORNO CHUNDER ROY

[3 W R, Act X, 147

89 ———— *Confiscation of zamindar's rights—Interruption of growth of right*—Confiscation of the zamindar's rights under Act XXV of 1857, will not operate to interrupt the growth of a right of occupancy claimed by a tenant SHEORAJ SINGH v LEGGE 3 Agra, 293

90 ———— *Interruption of possession during acquisition of right*—In a suit by a zamindar for ejectment where the raiyat pleads continuous occupancy for twelve years and it is found that the raiyat was evicted during that period but got back into possession if the eviction were wrongful it would not be such an interruption of possession as would prevent the raiyat from acquiring a right of occupancy but it would lie with the raiyat to show that the eviction was wrongful MAHOMED GAZEE CHOWDHRY v NOOR MAHOMED

[24 W R, 324

Reversing decision of BIRCH J in S C

[24 W R, 324 note

91 ———— *Application for ejectment Time when pending—Act X of 1859 s 25*—An application under s 25 Act X of 1859 for the assistance of the Collector in ejecting a raiyat was not of the nature of a suit so as to cause a term of occupancy to cease to run and if the raiyat in spite of the zamindar's efforts to eject him, nevertheless continued in cultivatory possession and paid rent he was entitled to count the time towards the twelve years required to found a right of occupancy MAHOMED SHAH v USGUR HOSSEIN 5 N W, 151

92 ———— *Fx lusion of pe-*

SINGH v RAM NARAIN 2 Agra, 93

93 ———— *Act X of 1859, s 6—Change of farmers*—A right of occupancy under s 6 Act X of 1859 was not affected by a mere change in the farmers SHEO CHURN SINGH v GORA CHAND GHOSE 3 W R, Act X, 125

94 ———— *Continuous occupation—Alluvial land—N W P Rent Act XVIII of 1873 s 8—Occupancy tenant*—A tenant who has occupied or cultivated alluvial land whenever such land was capable of occupation or cultivation, for twelve years acquires by such occupation or cultivation a right of occupancy in such land LACHMAN PRASAD v BAL SINGH

[I L R., 4 All, 157

95 ———— *Custom of district Utbandi tenures—Effect of non payment of rent for time when land not culturable*—Where by the custom of a particular locality rent was not pay-

or occupies land for a period of twelve years has a right to occupy the land so long as he pays the rent due thereupon PREMANUND GHOSE v SHOOREY DRONATH ROY 20 W R, 329

96 ———— *Bengal Tenancy Act, s 180—"Utbandi" holding*—Case in which the question as to what is an utbandi tenure is discussed Where the plaintiff who had been dis-

formed a separate holding which ... from the ...

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

time cultivated on the utbandi system during a period which had covered more than twelve years, cultivation at various times and under separate agreements on each occasion (such periods not being continuous although of the same piece of land) would not confer a right of occupancy on the ground that the first of such periods commenced more than twelve years before the alleged dispossession. BENI MADHUB CHUCKERBUTTY v. BHUBUN MOHUN BISWAS [I. L. R., 17 Calc., 393

97. ———————— *Successive occupants—Act X of 1859, s. 6—Occupancy by inheritance.*—Under s. 6, Act X of 1859, it is only when occupancy is inherited that the occupancy of the predecessor is considered as the occupancy of the tenant in possession. WATSON & CO. v. SHURUT SOONDUREE DEBIA . . . 7 W. R., 395

KHERODE CHUNDER ROY v. GORDON [23 W. R., 237

98. ———————— *Successive occupants—Act X of 1859, s. 6—Occupancy by inheritance.*—A holding by a raiyat and his father before him for many years constitutes a right of occupancy which will prevent ejectment by the zamindar except in due course of law. NIM CHAND BOROOAH v. MOORAREE MUNDUL . . . 8 W. R., 127

99. ———————— *Occupancy by inheritance—Occupation by raiyat as malik—Rent Act (Beng. Act VIII of 1869), s. 6.*—It is only the holding of the father or other person from whom a raiyat inherits that can be deemed to be the holding of the raiyat within the meaning of s. 6 of the Rent Act. Occupation by the predecessor in title is not such an occupation as will create in the holder of land any right of occupancy. Nor can the period during which the occupant of land is in possession as malik be included in considering whether he has acquired a right of occupancy; such a right must be acquired against some body, and cannot be acquired by a man against himself. LAL BAHADOOR SINGH v. SOLANO [I. L. R., 10 Calc., 45: 12 C. L. R., 539

100. ———————— *Occupancy by inheritance—Succession to occupancy right—Acquisition of right by continuing holding.*—Where the plaintiff succeeded to his uncle's holding, who had a right of occupancy, and the zamindar permitted him for about six years to hold the land without any new arrangement,—*Held* that he was entitled to recover the land as against the zamindar, his occupation being presumed to have been regarded as a continuation of the right of occupancy already acquired. BRIJBHOOKUN v. BHYROW DUTT [3 Agra, 240

101. ———————— *Raiyat succeeding by inheritance, though not entitled—Permissive holding for twelve years.*—Where the plaintiff, a raiyat, was allowed to succeed to the holding of his uncle, who had a right of occupancy, and was allowed by the zamindar to continue in the holding for eleven years,—*Held* that, though the plaintiff was not strictly entitled to succeed by right of inheritance, yet he must be taken to have succeeded to the holding by the consent of the zamindar, and to have acquired a right of occupancy. HUKEEM-OON-NISA v. BHOOBIA [5 N. W., 23

102. ———————— *Occupancy by purchase or transfer.*—Unless the tenant hold a transferable tenure, the sale by him of his jote to another party, without the consent of his landlord, does not transfer to the purchaser any right of occupancy which the latter may have possessed, or enable the present occupant to plead that the period of his own possession, joined to that of the former tenant, gives him a presumptive right of occupancy. WATSON & CO. v. SHURUT SOONDUREE DEBIA [7 W. R., 395

103. ———————— *Transfer of tenure by consent—Continuous possession.*—Where the zamindar consents to the transfer of a tenure from one raiyat to another, the possession of both must be considered to be continuous, and the right of occupancy to date from the time of the first holder. HURO CHUNDER GOHO v. DUNN [5 W. R., Act X, 55

104. ———————— *Receipt of rent by zamindar—Purchaser from tenant.*—A zamindar does not, by the mere receipt of rent from a purchaser from the tenant having a right of occupancy, sanction the sale to the purchaser so as to give him a right of occupancy. GAUR LAL SIRKAR v. RAMESWAR BHUMIK . . 6 B. L. R., Ap., 92

105. ———————— *Transfer of right—Possession of transferor—Act X of 1859, s. 6.*—The possession of the vendor could not be added to the possession of the purchasers so as to give the latter a right of occupancy under s. 6, Act X of 1859. HYDER BUKSH v. BHUBINDRO DEB COWAR 13 B. L. R., 276 note: 17 W. R., 179

TARAPRASAD ROY v. SURJOKANTO ACHARJEE CHOWDHRY [13 B. L. R., 281 note: 15 W. R., 152

106. ———————— *Beng. Act VIII of 1869, s. 6—Joint and afterwards sole possession.*—The continuous possession for twelve years which is the subject of s. 6 of the rent law of 1869 must be a possession under one and the same right. This right may be in its inception joint with other persons, and by the death of co-sharers ultimately become a sole right without its continuous nature being affected. FORBES v. RAM LALL BISWAS . 22 W. R., 51

107. ———————— *Beng. Act VIII of 1869, s. 6.*—*A* and *B* jointly obtained a pottah of a piece of land from the zamindar for a period of five years. Afterwards *A* alone obtained a pottah for another period of five years. Upon the expiry of this period, *A* held on for two years longer, when he was dispossessed by the zamindar. In a suit by *A* for recovery of possession on the ground that he had acquired a right of occupancy,—*Held* that he had not acquired a right of occupancy. MAHOMED CHAMAN v. RAMPRASAD BHAGAT [8 B. L. R., 338: 22 W. R., 52 note

RIGHT OF OCCUPANCY—*continued.*

1. ACQUISITION OF RIGHT—*continued.*

108. ——————— *N W P Rent Act (XII of 1881), s 9—Succession to occupancy tenant—Onus of proof—Collateral—Sharer in*

remote collateral who was a sharer in the cultivation

109. ——————— *Agreement restricting right of occupancy—Bengal Tenancy Act (VIII of 1885), s 178, Applicability of, to suits pending when Act came into force*—S 178 of the Bengal Tenancy Act (VIII of 18 5) has no application to suits instituted before the date on which that Act came into force So where a landlord sued to

RAUT I L R, 14 Calc, 621

110 ——————— *Purchase by tenant of fractional share of proprietary interest, Effect of, on acquisition of right of occupancy—Beng Act VIII of 1869, s 6*—A tenant, who had commenced to occupy his holding on the 13th April 1871, acquired by purchase in the year 1878 a frac

See MASEYK *v.* BHAGABATI BARMANYA [I. L. R, 18 Calc., 121

RIGHT OF OCCUPANCY—*continued.*

1 ACQUISITION OF RIGHT—*concluded*

111. ——————— *Bengal Tenancy Act (VIII of 1885), s 5, cls 25 and 178—Definition of raiyati holding—Lessees who are not raiyati within the Act—Zur i peshgi lease—Stipu*

under successive leases claimed, in virtue of the occupancy for more than twelve years to be a raiyat within the Bengal Tenancy Act, 1885 either with

which was mo e than one hundred standard bighas A zur i peshgi lease is not a mere contract for the cultivation of the land at a rent, but is a security to the tenant for his money advanced Two of the leases were zur-i peshgi or made on money advanced by the lessee to the lessor The tenant's possession in this case was, in part at least, that of a creditor operating payment to himself, and was no

LOGHOBUR DAS I. L R., 24 Calc., 2[illegible] [L R., 23 I A, 158 1 C W N, 83

See RAM KHELAWAN SINGH *v* SAMBHOO ROY [2 C W N, 758

112 ——— Presumption that right of occupancy exists.—The mere fact of plaintiff suing for enhancement implies the tenant s right of

[illegible]

113 ——— Effect of acquisition of right—*Right to hold at fixed rates*—A right to hold at fixed rates does not necessarily follow a right of occupancy RAMNARAIN SINGH *v* HURONATH ROY W. R, 1864, Act X, 92

114. ——————— *Interest in land—Proprietorship of the soil*—A raiyat having a mere right of occupancy, and not a right to hold at a fixed rate of rent, has not such an interest in the land as gives him a right to a share of the rent He has simply a right to occupy the land in preference to any other tenant so long as he pays a fair and [illegible] term in suits [illegible], as can be [illegible] f occupancy [illegible] r JHOOR

GHOSE . . . W. R., F. B, 131

2 LOSS OR FORFEITURE OF RIGHT.

115. ——— Statutory right, Effect on, of repeal of Act which gives it—*Bengal*

RIGHT OF OCCUPANCY—*continued.*

2. LOSS OR FORFEITURE OF RIGHT —*concluded.*

Court,—*Held*, reversing the decree of lower Court, that the plaintiff, on the strength of his purchase from *P* in 1887, had no right to eject the defendant. PURUSHOTTAM VAMAN SOMAN *v.* KASHIDAS JEYCHANDSHET . . . I. L. R., 17 Bom., 677

3. TRANSFER OF RIGHT.

135. ———— Nature of right as to transferability—*Consent of zamindar to transfer.*—A right of occupancy is not transferable irrespective of the consent or otherwise of the zamindar. BUTI SINGH *v.* MURAT SINGH 13 B. L. R., 284 note

S. C. BOOTEE SINGH *v.* MOORUT SINGH [20 W. R., 478

136. ———— Right of transferee against zamindar—*Consent of zamindar.*—A transfer of a mere right of occupancy gives no title to the transferee against the zamindar. DURGA SUNDARI *v.* BRINDABUN CHUNDRA SIRCAR CHOWDRY [2 B. L. R., Ap., 37 : 11 W. R., 162

137. ———— Power of transfer—*Consent of landlord—Act X of 1859, s. 6—Transferable tenure.*—A tenure not originally transferable without the consent of the landlord does not become so merely because the tenant has obtained a right of occupancy under s. 6, Act X of 1859. *Quære per* PEACOCK, *C.J.*—Whether a right of occupancy gained under s. 6, Act X of 1859, is necessarily heritable. AJOODHIA PERSAD *v.* EMAMBANDI BEGUM [B. L. R., Sup. Vol., 725 2 Ind. Jur., N. S., 192 : 7 W. R., 528

138. ———— *Right of zamindar as against transferee—Mesne profits.*—A right of occupancy which is not transferable is merely a right on the part of the person entitled to it to occupy and till the soil, either by himself or by persons dependent on or subordinate to him, *e.g.* his servants, lessees, or licensees. Therefore, where a non-transferable right of occupancy was transferred, and the transferee was in actual possession of the soil, tilling and using it for his own benefit. *Held* that the zamindar had a right of suit against the transferee to recover possession of the land. He was also entitled to recover as damages so much of the zamindar's rents and profits as the defendant had, while in possession, been the means of preventing the zamindar from receiving. SOHODWA *v.* SMITH [12 B. L. R., 82 : 20 W. R., 139

139. ———— *Right of heir of person with right of occupancy.*—The heir of a person with a restricted right of occupancy, though not competent to transfer that right out and out by sale, may make for sale such arrangements as he thinks fit for the cultivation and management of the tenure. MOHANUND BANERJEE *v.* SHUSHEE SHEKHUR CHATTERJEE . . 20 W. R., 132

140. ———— *Beng. Act VIII of 1869, s. 6, Occupancy right under—Sale in execution of decree—Gift.*—The right of occupancy acquired by a cultivating raiyat under s. 6 of Bengal Act VIII of 1869 cannot be transferred either by a voluntary sale or gift, or by a sale in execution of a decree. DWARKA NATH MISSER *v.* HURRISH CHUNDER . I. L. R., 4 Calc., 925 : 4 C. L. R., 130

141. ———— Right of transferee—*Purchaser at sale in execution of decree.*—The sale of a jote in execution of a decree against the jotedar does not prove it to be transferable, nor does the purchaser acquire a right of occupancy by his purchase where the right is not dependent on custom, but is a mere creature of the rent law. KRIPA NATH CHAKEE *v.* DYAL CHAND PAL . . 22 W. R., 169

142. ———— Customary right of transfer—*Tenure of khodkast raiyat.*—There is nothing unreasonable in the custom by which the tenure of a khodkast raiyat, who has built a pucca house on his land, and has acquired a right of occupancy under s. 6, Act X of 1859, is transferable. CHUNDER COOMAR ROY *v.* KADERMONEE DOSSEE [7 W. R., 247

143. ———— Custom or usage, Nature of evidence to prove—*Bengal Tenancy Act (VIII of 1885), s. 183, Ill. (1).*—In suits by a landlord for ejectment of purchasers from raiyats having only a right of occupancy, on the ground that the holdings of such raiyats were not transferable without the landlord's consent, the defendants pleaded custom or usage in support of the transfers. Questions arose as to the character of the usage required to be proved in such cases and the nature of the evidence required to prove the usage. In second appeal the High Court, (1) upon a review of the previous law on the subject, *held* that, however the law may have been previously declared, as it is now expressed in the Bengal Tenancy Act, s. 183, Ill. 1, a transfer in accordance with usage is valid even without the consent of the landlord. (2) After applying the principles laid down by the Privy Council as regards evidence of mercantile usage in the case of *Juggomohun Ghose* v. *Manick Chand, 7 Moore's I. A., 263*,—*Held* that it would be necessary in these cases either to prove the existence of the usage on the landlord's estate or that it is so prevalent in the neighbourhood that it can reasonably be presumed to exist on that estate. The finding of the lower Appellate Court on the existence of the usage being founded on irrelevant matters, the case was remanded for re-trial. PALAKDHARI RAI *v.* MANNERS . I. L. R., 23 Calc., 179

144. ———— Custom or usage—*Bengal Tenancy Act (VIII of 1885), ss. 183 and 178, sub-s. (3), cl. (d)—Local usage—Evidence to prove usage—Evidence Act (I of 1872), ss. 42 and 48—Judgment as to transferability of tenures in adjoining villages.*—In a suit by the landlords to avoid the sale of an occupancy holding in their mouzah and eject the purchaser thereof, one of the questions was as to the existence of a custom or usage under which the raiyat was entitled to sell such a holding. *Held* with reference to the expressions "custom or usage"

RIGHT OF OCCUPANCY—*continued*

3 TRANSFER OF RIGHT—*continued*

in s 183 and "local usage" in cl (*d*), sub s. (3), of s 178 of the Bengal Tenancy Act (VIII of
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usage under s 42 of the Evidence Act DALGLISH v GUZUFFER HASSAIN I L R, 23 Calc, 427

In the same case after remand it was held that, to establish that occupancy holdings are transferable in accordance with local usage, it is necessary to adduce evidence of purchases or transfer by persons

to prove a custom is not necessary when the existence of a local usage is in question A long period of time must elapse, before a custom in respect of the transferability of occupancy holdings can grow up but this is not the case with regard to the growth of usage in respect of the matter The "usage" to which ss 178 and 183 refer is not restricted to a usag
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145 ——— ——— *Transferability of right—Bengal Tenancy Act (VIII of 1885), ss 65 and 73*—In the absence of custom or local

ALI SHAIK SHIKDAR v GOPIKANTH SHAHA [I L R, 24 Calc, 355 1 C. W. N, 396

146 ——— *Bengal Tenancy Act (VIII of 1885), ss 178, 183—Evidence Act (I of 1782), s 48—Admissibility of opinion as to existence of custom or usage*—In this suit the plaintiffs by virtue of patni settlements, sought to obtain khas possession of certain jote lands which purported to have been conveyed by the jotedars,

not necessary to require proof
any length of time *Held* also that the statement made by persons who were in a position to know of the ... stom or usage in their locality

NANDI . I. L. R., 26 Calc., 184

RIGHT OF OCCUPANCY—*continued*

3 TRANSFER OF RIGHT—*continued*.

147. ——— *Sale of an occupancy holding not transferable by custom in execution of a decree for arrears of rent obtained by some of several co-sharer landlords—Effect of such a sale—Bengal Tenancy Act (VIII of 1885), ss 65 and 188*—A decree for rent obtained by some of certain co sharer landlords and not by the whole body of them, is not a decree under the Bengal Tenancy Act *Prem Chand Nuskar* v *Mokshoda Debi, I L R, 14 Calc, 201,* and *Jugobundhu Pattuck* v *Jadu Ghose Alkushi I L R 15 Calc, 47,* referred to An occupancy holding which is not transferable by custom, as also the interest of the judgment debtor in the said holding, are not saleable in execution of such a decree *Biram Ali Shaik Shikdar* v *Gopi Kanth Shaha, I L R, 24 Calc 355* referred to DURGA CHARAN MANDAL v KALI PRASANNA SARKAR I. L. R, 26 Calc, 727 [3 C. W. N, 586

148 ——— Sale of occupancy-holding in execution of decree for rent by one of several joint landlords *Bengal Tenancy Act (VIII of 1885), Ch XIV, and ss 65 188—Arrears of rent of separate share—Execution of decree for rent—Joint landlords—Transferability of occupancy holding—Beng Act VIII of 1869, ss 59 64—Landlord and tenant—Want of saleable*

s 65 of the Bengal Tenancy Act is a decree obtained by all the landlords or at all events a decree obtained

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

by some of the landlords for the entire rent in the presence of all. JABIR *v.* RAM KUMAR DE [3 C. W. N., 747

150. ———— **Non-transferable occupancy holding, whether saleable**—*Decree for arrears of rent by fractional co-sharer.*—An occupancy-holding which is not transferable by custom or usage cannot be sold in execution of a decree for arrears of rent obtained by a fractional co-sharer. *Bhiram Ali Shaik Shikdar* v. *Gopi Kanth Saha, I. L. R., 24 Calc., 355*; *Durga Charan Mandal* v. *Kali Prasanna Sarkar, I. L. R., 26 Calc., 727*; and *Majed Hossein* v. *Raghubar Chowdhry, I. L. R., 27 Calc., 187*, relied on. SITA NATH CHATTERJEE *v.* ATMARAM KAR . . . 4 C. W. N., 571

151. ———— **Transfer to mokurari tenant**—*Dispossession by landlord—Trespass.*—A raiyat having a right of occupancy can create a mokurari lease, but the terms of a lease granted by him to a third party can only be binding as between them both. If the landlord dispossesses the sub-lessee without the sanction of law, he is guilty of trespass DUMREE SHAIKH *v.* BISSESSUR LAL [13 W. R., 291

152. ———— **Proof of transferability**—*Custom—Special stipulation.*—In order to make a right of occupancy transferable, it must be shown that it is so transferable according to the custom of that part of the country in which the tenure is situated. Where no mention is made in a dowl of any right to transfer, the existence of the power to transfer cannot be presumed. UNNOPOORNA DOSSIA *v.* OOMACHURN DOSS . . . 18 W. R., 55

153. ———— *Suit by transferee against zamindar for registration of name.*—The purchaser of a right of occupancy in certain land, suing a zamindar who has refused to register his name in the zamindari sherista for the amount of land claimed and at a specified rent, is bound to show that the tenure was one which could be transferred, and that the sale did not involve any redistribution of the rent. SHUNKURPUTTEE THAKOORAIN *v.* SAIFOOLLAH KHAN . . . . 18 W. R., 507

154. ———— **Obligation of zamindar to register a transfer**—*Act X of 1859, s. 27.*—A right of occupancy is a transferable tenure, but the zamindar was not bound to register the transfer under s. 27, Act X of 1859. TARAMONEE DOSSEE *v.* BIRRESSUR MOZOOMDAR . . 1 W. R., 86

155. ———— **Finding as to transferability**—*Right of tenant with right of occupancy to transfer.*—Although it is the general rule in the N.-W. P. that a tenant's holding is not transferable without the zamindar's consent, yet the exceptions are so far from rare that it is necessary in each case to come to a distinct finding on this point, and decree accordingly. HADAYET ALY *v.* LALL SINGH [1 N. W., Pt. II, p. 38 : Ed. 1873, 96

156. ———— **Transfer by raiyat holding land for agricultural purposes**—*Transfer for conversion to other purposes.*—Raiyats having a right of occupancy for agricultural purposes may by custom have the right to transfer it to any person to hold for the same purpose, but that does not necessarily imply that the transferee may convert the land into a dwelling-house and appurtenances. JUGUT CHUNDER ROY CHOWDHRY *v.* ESHAN CHUNDER BANERJEE . . . 24 W. R., 220

157. ———— **Effect of transfer**—*Sub-letting—Right of ejectment—Sub-tenant.*—A tenant having a right of occupancy does not determine it by sub-letting the land; therefore, whether the lessees are ejected by the zamindar, they are entitled to recover possession under the terms of their leases. JAMIR GAZI *v.* GONEYE MUNDUL [13 B. L. R., 278 note : 12 W. R., 110

158. ———— *Right of zamindar against transferee.*—If a raiyat having a right of occupancy transfer his right to another, his right is not thereby forfeited, and the zamindar has no right to eject the transferee. GORACHAND MUSTAFI *v.* MADAN MOHAN SIKDAR 13 B. L. R., 279 note

S. C. GORACHAND MOOSTAFEE *v.* BURODA PERSHAD MOOSTAFEE . . . 11 W. R., 194

DWARKANATH MISREE *v.* KANAYE SIRDAR [16 W. R., 111

159. ———— *Sub-letting tenure—Right of sub-lessee.*—A right of occupancy under s. 6, Act X of 1859, may be acquired by a tenant of land sub-let by a raiyat, but not unless the raiyat sub-letting has himself a right of occupancy. The acquiring the right was confined to the special cases in Act X of 1859. Where that Act was held not to apply, there was no equitable principle on which a person occupying under a grant for no specified period could acquire a right of occupancy. RAMDHAN KHAN *v.* HARADHAN PARAMANICK [9 B. L. R., 107 note : 12 W. R., 404

160. ———— *Sub-letting—Act X of 1859, s. 6.*—*A* sued for a declaration of right of occupancy founded on a pottah and long possession, and alleged that he had under-let to raiyats the land devised by the pottah, but that *B* had obtained a decree against them for rent. The lower Court on appeal held that *A* had determined his tenancy by quitting the land. *Held* that *A* did not by sub-letting, transfer the right of occupancy. Decree reversed, and case remanded for trial on the merits. HARAN CHUNDER PAL *v.* MUKTA SUNDARI CHOWDHRAIN [1 B. L. R., A. C., 81 : 10 W. R., 113

161. ———— **Relinquishment of tenancy**—*N.-W. P. Rent Act (XVIII of 1873), s. 9—Transfer.*—*Per* TYRRELL, *J.*—A relinquishment by an occupancy tenant of his holding is not a "transfer" within the meaning of s. 9 of the Rent Act. LALJI *v.* NURAN . . . I. L. R., 5 All., 103

162. ———— **Mortgage**—*Act XII of 1881, s. 9 Landholder and tenant—Usufructuary mortgage by occupancy tenant—"Transfer."*—A mortgage with possession by an occupancy tenant of his

RIGHT OF OCCUPANCY—*continued*

3 TRANSFER OF RIGHT—*continued*

cultivatory holding is a "transfer" within the prohibition of s 9 of the N.-W.-P. Rent Act, 1881 GANGA DIN v DHURANDHAR SINGH

[I L R, 5 All, 495

163 ——————— *Act XII of 1881 (N W P Rent Act), s 9—Landlord and tenant—Right of occupancy—Meaning of "transfer"*—

GOPAL PANDEY v PARSOTAM DAS BADRI NATH v. PARBAT . . . I L R, 5 All, 121

164. ——— Sale in execution of decree—*Act XVIII of 1873, s 9—Restriction on sale*—*Held* (by a majority of the Full Bench) that the right of an occupancy tenant is transferable by sale in execution of decree, but only as between persons who have become by inheritance co sharers

165 ——————— *Act XVIII of*

GAGE BANK OF INDIA I L R, 1 All, 547

Affirmed by the Full Bench (SPANKIE, J, dissenting) UMRAO BEGAM v LAND MORTGAGE BANK OF INDIA [I. L R., 2 All, 451

166. ———Rights of tenants at a fixed rate—*Act XVIII of 1873, s. 9—Ex proprietary tenant—Occupancy tenant—Inheritance to rights of occupancy*—*Held* that the proviso to the last clause of s 9 of Act XVIII of 1873 refers only to the holdings of ex proprietary tenants and occupancy tenants, and not to tenants at fixed rates BHAGWANTI v RUDE MAN TEWARI

[I. L R, 2 All, 145

167. ——— Transfer of portion of tenure—*Zamindar, Right of—Ejectment.*—The existence of a custom in a particular district by which

ferees as trespassers and eject them. TIRTHANUND THAKOOR v MUTTY LALL MISSER

[I. L. R, 3 Calc., 474

168 ———Transfer of a portion of occupancy holding—*Bengal Tenancy Act (VIII of 1885), s 88—Custom—Ejectment Possession*—

RIGHT OF OCCUPANCY—*continued*.

3 TRANSFER OF RIGHT—*continued*.

a custom in a particular place by which such a holding is transferable is immaterial and gives no right to the transferee as against the landlord. KULDIP SINGH v GILLANDERS, ARBUTHNOT & Co

[I. L. R., 30 Calc, 615
4 C W. N, 738

See CHANDRA MOHUN MOOKHOPADHAYA v BIRESSWAR CHATTERJEE . 1 C. W. N., 158

DURGA PROSAD SEN v DOULA GAZEE

[1 C W. N, 160

KABIL SARDAR v CHUNDRA NATH NAG CHOWDHRY . I L. R, 20 Calc, 590

GOZAFFER HOSSEIN v BABLISH

[1 C W. N, 162

and KALLI NATH CHAKRAVARTI v UPENDRA CHANDRA CHOWDHRY

[I. L R, 24 Calc, 212 : 1 C. W. N, 163

169. ——— Transfer of proprietary rights—*Possession by conditional mortgagees—Sir land—Act XVIII of 1873—Purchase of proprietary rights by mortgagees*—The possession of sir land by conditional mortgagees must be treated as the possession of the mortgagors *Held* accordingly that, where the mortgagees of certain proprietary rights in a mehal, being in possession of such rights, purchased the same at an auction sale, the sir land included in the proprietary rights was held by the mortgagors at the time of the auction-sale within the meaning of s 7 of Act XVIII of 1873 and that, after the sale in virtue of the provision of that section, they became entitled to a right of occupancy in the sir land DAKKAL RAM v WAZIR ALI

[I. L R, 1 All, 448

170. ——————— *Mortgage—Ex-proprietary tenant—Act XVIII of 1873, s. 7*—

session of the lands on the ground that he had a right of occupancy in the lands under s 7 of Act XVIII of 1873, such section not being applicable and contemplating something more than a mere temporary transfer of proprietary rights BHAGWAN SINGH v MURLI SINGH I. L. R, 1 All, 450

171 ——————— *Act XVIII of 1873, ss 7, 9—Ex-proprietary tenant*—The right of occupancy which a person losing or parting with

purporting to transfer his share in the village including his sír land and ex-proprietary right divests such proprietor of the ex-proprietary right conferred by s. 7 of Act XVIII of 1873. MARKUNDI DIAL *v.* RAM BARAN RAI . . . I. L. R., 2 All., 735

172. ——— Transfer of raiyat's interest —*Abandonment—Forfeiture Beng. Act VIII of 1869, s. 6.* A mokurari mirasi pottah was granted in 1838 to *A*. who was found to have held thereunder as a raiyat till 1859, when his right, title, and interest were sold in execution of a decree and purchased by *B*, and the latter was accepted as tenant by, and paid rent to, the zamindar for nearly twelve years. The zamindari, being sold in 1871 for arrears of Government revenue, was purchased by the plaintiff, who gave *B* notice to quit, and on his refusal brought the present suit to eject him. *Held* that the right of occupancy which *A* had acquired under s. 6 of Bengal Act VIII of 1869 at the time of the sale to *B* was not transferable. NARENDRA NARAYAN ROY CHOWDHRY *v.* ISHAN CHUNDRA SEN

[13 B. L. R., F. B., 274 : 22 W. R., 22

See WILSON *v.* RADHA DULARI GOPE

[2 C. W. N., 63

173. ——— *Abandonment—Status of purchaser as regards zamindar.*—A tenant having a right of occupancy cannot create an intermediate tenure between himself and the zamindar. If a raiyat not having a transefrable tenure quits possession, makes over his interests, and gives over the land to a third person, he may be treated as having abandoned all rights formerly possessed by him in the land. When a purchaser takes possession of a non-transferable tenure, and interposes himself between the zamindar and the raiyats on the land, he thereby commits a wrong, and the zamindar may sue to declare that no interest is vested in such purchaser or to restrain him from interfering with the collection of rent. HUREEHUR MOOKERJEE *v.* JODOONATH GHOSE . . . . 7 W. R., 114

174. ——— *Recognition of transfer by zamindar.*—The conduct and acts of a zamindar may be such as to take a case out of the purview of the Full Bench decision in *Narendra Narayan Roy* v. *Ishan Chundra Sen, 13 B. L. R., 274 : 22 W. R., 22,* which declares that a right of occupancy is not transferable, *e.g.*, where a zamindar has clearly recognized a transfer and done everything in his power in accepting the transferee as his tenant. AMEEN BUKSH *v.* BHYRO MUNDUL

[22 W. R., 493

175. ——— *N.-W. P. Rent Act (XVIII of 1873), s. 9—Sale of occupancy rights with zamindar's consent—Acceptance of rent by zamindar from vendees—Contract Act, ss. 2, 23—Estoppel—Evidence Act, ss. 115, 116.*—Under a deed dated in 1879, the occupancy tenants of land in a village sold their occupancy rights, and the zamindars instituted a suit for a declaration that the sale-deed was invalid under s. 9 of Act XVIII of 1873 (the N.-W. P. Rent Act in force in 1879), and for ejectment of the vendees, who had obtained possession of the land. It was found that the zamindars had consented to the sale to the vendees, and received from them arrears of rent due on the holding by the vendors, and had recognized them as tenants. *Held* on appeal under the Letters Patent that the sale-deed was invalid with reference to the provisions of ss. 2 and 23 of the Contract Act, inasmuch as its object was the transfer of occupancy rights which was prohibited by s. 9 of Act XVIII of 1873. *Held* also that the zamindars having accepted the vendees as tenants and taken rent from them, a tenancy was thereby constituted under the rent law; that the vendees were therefore not trespassers; and that therefore the question as to ejectment did not fall within the jurisdiction of the Civil Court. JHINGURI TEWARI *v.* DURGA . I. L. R., 7 All., 878

Upholding the judgment of MAHMOOD, *J.*, in DURGA *v.* JHINGURI . . I. L. R., 7 All., 511 where OLDFIELD, *J.*, and MAHMOOD, *J.*, differed in opinion.

176. ——— Transfer by one co-sharer —*N.-W.P. Rent Act, 1873, s. 9—Suit by reversioner—Transferee by inheritance.*—The plaintiffs sued to set aside an usufructuary mortgage of a cultivatory holding by the defendant *M* to the other defendants, on the averment that they held the same jointly with *M*'s deceased husband, and she had no right to make the mortgage. The lower Appellate Court found that the land was held separately by *M*'s husband, and that she had succeeded to its occupancy on the death of her son. The suit was dismissed in special appeal on the facts found and also with reference to s. 9 of Act XVIII of 1873. BARANJA *v.* BASDEO MISSER

[7 N. W., 241

177. ——— Transfer of occupancy right and purchase by some of several co-sharer landlords—*Bengal Tenancy Act (VIII of 1885), s. 22, cl. 2—Merger—Right of other co-sharer landlords to rent.*—The acquisition of an occupancy right by a proprietor does not, under sub-s. 2 of s. 22 of the Bengal Tenancy Act, affect the right of a co-sharer landlord to receive his share of the rent of the tenancy. The "third person" mentioned in that sub-section includes every person interested other than the transferor and transferee. SITANATH PANDA *v.* PELARAM TRIPATI

[I. L. R., 21 Calc., 869

178. ——— Co-owner's purchase of occupancy right, Effect of—*Bengal Tenancy Act (VIII of 1885), s. 22.*—There is no law which prevents one of several co-proprietors from holding the status of a tenant under the other co-proprietors of land which appertains to the common estate. The effect of the purchase, by one co-owner of land, of the occupancy right is not that the holding ceases to exist, but only the occupancy right which is an incident of the holding. *Sitanath Panda* v. *Pelaram Tripati, I. L. R., 21 Calc., 869,* referred to. JAWADUL HUQ *v.* RAMDAS SAHA

[I. L. R., 24 Calc., 143
1 C. W. N., 166

RIGHT OF OCCUPANCY—continued

3 TRANSFER OF RIGHT—*continued*

179 ———— Effect of purchase, by talukhdar, of raiyat's holding—*Bengal Tenancy Act (VIII of 1885) s 22 cl (1)*—If a

MINNAT ALI I L R, 24 Calc, 541

See RAM SARAN PODDAR *v* MAHOMED LATIF [3 C W N, 62

180 ———— Occupancy, Non transferable right of—*Bengal Tenancy Act (VIII of*

retain possess

Saha I L R, 24 Calc, 143 explained and distinguished GRISH CHANDRA CROWDHRY *v* KEDAR CHANDRA ROY I L R, 27 Calc, 473 [4 C W N, 569

181 ———— Transfer by proprietor in mehal—*Ex proprietary tenant—Act XII of 1881 (N W P Rent Act), ss 7, 9*—The words of s 7 of the N W P Rent Act "shall have a right of occupancy in the land held by him as sir" are intended by operation of law to confer upon the proprietor who has sold his proprietary rights in

is selling his proprietary ... vested or contingent ... f his right of ... h is prohibited by s ... GULAB ROY *v* INDAR SINGH . I L R, 6 All, 54

182 ———— Right of mortgagees from tenant—*Mortgagees Rights of, in suit for ejectment of tenants*—If a zamindar obtains a decree in the Revenue Court for the ejectment of tenants with

rights of the original tenant ... with a right of occupancy mortgaged portions of their holdings, and the zamindar assented to the substitution of the mortgagees for the original tenants

RIGHT OF OCCUPANCY—continued

3 TRANSFER OF RIGHT—*continued*

183 ———— Validity of transfer—*Rights of mortgagees from tenant—Lease—"Zur-i peshgi" lease—Act XII of 1881 (N W P Rent Act), ss. 8 9*—The occupancy tenants of certain land executed a zur i peshgi lease in favour of certain persons by which in consideration of a sum of money it was agreed that the latter should have the right of occupying and cultivating the occupancy holding as tenants for a term of years at a nominal

Per PETHERAM C J—A right of occupancy means nothing but the right to live on and cultivate land as one's own *Per* STRAIGHT J—The last sentence of s 8 of the Rent Act should not be read as declaring that any occupancy tenant may sub let his land but that the scope of the proviso is limited to tenants who actually occupy or cultivate land under a written lease without having acquired a right of occupancy *Hidayatullah v Ram Niwaz Rai, Weekly Notes All 1882 p 80* referred to ABADI HUSAIN *v* JURAWAN LAL I. L. R., 7 All., 866

184 ———— *Suit for ejectment—Act by tenant inconsistent with purpose for which land was let—Mortgage of occupancy-holding—Cancelment of mortgage before suit for ejectment—Act XII of 1881 (N W P Rent Act),*

was let, within the ... (N W P Rent Act) s 93 (b) *Held* by OLDFIELD, J, that apart from the question whether executing a mortgage of his holding was an act within the meaning of s 93 (b) of the Rent Act the mortgage having been cancelled there was no cause of action left and the penalty should not be enforced with reference to s 119 *Held* by MAHMOOD J, that the occupancy tenure could not be brought to an end except on grounds clearly provided by the law; and the execution of the mortgage though illegal and void ... land ... the I ... of th ... ejectment *Gopal Panday v Parsotam Das, I L R, 5 All, 121,* and *Naik Ram Singh v Murli Dhar, I L R, 4 All 371,* referred to. Also *per* MAHMOOD J—The terms of s 93 (b) of the N W P Rent Act apply, *exempli gratia*, to cases in which land is given to a tenant for purposes of cultivation and is used by him for building or other purposes. DEBI PRASAD *v* HAR DAYAL [I. L. R., 7 All., 691

RIGHT OF OCCUPANCY—*continued.*

3. TRANSFER OF RIGHT—*continued.*

185. ———— *N.-W. P. Rent Act (XII of 1881), s. 93 (b)—Mortgage by ex-proprietary tenant—Act "inconsistent with the purpose for which land was let"—Act XII of 1881, ss. 9, 56.*—The policy of the framers of the N.-W. P. Rent Act (XII of 1881) was not to protect the interest of the purchaser of proprietary rights, but that of the person whose proprietary rights have been sold, and who has become an ex-proprietary tenant. It would be straining the law, as laid down in s. 93 (b) of the Act, to hold that a mortgage of his holding granted by an ex-proprietary tenant was an act "inconsistent with the purpose for which the land was let" within the meaning of that provision. The words quoted have reference to something which may alter the character of the land, or cause injury to the land and thus to the landholder. In the case of a mortgage by an ex-proprietary tenant, the landholder would not be damnified by being unable, in the event of his rent being in arrear, to distrain the crops grown upon the land by the so-called mortgagee, s. 56 of the Rent Act giving the landholder a right to distrain any crops growing upon the land, by whomsoever grown, in respect of which the arrear arises. *Debi Prasad* v. *Har Dayal, I. L. R., 7 All., 691,* followed. *Wajiha Bibi* v. *Abhman Singh, Weekly Notes, All., 1883, 166,* referred to. FATIMA BEGAM *v.* HANSI

[I. L. R., 9 All., 244

186. ———— *N.-W. P. Rent Act, (XII of 1881), ss. 7, 9—Sír land—Sale of sír land by co-sharer—Ex-proprietary tenant.—Held* by PETHERAM, *C J.*, and STRAIGHT, OLDFIELD, and BRODHURST, *JJ.*, that the question whether the proprietary rights of a co-sharer in the sír of a mehal are distinct and separate from the proprietary rights in the mehal itself, so as to enable the owner of one share to sell and give possession of his sír alone as against his co-sharers, must be determined with reference to the tenure and conditions under which land is held in the mehal by the co-parceners, to be ascertained in each case. *Per* PETHERAM, *C.J.*, and STRAIGHT and OLDFIELD, *JJ.*—In zamindari tenures, in which the whole land is held and managed in common, a co-sharer cannot convey his right of occupancy in the sír as something distinct from his proprietary rights in the mehal. In puttidari tenures, in which the lands are divided and held in severalty, each proprietor managing his own lands, there may be lands which come within the classification of sír given in the Rent Act, but they would not seem to be on a different footing from any other land held in severalty by a proprietor. *Per* BRODHURST, *J.*—So long as a person is the sole proprietor of a mehal, he is not restrained by any law from effecting a sale of his proprietary rights in his sír land, even though he retains possession of the whole of the other lands of the mehal. *Per* MAHMOOD, *J.*—That the proprietary rights of a joint co sharer in his sír land form an essential part of his rights in the mehal; that such proprietary rights in the sír land may be sold, but that the purchaser under such a sale could not obtain any such possession as would operate indefeasance of the exproprietary right in such sír land conferred by s. 7 and secured by s. 9 of the Rent Act. *Sahib Ram* v. *Kishen Singh, Weekly Notes, All., 1882, p. 19; Hazari Lal* v. *Ugrah Rai, Weekly Notes, All., 1884, p. 103; Gulab Rai* v. *Indra Singh, I. L. R., 6 All., 54;* and *Tirmal Singh* v. *Bhola Singh, Weekly Notes, All., 1884, p. 169,* referred to. SITAPAL PRASAD *v.* AMTUL BIBI

[I. L. R., 7 All., 633

187. ———— *Mortgage by conditional sale of occupancy rights to zamindar—Act XVIII of 1873 (N.-W. P. Rent Act), s. 9—Act XII of 1881 (N.-W. P. Rent Act), ss. 2, 9.*—The occupancy tenant of certain land, before the N.-W. P. Rent Act (XII of 1881) came into force, mortgaged his rights to his zamindars by a deed of conditional sale. The zamindars sued the heirs of the conditional vendee for foreclosure and possession of the mortgaged property. *Held* by the Full Bench that the terms of the judgment of the Full Bench in *Naik Ram Singh* v. *Murli Dhar, I. L. R., 4 All., 371,* were directly applicable to the case, and that the transaction of mortgage, which was subsequently to become a sale, was not a transaction to which s. 2 of the Rent Act applied, because the sale would not have effect till after the Act came into operation. MURLI RAI *v.* LEDRI . I. L. R., 7 All., 851

188. ———— *Effect of transfer on occupancy right—Transfer of trees—Act XII of 1881, s. 9.*—The presumption of law and the general rule is that property in timber on a tenant's holding rests in the landlord in the same way as, and to no less an extent than, the property in the soil itself. *Faqueer Soonar* v. *Khuderun, 2 N. W., 251; Ajudhia Nath* v. *Sital, I. L. R., 3 All., 567; Abdool Rohomon* v. *Dataram Bashee, W. R., 1864, 367; Ruttonji Edulji Shet* v. *Collector of Tanna, 11 Moore's I. A., 295,* referred to. *Held* therefore, where an occupancy tenant transferred his holding, that the transfer was not only invalid in respect of the holding, but in respect also of the trees on the holding. Where an occupancy tenant, under the impression that he was a tenant at fixed rates, sold his holding, and the landholder sued the tenant and his vendee to set aside the transfer as contrary to law, and for possession of the holding,—*Held* that the transfer could not be treated as a relinquishment by the tenant of the holding to the landholder, and that the proper decree to make was that the transfer should be cancelled, that the plaintiff was entitled to eject the vendee from the land, but the plaintiff was not entitled to take the holding from the vendor. KASIM MIAN *v.* BANDA HUSAIN

[I. L. R., 5 All., 616

189. ———— *Inquiry as to validity.*—When a raiyat alleges a mokurari right by purchase, the nature of his vendor's title ought to be inquired into, and whether it was or was not transferable. GOBIND CHUNDER MOZUMDAR *v.* BISSUMBHURREE DOSSEE. RAM CHUNDER MITTER *v.* RAMZANEE BEBEE . . 2 W. R., Act X, 4

BANEE MADHUB BANERJEE *v.* JOY KISHEN MOOKERJEE . . . . 4 W. R., Act X, 16

RIGHT OF OCCUPANCY—*concluded*

3 TRANSFER OF RIGHT—*concluded*

190 ———————— *Transfe of ten ure—Ejectment of transferee* —Where a tenure has been transferred by the tenant and it is foun l that the transfer was invalid the zamindar is entitled to eject the transferee, and look to the former tenant for his rent SUDDYE PURIRA v BOISTUB PURIRA [12 B L R, 84 note 15 W R, 261

191 ———————— *Suit for registra*

for registration of his own name in the landlord s

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tenant, is

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s 73 of the Act AMBIKA PERSHAD v CHOWDHRY KESHRI SAHAI I L R, 24 Calc, 642

See KULHIP SINGH v GILLANDERS ARBUTHNOT & Co and MOTILAL SINGH v OMARALI [I L R, 26 Calc, 615 3 C W N, 19

and *contra* ANANDA KUMAR NASKAR v HARI DASS HALDAR I L R, 27 Calc, 545

RIGHT OF REPLY

1 ———— Witnesses not called for de

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[1 Mad, 375

2 ———— **Decision on appellant's arguments after hearing respondent**—Where an appellant had been heard at length and the respondent heard partly in answer, and the Court came to a conclusion after research into the record without any new matter being brought forward by the respondent it was considered unnecessary to hear the appellant in reply ROUSSEAU v NUBOO KISHORE BHUDRO 12 W R, 302

3 ———— **Giving no opportunity for reply**—*Ground for special appeal* —Where an appeal was dismissed by the lower Appellate Court, after hearing the respondent's pleader, without giving the appellant s pleader an opportunity to reply, the High Co rt on that objection being made a ground of special appeal from an order of the Judge refusing to grant a review on that ground set aside the order and sent the case back for re trial JARDINE v TARINI MOHAN SEN [8 B L R., Ap, 44

Distinguished in RAM KOOMAR KYBURTO DASS v SONAIUN DASS PORAMANICK 3 C. L R., 23

which was a case where, after some explanation from the appellant's vakil, the Judge said he did not think the Munsif's judgment erroneous, whereupon the vakil said he was not d sirous of arguing the case further and the Judge began writing his judgment and refused to hear another vakil instructed by the appellant who came in and asked permission to argue the case

4 ———— **Hearing of rule "nisi"**—*Practice* —On the hearing of a rule *nisi* after cause had be n shown against the rule it was objected on counsel rising to support it that there was no right of reply, no affidavit having been us d in showing cause The objection was overruled and a reply allowed BAMASUNDARI DASI v RAMNARAYAN MITTER . 7 B L R, Ap, 57

5 ———— **Question of law**—*Construction of will—Evidence not calle l for defendants* —In a suit for the construction of a will a reply was allowed although the defendants called no evidence the suit being of the nature of a special case JUDAH v JUDAH 5 B L R, 439

6 ———— **Crown's right of reply**—*Trial of prisoners charged with distinct offen es in one ind ctment* —Where two prisoners were charged with d stinct offences in the same indictment the calling of evidence on bel alf of one does not give the Crown a right of reply upon the other QUEEN v ABBAS 2 Hyde 247

7 ———————— *Use of documents in cross examination by accused* The fact that the accused has during tl e cross examination of the witnesses for the prosecution used certain docu ments and that such documents have been put in as evide ce on his behalf does not entitle the prosecutor to the right of reply if when asked upon the close of the case for the prosecution whether he means to adduce evi lence the acc ised says that he does not QUEEN EMPRESS v GREES CHUNDER BANERJEE I. L. R, 10 Calc, 1024

8 ————————*Practice—Evi dence—Witness called by Co rt—Tendering witnesses for cross examination—Criminal Procedure Code (Act X of 1882) ss 289 540* —The giving of any documentary evidence by an accused person, during the cross examination of the witnesses for the prosecution, and before he is asked under s. 289 if he means to adduce evidence, does not give a right of reply to the prosecution *Queen Empress v Grees Chunder Banerjee I L R, 10 Calc, 1021*, followed EMPRESS OF INDIA v KALIPROSONNO DOSS I. L. R., 14 Calc, 245

9 ———————— *Criminal Pro-*

Empress v Grees Chunder Banerjee I L R, 10 Calc, 1024 dissented from QUEEN EMPRESS v VENKATAPATHI . I L. R., 11 Mad, 339

10 ————————*Practice—Criminal Procedure Code (Act X of 1882), s 289* —The putting in as evidence on his behalf, of any documentary evidence by an accused person during

RIGHT OF REPLY—*continued.*

the cross-examination of the witnesses for the prosecution and before he is asked under s. 289 if he means to adduce evidence, does not give the prosecution a right to reply. *Empress* v. *Kaliprossonno Doss, I. L. R., 14 Calc., 245,* followed. *Queen-Empress* v. *Venkatapattu, I. L. R., 11 Mad., 339,* dissented from. QUEEN-EMPRESS *v.* SOLOMON [I. L. R., 17 Calc., 930

11. ——————— *Witnesses not called for defence—Reply by prosecutor—Criminal Procedure Code (Act X of 1882), ss. 289, 292.*—At the close of the evidence for the prosecution, the attorney for the defence, in answer to the Judge, stated that he meant to call witnesses. The Court then adjourned, and on the following day the attorney stated that, on re-consideration, he did not intend to call witnesses. The Judge allowed the prosecutor to reply. *Held* that, though the strict interpretation of ss. 289 and 292 of the Criminal Procedure Code would warrant this course, it was never meant by the Legislature that the prosecutor should have a reply when no witnesses are called for the defence, the object of the law being evidently to let each side have an opportunity of commenting on the evidence of the other, and not to give an additional advantage to the prosecutor in such a case as the present. HURRY CHURN CHUCKERBUTTY *v.* EMPRESS [I. L. R., 10 Calc., 140: 13 C. L. R., 358

12. ——————— *Documents put in evidence on behalf of accused during cross-examination of witnesses for prosecution—No witnesses called for defence—Criminal Procedure Code (Act X of 1882), s. 292—Practice.*—The fact that during the cross-examination of witnesses for the prosecution documents are put in evidence on behalf of the accused does not give the prosecution the right of reply if no witnesses are called for the defence. QUEEN-EMPRESS *v.* KRISHNAJI BABURAV BULELL . . . I. L. R., 14 Bom., 436

13. ——————— *Criminal Procedure Code, ss. 289, 292—Adducing evidence for the defence—Documents produced for cross-examination of Crown witness—Practice.*—In a trial before a High Court or a Court of Session, evidence for the defence cannot be adduced until the close of the case for the prosecution; but counsel for the defence may, while a witness for the Crown is under cross-examination, put documents to him, and if in so doing counsel reads or causes to be read to the Court such documents, he thereby impliedly undertakes to put those documents in as evidence at the proper time. When such documents as aforesaid are filed in Court as evidence, or any other documentary evidence is put in by the defence, the defence has "adduced evidence" within the meaning of ss 289 *et seq.* of the Code of Criminal Procedure, so as to give the prosecution a right of reply, though no witnesses may be called for the defence. In a trial at the Criminal Sessions of the High Court during the cross-examination of one of the witnesses for the Crown, counsel for the defence put certain documents to the witness, and these were read to the Court and jury and marked as exhibits as evidence for the defence, and were filed

RIGHT OF REPLY—*concluded.*

with the record in the same way as the evidence for the prosecution had been marked and filed. During the cross-examination of the next witness a similar course was pursued, and, after the cross-examination had continued for some time, counsel for the defence applied to the Court for a ruling as to whether the fact of documents having been used during cross-examination in the manner above stated would, under s. 292 of the Code of Criminal Procedure, entitle the Crown to a reply, in the event of the accused not calling witnesses. *Held* that although, as a matter of order, such a question would be better raised either when the first document intended to be used in this way was put to a witness or when the accused was asked if he meant to adduce evidence, yet there was nothing in the Code of Criminal Procedure to prevent the Court from deciding the question at any other stage, and that, under the special circumstances of the case, it might be considered then. *Held* also that the use of the documents in the manner above stated gave the prosecution a right of reply. *Queen-Empress* v. *Grees Chunder Banerjee, I. L. R., 10 Calc., 1024; Empress of India* v. *Kaliprosonno Doss, I. L. R., 14 Calc., 245; Queen-Empress* v. *Solomon, I. L. R., 17 Calc., 930;* and *Queen-Empress* v. *Krishnaji Baburav Bulell, I. L R, 14 Bom., 430,* dissented from. QUEEN-EMPRESS *v.* HAYFIELD [I. L. R., 14 All., 212

14. ——————— *Several persons tried jointly—Right of reply where one of several accused calls witnesses and the others do not—Criminal Procedure Code (1882), ss. 289, 290, and 292.*—Where one of several accused persons tried jointly calls witnesses at the trial, but the other accused call no witnesses, they must, under s. 290 of the Criminal Procedure Code, all follow one another in their defence, and the prosecution has, under s. 292, the right of reply on the whole case. QUEEN-EMPRESS *v.* SADANAND NARAYAN [I. L. R., 18 Bom., 364

15. ——————— *Tender of document to witness for Crown in cross-examination—Criminal Procedure Code (1882), s. 292.*—The action of the defence, during the cross-examination of a witness for the Crown, in tendering a document to such witness and using the same as evidence for the defence was held to entitle the Crown to reply under s. 292 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* MOSS . I. L. R., 16 All., 88

RIGHT OF SUIT.

RIGHT OF SUIT—*continued*

See Act IX of 1847 — 15 B L R., 49 [I L R, 4 Calc, 103

See Act XIII of 18J9 — 2 Mad, 427

See Act XX of 1863 — 2 N W, 420 [4 N W, 155
I. L. R., 2 Mad., 197
I L. R, 7 Calc., 767
I L. R., 9 Calc, 133
I L R., 19 Mad., 395

See Cases under Assignment of Chose in Action

See Cases under Benami Transaction —Certified Purchasers

See Benami Transaction—General Cases — 25 W R. 532 [3 C L. R., 9
I L. R, 21 *Mad*, 30, 231
I. L. R., 22 Bom 820
I L R 18 Mad., 460
I. L R, 23 *Calc*, 460 962 962 note
I L. R, 27 Calc, 231

See Cases under Certificate of Administration Right to Sue or Execute Decree without Certificate

See Cases under Civil Procedure Code s 244

RIGHT OF SUIT—*continued.*

See ENDOWMENT I. L. R., 3 Calc.. 563
[2 C. L. R., 128
3 C. L. R., 112
I. L. R., 9 Bom., 169
I. L. R., 14 Mad., 1

See FISHERY, RIGHT OF.
[I. L. R., 2 Bom., 19

See CASES UNDER HINDU LAW—REVERSIONERS—POWERS OF REVERSIONERS, ETC.—WHO MAY SUE.

See CASES UNDER JURISDICTION OF CIVIL COURT.

See CASES UNDER PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

1. INTEREST TO SUPPORT RIGHT.

1. ——— **Party without right or interest in subject-matter of suit.**—A party must show due right or interest in the subject-matter of the suit to entitle him to complain of any acts injurious thereto, and a mere stranger without interest cannot maintain any suit. CHUNDUN *v.* TALIB ALI
[2 N. W., 41

BHEKDHAREE SINGH *v.* KISHEN PERSHAD SINGH
[15 W. R., 106

2. ——— **Want of interest in suit**—*Procedure in appeal—Stay of proceedings on application.*—The High Court will not, on the application of the defendant, stay all proceedings in the appeal, on the ground that the plaintiff has no interest in the suit, that being a question which can more properly be raised in the suit or appeal itself. IN THE MATTER OF THE PETITION OF KHODEJOONISSA
[7 W. R., 486

3. ——— **Right to expose fraud in Court**—*Evasion of order for guardians of minor to account.*—Where a gross fraud is being practised on a Court, with the object of evading an order which the Court has made directing a minor's guardians to account, any person who appears before the Court and exposes the fraud, undertaking also to prove it, has a *locus standi* in Court, and has a right to be heard. HOSSEIN ALI KHAN *v.* BURKUT ALI
[10 W. R., 372

4. ——— **Suit on covenant by purchaser.**—*Held* that the plaintiff had no right to sue for the enforcement of the promise made in favour of the person from whom she bought, who did not convey to her the right to sue upon or otherwise enforce it. KISHORE *v.* JEY KISHORE DASS
[3 Agra, 46

5. ——— **Suit by male members of family**—*Insult to women.*—*Held* that male members of a family cannot sue for the injury or insult which they have sustained indirectly in consequence of ill-treatment of certain female members of the family, and that, if there was any remedy by suit for such grievance or dishonour, it was open to the women themselves, and not to the plaintiffs. OODAI *v.* BHOWANEE PERSHAD . . 1 Agra, 264

RIGHT OF SUIT—*continued.*

1. INTEREST TO SUPPORT RIGHT—*continued.*

6. ——— **Suit to have trust fund paid into Court**—*Suit quia timet—Want of title or interest in plaintiff.*—A suit, the sole object of which was to have a trust fund paid into Court, was dismissed on the ground that the plaintiff had no actual title to any part of the fund. When the plaintiff in a suit, seeking solely the payment into Court of a fund for the relief of poor Armenian orphans, had no interest except as a member of the Armenian community,—*Held* that he had no such title to part of the fund as would support the suit. *Held* also that the consent of the defendants, the trustees of the fund, to the decree sought by the plaintiff would not justify the Court in making it. To support a bill *quia timet*, the plaintiff must have a title in possession or expectancy, and the property must be in danger. SATOOR *v.* SATOOR . . . 2 Mad., 8

7. ——— **Interest sufficient to maintain suit**—*Suit by representative of testator to enforce charitable or religious trusts under will—Plaint, Allegations in.*—The representatives of a testator are entitled to sue for the enforcement of the due performance of trusts created by him for religious and charitable purposes, and in which they are not personally interested, but their suit will be dismissed, unless upon their plaint they substantially allege a state of circumstances which, if proved, will constitute a distinct breach of trust. BROJOMOHUN DOSS *v.* HURRO LOLL DOSS . . 6 C. L. R., 58

8. ——— *Suit by wife in absence of husband for his share of property under partition-deed.*—Plaintiff brought a suit to procure delivery to her of a share of land purchased with money subject to the provisions of a deed of partition executed by her husband and the undivided members of his family. Plaintiff's husband had been since 1854 absent in a foreign country. *Held* that the plaintiff sufficiently represented her absent and divided husband to enable her to sue for his share. PAPAMMAL *v.* RAMASWAMI CHETTI 2 Mad., 365

9. ——— **Interest as Collector of revenue of Government**—*Suit for accretion.*—A chur, B, formed by gradual accretion to an estate (mouzah B), was resumed by Government, who successively made temporary settlements for it with the patnidar of mouzah B, and finally with the zamindar. While the second settlement was in force, another chur formed, and a dispute arose between the patnidar of B and the patnidar of an adjoining mouzah, D, as to its ownership. Three suits were brought by the latter, claiming the second chur as an accretion to his estate, in all which suits he was successful, and in one of which Government was a party. Government then sued to set aside the decrees in the two suits in which it was not a party, and for possession of the land in dispute, and it was found in that suit that the land was continuous to chur B, and not to mouzah D. *Held* that Government, having a right to revenue, but not to actual possession, could have no *locus standi* as plaintiff in such a suit. MOOKTAKESHEE DEBEA *v.* COLLECTOR OF BURDWAN . . . 12 W. R., 204

RIGHT OF SUIT—*continued*

1. INTEREST TO SUPPORT RIGHT—*continued*

10. ———— Interest of lambardar—*Suit for sums paid as nuzzerana before resumption*—A certain sum was paid to Government as nuzzeranna during the existence of the maafi grant through a lambardar. After the maafi was resumed and a Government jumma assessed upon it the nuzzerana continued to be paid until the interest of the holder of the resumed maafi was confiscated fo-

(lambardar) as trustee on behalf of Government such an interest in the estate as would enable him to sue, and enforce such claim ZAHOOR HOSSEIN v. ASSUD ALI . 2 Agra, Pt II, 178

11 ———— Interest under decree—*Suit for balance due on decree—Decree for money*—The appellant having obtained a decree for money sued to recover the unsatisfied balance thereof from the respondents, alleging that the property of the deceased judgment debtor (being one seventh share in the legacy of his father) was in their possession He prayed that, after due inquiry, adjustment of accounts and the determination of the value of the said legacy out of the share which might be found due to the judgment debtor, the above mentioned balance might be decreed with interest and costs *Held* that the decree did not vest in the appellant a right to the property sued for, and consequently he could not maintain the suit MAHOMED AGA ALI KHAN v. WIDOW OF BALMAKAND

[L R, 3 I A, 241: 26 W.R, 82

12. ———— Right of remote heir—*Existence of near heir*—During the existence of a near heir, a more distant heir cannot sue BISRAM SINGH *alias* BISHEN SINGH v INDURJEET KOONWAR

[6 W. R, 2

13 ———— Suit by widow to set aside sale of reversioner's interest—A suit by a widow to set aside the sale of a judgment debtor's interest as reversioner is not maintainable SHIB KOONWER v SADHO SINGH . 2 Agra, 255

14 ———— Suit by widow as represent-

entitle her to sue RAM KANNYE GOSSAMEE v MEERNOMOYEE DOSSEE . . 2 W. R, 49

JANNOBEE CHOWDHRAIN v DWARKANATH ROY CHOWDHRY . . . . 7 W. R., 455

RIGHT OF SUIT—*continued*

1 INTEREST TO SUPPORT RIGHT—*continued*

of

zamindar or as guardian of a minor son adopted to him by her—A Hindu widow, representing a

titled to sue at that time, he having that right *Held* that the Courts below had rightly disallowed this objection There was no sufficient evidence to show that the adopted son had attained majority when this suit was brought and the plaintiff could sue either in her character as widow of the deceased or as guardian of the minor adopted son. SURJA KANT ACHARYA v HEMANTA KUMARI

[I L. R, 20 Calc., 498
L R., 20 I. A, 25

16 ———— Interest of Government after grant—*Suit to recover surplus land from neighbouring grantees of Government who have encroached*—Where a certain quantity of land was granted by Government to several grantees subject to the condition of resumption if the land were allowed to remain

recover possession of such surplus land was vested in the other grantees and not in the Government, who had no remaining interest in it except that of resumption GOVERNMENT v. RAM CHARUN MISR 2 Agra, 74

17. Suit on behalf of deceased lunatic's estate—*Manager appointed by Court of Wards—Parties*—One L in December 1867,

The suit should have been brought as to arrears accruing during the lifetime of B, by his personal representative and as to arrears accruing due after B's death, by the successor of B M, not being in either position, was not entitled to sue MAHOMED ABDUL HYE v LUNJEET SINGH

[13 B. L. R., Ap, 14: 22 W R., 200

18 ———— Suit by vendor to set aside mortgage and decree as fraudulent—*Specific Relief Act, s 39—Sale of immoveable property—Covenant by vendor of good title—Suit and decree on a previous decree against purchaser—Vendor and purchaser*—A vendor of land who had covenanted with his vendees that he had a good title, and who after the sale had no interest remaining in the property, brought a

RIGHT OF SUIT—*continued.*

1. INTEREST TO SUPPORT RIGHT—*continued.*

suit in which he claimed to set aside as fraudulent a mortgage on which the defendant had obtained a decree against the vendees, and the decree itself. He based his right to maintain the suit upon his liability under his covenant. The vendees were not parties to the suit. *Held* that, as the defendant's mortgage had merged in his decree, the suit could only be maintained if the plaintiff could show himself entitled to have the defendant's decree set aside, and that he had shown no interest which would entitle him to maintain a suit for such a purpose. JHUNA *v.* BENI RAM . . . I. L. R., 9 All., 439

19. ——— Suit by junior members of tarwad—*Fraud—Collusion between senior members and alienees.*—A suit was brought by the junior members of a tarwad, which consisted of three stanoms and three tavaries against the karnavan and others to whom he had alienated some tarwad property, for a declaration that the alienations in question were invalid. *Held* that the plaintiffs, though junior members of the tarwad, were competent to maintain the suit if there was collusion between the senior anandravans and the alienees and the stani for the time being. *Anund Koer* v. *Court of Wards, L. R., 8 I. A., 22,* considered. MAHOMED *v.* KRISHNAN [I. L. R., 11 Mad., 106

20. ——— *Malabar law—Suit of declaration of invalidity of kanom.*—The junior members of a Malabar tarwad brought a suit against their karnavan and senior anandravan, and certain persons claiming under a kanom granted by the former, for a declaration that the kanom was invalid and for possession of the land demised with mesne profits. The suit was filed nearly twelve years after the execution of the kanom. *Held* that the suit was maintainable by the plaintiffs. ANANTAN *v.* SANKARAN . . . I. L. R., 14 Mad., 101

21. ——— Re-admission to caste —*Contract to procure admission to caste—Contract made by head of a caste in representative capacity not enforceable by him after he has ceased to hold office.* The defendant was the eldest of three brothers whose mother on her marriage had been put out of the Lovana caste for having married a man belonging to a different caste. The defendant was anxious that he and his brothers should be re-admitted to the caste; and in 1864 he entered into an agreement with the plaintiff, who was at that time one of the setias of the caste, whereby the latter agreed to procure the admission of the plaintiff and his brothers and get them married to girls belonging to the caste. In consideration of these services, the defendant was to pay the plaintiff the sum of R5,000, which sum was to become due on the marriage of the defendant's youngest brother to a girl of the caste, and to be expended in purchasing caste utensils, which were to be kept for the use of the caste. The plaintiff alleged that part of this money had been already paid to him, and that on the marriage of the defendant's youngest brother in 1880 he had demanded payment of the balance (*viz.,* R3.149), which the defendant had not paid. He now sued to recover this balance. One of the witnesses at the hearing was the setia of the caste who had succeeded the plaintiff in that position. He stated that he and other leaders of the caste to whom he had spoken, disapproved of this suit. *Held* that the suit was not maintainable. The agreement was made with the plaintiff as one of the heads of the caste. It was made with him in his representative, not in his personal, capacity, and the benefit of the agreement accrued, not to him, but to the caste. It was therefore for the caste to say whether they wished to enforce the agreement. The plaintiff, however, had lost his position as one of the heads of the caste in 1869, and was no longer the spokesman or the representative of the caste. His successor had told the Court that the leaders of the caste disapproved, as he did himself, of this suit. Under these circumstances, the suit was not maintainable. PITAMBER RATANSI *v.* JAGJIVAN HANSRAJ [I. L. R., 13 Bom., 131

22. ——— Suit by father in his own right for defamation of daughter—*Suit not maintainable.*—A suit for defamation of his daughter cannot be maintained by a Hindu father suing in his own right and not as general attorney or on behalf of the daughter. A suit for defamation can only be brought by the person actually defamed, if the person is *sui juris*, and if not *sui juris*, then under the provisions of the Civil Procedure Code, by his guardian or next friend. *Dawan Singh* v. *Mahip Singh, I. L. R, 10 All., 425,* and *Sarvathi* v. *Mannar, I. L. R., 8 Mad., 175,* distinguished. *Subbaiyar* v. *Kristnaiyar, I. L. R., 1 Mad., 383,* and *Luckumsey Rowji* v. *Hurbun Nursey, I. L. R., 5 Bom., 580,* referred to. DAYA *v.* PARAM SUKH [I. L. R., 11 All., 104

23. ——— Maintainability of suit brought by widow—*Liability of undivided brother of deceased Hindu to defray expenses of his niece's marriage—Improper refusal—Performance by widow—Contract Act (IX of 1872), s. 69—"Person who is interested in the payment of money."*—The defendant having improperly refused to perform the marriage ceremony of his niece, the daughter of his undivided brother (deceased), the widow of the latter herself performed the ceremony, borrowing money for the purpose, and sued her late husband's said brother (the defendant) to recover the amount expended on the marriage. On its being contended that defendant was under no obligation to provide for the expenses of his brother's daughter's marriage,—*Held* that defendant was liable, the marriage having been properly performed. *Held* further that the suit was maintainable, though it had been brought by the mother of the bride, and not by the bride herself. *Semble*—That the mother was, within the meaning of s. 69 of the Indian Contract Act, interested in making the payment which had given rise to the action. It was not necessary for her to prove that she had been compelled to make it or that she had made it at the defendant's request. VAIKUNTAM AMMANGAR *v.* KALLAPIRAN AYYANGAR [I. L. R., 23 Mad., 512

RIGHT OF SUIT—*continued.*

1. INTEREST TO SUPPORT RIGHT—*continued*

24. ——— Suit to remove a trustee—*Civil Procedure Code, s 539, Interest necessary to support a suit under*—The plaintiffs, having an

Brahmans entitled under certain circumstances to

interest did not support the suit *Quære*—Whether a suit for the removal of a trustee will lie under the above section NARASIMHA *v* AYYAN CHETTI [I. L R, 12 Mad., 157

25. ——— Suit for cancellation of sale-deed—*Assignment of interest*—In a suit for cancellation of a sale-deed by the person whose name appeared on it as executant, it appeared that the plaintiff's interest in the property to which the instrument related had been assigned by her to another by a conveyance which contained certain covenants by her with regard to the land *Held* that the plaintiff was not entitled to maintain the suit IYYAPPA *v* RAMALAKSHMAMMA [I. L. R, 13 Mad, 549

26 ——— Suit to cancel a void or voidable instrum

serious injury—

s 39.—Any pe

ment is void or

sion that such

cause him serious injury, may sue to have it cancelled The test is 'reasonable apprehension of serious injury' Whether that exists or not depends upon the circumstances of each case It cannot be laid down, as a rule of law, that in no case can a man, who has parted with the property in respect of which a void or voidable instrument exists, sue to have such instrument cancelled *Iyyappa v. Ramalakshmamma, I L R, 13 Mad, 549,* referred to KOTRABASSAPPAYA *v* CHENVIRAPPAYA [I. L. R, 23 Bom., 375

27. ——— Executor and residuary legatee Power of—*Probate and Administration Act (V of 1881), s 90, sub-s 4, as amended by Act VI of 1889—"Person interested in the pro-*

and *J*

The c

release

decree-

were liable to be sold in execution of his decree, it was *held* that the words "person interested in the property" in sub-s (4) of s. 90 of the Probate and Administration Act (V of 1881), as amended by s. 14 of Act VI

RIGHT OF SUIT—*continued*

1 INTEREST TO SUPPORT RIGHT—*concluded.*

est te of the testator, was not entitled to avoid the alienation under that section even had it been invalid JAGOBANDHU DEY PODDAR *v* DWARIKA NATH ADDYA . . I. L R., 23 Calc, 446

2 ACCRUAL OF RIGHT

28 ——— Cause of action—*Limitation Misapprehension of legal rights*—A judgment of a Court altering a pure legal misapprehension as to rights and status and passed in a suit to which *A* was not a party, cannot confer any fresh cause of action as against *A* by the party who previously misapprehended his correct legal claim LOTF ALI KHAN *v* AFZULOONISSA BEGUM [3 W. R., 113

29 ——— *Right of unborn son—Hindu law—Limitation*—The texts of Hindu law laying down the right of an unborn son to sue

30 ——— *Suit by zamindar to recover possession of occupancy-holding against occupancy tenant and his alleged transferee in possession—Death of occupancy tenant after filing of suit but before notice N-W. P Rent Act s 9*—A plaintiff is not entitled to a decree in his suit unless by proof or admission or default of pleading he shows that when he instituted that suit he was entitled to a decree. One *K C*, a zamindar, sued in a Court of revenue to recover an occupancy-holding from one *B S*, his occupancy tenant, and that tenant's transferee, *G S*, to whom by a transfer which was inoperative under s 9 of Act XII of 1881, *B S* had purported to make over his occupancy holding The occupancy tenant died after the suit was filed but before he had received notice of it, and the transferee, being, in sole possession of the occupancy-holding, defended the suit *Held*, under the above circumstances that the zamindar's suit must

31. ——— *Suit for pre-emption—Mortgage*—A pre-emptor may sue any time before the expiry of a year from the date of transfer of possession A mortgagee's absolute right and his claim to pre-emption arise from the time the sale becomes absolute JANKEE KOOER *v* LEKHANEE KOOER . . . W. R., 1864, 285

32 ——— *Suit for pre-emption—Conditional sale*—*Held per* PEARSON *J*, and STRAIGHT *J* (SPANKIE, *J*, dissenting) that the cause of action of a person claiming the right of pre-emption in the case of a conditional sale arises

RIGHT OF SUIT—*continued.*

2. ACCRUAL OF RIGHT—*continued.*

when the conditional sale takes place, and not when it becomes absolute; and therefore, where a conditional sale took place in 1867, and after it had become absolute a person sued to enforce his right of pre-emption in respect of the property sold, basing his claim upon a special agreement made in the interval between the date of the conditional and the date that it became absolute, and alleging that his cause of action arose on the latter date, that the suit was not maintainable, the plaintiff having no right of pre-emption at the time of the conditional sale. LACHMAN PRASAD *v.* BAHADUR SINGH

[I. L. R., 2 All., 884

33. ———— *Suit for pre-emption—Mortgage—Conditional sale.*—The cause of action of a person claiming a right of pre-emption in respect of a mortgage by way of conditional sale arises on foreclosure of such mortgage, that is to say, on the expiration of the year of grace without payment by the mortgagor of the mortgage-money, inasmuch as, on the expiration of such period, the mortgagee acquires a proprietary title to the mortgaged property. Such person can therefore sue to enforce his right of pre-emption on the expiration of such period, and need not wait to do so until the mortgagee has obtained proprietary possession of the mortgaged property. HAZARI RAM *v.* SHANKAR DIAL . . . . I. L. R., 3 All., 770

34. ———— *Conditional sale—Pre-emption—Wajib-ul-urz.*—On the 12th May 1871 *B* mortgaged, by way of conditional sale, a share of a village to *A*, a stranger. Such mortgage having been foreclosed, *A* sued *B* for possession of such share, and obtained a decree on the 16th April 1878, in execution of which he obtained possession of such share on the 9th September 1878. On the 1st September 1879 *S*, a co-sharer, sued *A* and *B* to enforce his right of pre-emption in respect of such share, founding his suit upon the following clause in the administration paper of the village: "When a shareholder desires to transfer his share, a near relative shall have the first right; next the shareholders of the other pattis; if these refuse to take, the vendor shall have power to sell and mortgage, etc., to whomsoever he likes." *Held* (PEARSON, *J.*, dissenting), having regard to the terms of the administration paper, that a cause of action accrued to *S* when such mortgage was foreclosed. *Per* SPANKIE, *J.*, OLDFIELD, *J.*, and STRAIGHT, *J.* (STUART, *C. J.* dissenting), that a cause of action also accrued to *S* when such share was mortgaged by way of conditional sale to *A*. ALU PRASAD *v.* SUKHAN . I. L. R., 3 All., 610

35. ———— *Suit for pre-emption—Mortgage by conditional sale.*—The wajib-ul-urz of a village provided that the right of pre-emption should accrue "not only in respect of absolute sales, but also in regard to conditional sales, mortgages, and ticca leases." *Held* that under its terms the right of pre-emption accrued on a mortgage by conditional sale becoming absolute. The *ratio decidendi* in *Alu Prasad* v. *Sukhan, I. L. R., 3 All., 610,* relied on. The pre-emptor, in the case of a mortgage by conditional sale which has become absolute, is bound to pay as the price of the property the entire amount due on such mortgage at the time it became absolute. ASHIK ALI *v.* MATHURA KANDU

[I. L. R., 5 All., 187

36. ———— *First and second mortgagees—Dispossession of second mortgagee—Limitation—Interest.*—*Z*, being indebted to *A*, executed in his favour a written mortgage of certain lands, in which it was agreed that, if the debt was not repaid within a fixed time, *A* should be put into possession of the lands. Subsequently *Z* executed in favour of *P*, to whom also he owed money, a second mortgage of the same land subject to the same condition. *P*, not receiving payment within the stipulated time, sued *Z* on the mortgage, and obtained a decree for possession of the lands, under which he was put into possession in the year 1846. After *P* had obtained his decree, *A*, whose debt had likewise remained unpaid, brought a suit as first mortgagee against *Z* and *P* for the possession of the lands, and, obtaining a decree, recovered possession in the year 1847, dispossessing *P*. In the year 1870 the heirs of *Z*, having paid off the debt due to *A*, resumed possession, whereupon the heirs of *P* applied to be restored to possession in execution of the decree obtained by *P* in 1846. This application having been rejected on the ground that that decree had been fully executed when *P* obtained possession under it, the heirs of *P* instituted a suit against the heirs of *Z* to recover possession and for interest during the time they were dispossessed. *Held* by their Lordships of the Judicial Committee, reversing the decision of the High Court, that the heirs of *P* were entitled to possession on *A*'s mortgage being paid off, and that their cause of action accrued and limitation ran against them from the time when the heirs of *Z* resumed possession. *Held* also that they were not entitled to a decree for the interest accruing during the time they were dispossessed. NARAIN SINGH *v.* SIMBHOO SINGH . I. L. R., 1 All., 325

[L. R., 4 I. A., 15

37. ———— *Suit by purchaser for possession—Sale for arrears of revenue—Limitation.*—In suits instituted by a purchaser to recover possession of an estate sold for arrears of Government revenue due in respect of such estate the period of limitation cannot be calculated, under any circumstances, from a day anterior to the date of purchase. NARAIN CHUNDER *v* TAYLER

[I. L. R., 4 Calc., 103: 3 C. L. R., 151

38. ———— *Suit to recover compensation for land taken for public purposes and paid by Government to wrong party.*—In a suit to recover money paid by Government to the defendant as compensation for land taken for public purposes which the plaintiff alleged to belong to him, and not to the defendant,—*Held* that the plaintiff's right of action against the defendant accrued at the time when the defendant first took the money from Government, and that the ignorance of the plaintiff in regard to the accrual of his right did not prevent

RIGHT OF SUIT—*continued*

2 ACCRUAL OF RIGHT—*concluded*

the time from running against his suit, unless it had been brought about by the fraud of the defendant AZROAL SINGH *v* LALLA GOPEENATH 8 W.R, 23

39 ———— *Possession of lands not capable of occupation—Khal* —When lands which are not in their nature capable of actual occupation (such as a khal) appertain to lands which are occupied, the possession of the former in point of law necessarily follows that of the latter, but when a khal dries up and becomes culturable, if any one to whom it does not belong takes actual possession of it, a cause of action accrues to the person in possession of the land to which the khal appertains from the time of the wrongful possession and not from the time of the khal becoming culturable or cultivated SUNNUD ALI *v* KURIMOONISSA [9 W R, 124

40 *Promise to pay "when I am able"*—In a written promise to pay "when I am able," those words are not to be treated as mere surplusage, but as a binding part of the contract The promisee's cause of action does not accrue until the promisee is in circumstances to pay WATSON & CO *v* BLECHYNDEN 1 W. R, 368

41. ———— *Suit for lost property discovered—Jurisdiction* —Where property lost in one district is found in another, in the possession of a party who refuses to restore it, the owner's [illegible] from the date of such refusal, [illegible] y must [illegible] RAM [illegible] W. R, 586

42 ———— *Service watan land—Successive life tenants* —Where land belonging to a service watan held on a tenure of successive life estates had passed out of the possession of the watandars, it was held that a cause of action to recover such land accrued to each successive life tenant upon the death of his predecessor KUBIA BIN HANMIA *v* GURUBAY 9 Bom, 282

[illegible]

44 ———— *Repudiation by tenant of landlord's title* —The repudiation of a [illegible]

[illegible]

3 SURVIVAL OF RIGHT

45 ———— Trustee and cestui que trust—*Survival in representative of cestui que*

RIGHT OF SUIT—*continued*

3 SURVIVAL OF RIGHT—*continued.*

trust of right to sue —If the money due on a bond belonged to *A*, and *B* the nominal plaintiff in a suit on the bond, was a trustee for him —*Held* that *A's* son might sue to get the benefit of the decree obtained by *B* JUGGOBUNDHOO COONDOO *v* NIL COMUL SURMAH W. R., 1864, 190

[illegible]

proved to be necessary for the protection of the minors' [illegible] the min[illegible] nct a u[illegible]

[illegible] Mad., [illegible]

47 ———— Suit against agent for account—*Death of agent—Act X of 1859, s 20* —A right of suit accruing against an agent for money received and accounts kept, falling within the class mentioned in s 24, Act X of 1859, survives the death of the agent HILLS *v* SHOKHEE MONEE DOSSEE [10 W. R., 59

48 ———— Malicious prosecution, Suit for—*Civil Procedure Code, s 361—Abatement of suit—Tort—Cause of action, Survival of, as against heir of a deceased wrong doer—Act XII of 1855—"Actio personalis moritur cum persona," Application of* —The plaintiff sued to recover damages from the defendant's father *R* for wrongful arrest and malicious prosecution During the pendency of the suit *R* died and the plaintiff substituted the defendant as his heir and representative The [illegible]

the death of *R*, his estate having derived no benefit, but, on the other hand, suffered loss in consequence of his wrong doing *Phillips v. Homfray, L R 24 Ch D*, 439, followed It was contended for the plaintiff that Act XII of 1855 gave the plaintiff a right to continue his suit against the heir of *R* [illegible]

MATHURADAS I. L. R., 13 Bom., 677

49 ———— Application to revive suit by person whose claim is in conflict with that of original plaintiff—*Civil Procedure Code*

RIGHT OF SUIT—*continued.*

3. SURVIVAL OF RIGHT—*concluded.*

(1882), ss. 361 and 371—Cause of action—Abatement of suit—Substitution of parties.—The language of ss. 361 and 371 of the Code of Civil Procedure relating to abatement of a suit show that, where it is sought to revive a suit on the death of the plaintiff, the cause of action of the original and revived suit must be the same, and that no fresh cause of action can be imported into the revived suit. Where a suit was brought to have it declared that the plaintiff was entitled to succeed as mohant of the Tarkessur shrine on the allegations (*a*) that he had been selected as the chela or disciple of the deceased mohant; (*b*) that the ceremony of initiation had been duly performed, by which he was brought into the brotherhood of his gurus; and (*c*) that the installation ceremony had been performed with the consent of the dasnami, and that by virtue thereof he became the mohant, and exercised the functions of that office; and on the death of the plaintiff an application to be substituted in his place was made on grounds which put the applicant into opposition to the original plaintiff and made his claim not dependant on the original plaintiff's case but in conflict with it,—*Held* that the right of suit could not be said to survive to the applicant within the meaning of the sections of the Code relating to abatement of suit, but that the suit abated by the death of the plaintiff. SHAM CHAND GIRI *v.* BHAYARAM PANDAY . . . . **I. L. R., 22 Calc., 92**

50. ———— Claim to guardianship based on a will does not survive to claimant's representative—*Death of appellant pending appeal—Abatement of appeal—Guardians and Wards Act (VIII of 1890), ss. 7, 8, 13.*- One *K* applied to be the guardian of the person and property of her minor son. Her application was opposed by *G*, the grand-mother of the minor, who alleged that she has been appointed guardian by the will of the minor's father. The Judge found the will not proved, and he appointed *K* to be guardian. *G* appealed, and, pending the appeal, she died. *G's* brother, one *M*, thereupon applied for leave to prosecute the appeal as *G's* representative. *Held*, refusing the application, that the appeal must abate by reason of *G's* death. Her appointment, alleged to have been made under the will, was a matter of personal preference and trust. A claim based on personal trust could not survive to her representative. GANGABAI *v.* KHASHABAI

[I. L. R., 23 Bom., 719

4. SUIT BROUGHT IN TWO COURTS.

51. ———— Suit simultaneously brought in different Courts on same cause of action—*Bar to maintenance of suit—Election.*—A suit brought in a District Munsif's Court, filed on the same day as a suit for the same amount brought on the same cause of action in the Small Cause Court, is not a bar to the maintenance of the Small-Cause suit; but the plaintiff must elect which suit he will proceed with. SUBBRAMANYIAN *v.* GANAPATHI

[I. L. R., 2 Mad., 123

RIGHT OF SUIT—*continued.*

5. ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.

52. ———— Suit for damages for refusal of license by excise authorities—*Liability of Government—21 & 22 Vict., c. 106—Matter of revenue—21 Geo. III, c. 70, s 8.*—The plaintiff, for some years before and up to 31st March 1874, carried on the business of a retail dealer in ganja and sidhi in Calcutta, and occupied for that purpose certain shops and godowns duly licensed under the Government regulations with respect to such sales. The license had to be renewed annually, and might, for sufficient cause, be withdrawn at any time within the year which terminated on 31st March. On 4th March 1874, while the plaintiff was carrying on his business, the Superintendent of Excise for Calcutta put the right to sell ganja and sidhi for the year commencing the 18th April 1874 up to the public competition, which was the usual way of distributing the yearly licenses. The sale notification contained a list of the shops with the localities where they were situated, but the right was reserved, in case of combination or for other cause, to transfer, before settlement, any shop from the locality specified to some locality in the neighbourhood; and the conditions of sale were stated to be "that the Collector does not bind himself to accept the highest bid; that the settlement with the accepted auction-purchasers will be contingent on the approval by the police authorities of the proposed locality of the shop, and the character of the applicant for license; that the person accepted as the auction-purchaser shall deposit at once a sum equal to the license fee payable for two months, and shall at the same time state in writing in what building his shop will be opened, it being understood that the above deposit will be returned to any person whose license is subsequently refused for police reason." At the sale the plaintiff was the highest bidder for the licenses for five shops for the sale of ganja and sidhi, and his bids were recorded; and he also paid the deposit due in respect of the licenses amounting to R968. Subsequently the excise authorities refused licenses to the plaintiff for the five shops, and failed to return the deposit made in respect thereof. In a suit brought by the plaintiff against the Secretary of State in Council for India, in which he alleged that the Government had accepted his bid, and thereby contracted with him to give him the licenses and allow him to carry on his trade in ganja and sidhi, and that by their not giving him licenses and so forcing him to close his godowns and shops they had committed a breach of contract for which he was entitled to damages,—*Held* on the evidence *per* PHEAR, *J.*, that there was no contract between the plaintiff and the Government. *Held* also both in the Court below and on appeal, even assuming there was a contract, that the suit was not maintainable, being in respect of acts done by the Government in the exercise of sovereign powers. Suits such as might, previous to the passing of 21 & 22 Vict., c. 106, have been brought against the East India Company, and subsequently against the Secretary of State in Council, are limited to suits for acts done in the conduct of undertakings which might be carried on by private individuals without

RIGHT OF SUIT—*continued*

5 ACTS DONE IN EXERCISE OF SOVEREIGN POWERS—*continued*

sovereign powers. NOBIN CHUNDER DEY *v* SECRETARY OF STATE FOR INDIA
[I L, R , I Calc , 11 · 24 W R , 309

53 ———— *Suit for illegal levy of import* **duties by Collector**—In 1877 *B* shipped salt from Bombay to Malabar ports having conformed [illegible]

was in transit the Salt Act of 1877, [illegible] the import duty to R2 8-0 a maund came into *force* The Collector of Malabar levied 11 annas a maund on the salt imported in the belief that he [illegible] was ratified [illegible] e Collector's [illegible] amount so [illegible] of State for [illegible] payment at Bombay was not a payment of import duty by anticipation and that the plaintiff was not excused by the notification of the Governor General from paying the amount levied by the Collector *Nobin Chunder Dey v Secretary of State for India, I L R., 1 Calc , 11* dissented from *Held* on appeal that the acts of State of which the Municipal Courts of British India are debarred from taking cognizance are acts done in the exercise of sovereign powers

[illegible] by the sovereign power, and is not an act which could possibly be done by a private individual, does not oust the jurisdiction of the Civil Courts HARI BHANJI *v* SECRETARY OF STATE FOR INDIA
[*I. L. R., 4 Mad , 344*

S C on appeal, SECRETARY OF STATE FOR INDIA *v* HARI BHANJI I. L R., 5 Mad , 273

54 ——— **Suit for breach of contract by Government to grant proprietary rights in land**—*Contract entered into or acts done in the exercise of sovereign powers*—The plaintiff in the suit, alleging that the Government had granted him a lease of certain land with the rights of a proprietor, promising to confer on him the proprietary rights in such land if he did certain things, that he had done such things, that the Government had refused to *perform such promise and had conferred the proprietary* rights in such land on another person, claimed by virtue of the contract between him and the Government, and as against the Government and such person, proprietary possession of such land *Held per* SPANKIE, *J*, that, assuming that the Government had entered into such a contract with the plaintiff as alleged, the suit would not lie, inasmuch as such contract was entered into, and the refusal of the Government to confer the proprietary rights in such land on the plaintiff, and the grant by it of such rights to such person, were acts done in the exercise of sovereign powers *Held per* STUART, *C J*, that the Government had entered into the contract alleged by the plaintiff, that the suit would lie, as the Government had not entered into such contract in the exercise of sovereign powers but in the capacity of a private owner, but that the plaintiff's case failed, as he had not performed his part of such contract KISHEN CHAND *v* SECRETARY OF STATE FOR INDIA I. L. R , 3 All , 829

RIGHT OF SUIT—*continued*

5 ACTS DONE IN EXERCISE OF SOVEREIGN POWERS—*concluded*

6 ATTACHMENT, SUIT TO SET ASIDE

55 ——— **Suit by mortgagee**—*Mortgagee not claiming through judgment debtor*—A mortgagee claiming title otherwise than from the execution debtor is competent, on behalf of himself *and his mortgagor, to sue to raise an attachment on* the property of which he is mortgagee WAIGANKAR *v* WADEKAR 5 Bom , A C , 194

56 ——— ——— *Mortgagor and mortgagee*—*A* and *B* borrowed money from *D*, with *C* as their surety, mortgaging their house to *C* to secure him from loss The same house having been previously given to *D* *C* had to pay the debt to *D*, but the house was attached by *F* in execution of a decree against *A* and *B* *C* sued *D* and *E* to raise the attachment *Held* that the action did not lie SHIVLAL BIN KHUBCHAND *v* BALVANTRAV VINAYAK
[2 Bom , 75 2nd Ed., 70

57 ——— **Suit for attached property**—*Property collusively attached by one defendant against another*—*Cause of action*—In a suit to establish a claim to property which had been attached in execution of a decree obtained by one defendant *against another*, which the plaintiff alleged to be *collusive*,—*Held* that the plaint disclosed a cause of action MAHOMED GAZEE CHOWDHRY *v* SHUMBHOONATH MISSER 22 W R , 369

7 AWARDS, SUITS CONCERNING

58 ——— **Suit on award made ultra vires**—A suit on an award made in which the arbitrators have exceeded their powers is not maintainable DURJAN SINGH *v* SIDIA . 7 N. W , 329

59 ——— **Suit to enforce private award**—*Refusal of Court to file award under s 327, Act VIII of 1859*—A suit lies to enforce an award made without the intervention of a Court of justice *where an application has been made to* file it as an award and has been refused KOTA SEETAMMA *v* KOLLIPURLA SOOBBIAH 8 Mad., 81

PALANIPPA CHETTY *v* RAYAPPA CHETTY
[4 Mad., 119

60 ——————— *Suit on award*—*Award which cannot be filed under s 525, Civil Procedure Code*—Where an award cannot be filed

RIGHT OF SUIT—*continued.*

7. AWARDS, SUITS CONCERNING—*continued.*

and a decree obtained upon it under Civil Procedure Code, s. 525, a party is not precluded from suing upon it. GOPI REDDI *v.* MAHANANDI REDDI [I. L. R., 15 Mad., 99

61. ———— *Suit to enforce award—Civil Procedure Code (1882), s. 525.*—Disputes between the members of a Hindu family were referred to arbitrators who made an award as to how the whole of the property should be divided. In pursuance of the award, part of the moveable property was divided. Subsequently one of the members of the family died. The plaintiff, another member of the family, now sued to enforce the award, or in the alternative, for partition. *Held* that the provisions of the Civil Procedure Code, s. 525, did not preclude the plaintiff from suing to enforce the award. *Gopi Reddi* v. *Mahanandi Reddi, I. L. R., 15 Mad., 99,* followed. SUBBARAYA CHETTI *v.* SADASIVA CHETTI . . I. L. R., 20 Mad., 490

62. ———— *Award made on submission by person professing to represent community in religious matters.*—The Courts will not interfere to enforce performance of an award made under a submission to arbitration entered into by a few persons, without the consent of the entire community, in respect of a religious quarrel relating to a state of things which has been in force at a mosque for fifty years, by the common consent of all the worshippers having an interest therein. ZAHID *v.* PEEREE . . . . . . 3 N. W., 92

See also MUZHUR ALI *v.* GANESH KOOER [3 N. W., 46

63. ———— *Suit for compensation awarded by punchayet in accordance with caste custom.*—The plaintiff sued the defendants, his wife and her father (first and second defendants), to recover damages for the non-performance of a contract whereby the defendants agreed to deliver to the plaintiff a specified quantity of grain. The plaintiff and the first defendant appeared before a punchayet composed of members of their caste, and the first defendant having refused to live any longer with the plaintiff, the punchayet awarded the compensation claimed, and the defendants promised to deliver the grain. It was found that the award of the punchayet was in accordance with the custom of the caste in cases in which the wife refused to live with the husband. *Held* that the plaintiff was entitled to maintain the suit. SOOBBA JEVAN *v.* MOOTHOOKOODY . . . 6 Mad., 40

64. ———— **Suit to set aside award**—*Beng. Reg. IX of 1833, ss. 6, 7, and 9—Consent to arbitration.*—*Held* that a suit for cancelment of an award made under ss. 6 and 7, Regulation IX of 1833, where it was not alleged that the proceedings were contrary to law, but that the plaintiff did not consent to it, was not maintainable under s. 9 of the said enactment; the consent of the parties not being necessary under the provisions of these sections. IKRAMOOLLAH *v.* SHEO PERSHAD . 2 Agra, 340

RIGHT OF SUIT—*continued.*

7. AWARDS, SUITS CONCERNING—*concluded.*

65. ———— *Award as to settlement—Beng. Reg. IX of 1833, s. 9—Necessity to set aside award.*—It was held that a suit to obtain possession of a moiety of certain lands by establishment of the title of the plaintiffs as purchasers and the cancelment of an award of arbitrators, was not barred by s. 9 of Regulation IX of 1833. The award was brought about, not under that Regulation, but owing to an application of the [illegible] of the share under Regulation VII of 1822, which application was rejected in reference to the award declaring the plaintiff's vendors were not in possession at the time of the sale. It was not necessary that the award should be set aside prior to an adjudication on the claim, as it determined no question of title. If the dispossession of the vendors did not take place at a period more remote than twelve years before the commencement of the suit, the plaintiffs were entitled to a decree for possession on establishment of their right, even if there was no sufficient reason to set aside the award. GUNGA BAKSH *v.* WALI BAKSH . . . . 7 N. W., 169

8. BOUNDARIES.

66. ———— **Suit to compel neighbouring landholders to fix boundary**—*Absence of hostile act.*—A proprietor of land has no right to bring a suit to compel his neighbours to agree to a particular line of boundary being marked out between his lands and theirs where he does not venture to say that they have by any overt act transgressed that boundary. AMEEROONNISSA BEGUM *v.* GOPAL SAHOO [22 W. R., 134

9. BUILDING, SUIT TO RESTRAIN.

67. ———— **Suit to restrain owner of land from building**—*Interference with easement or right.*—A suit will not lie to restrain an owner of land from erecting buildings on his land, unless by doing so he is interfering with some easement acquired by the owner of the neighbouring land, or interfering with the free enjoyment of his land. RAM ROOCH CHOWDREE *v.* DEOKEE NUNDUN [2 N. W., 169

KASIM ALI KHAN *v.* BIRJ KISHORE [2 N. W., 182

JOOGUL LAL *v.* JASODA BEBEE . 3 N. W., 311

68. ———— **Erection of buildings by owners of adjoining sites under agreements with Government**—*Government surveyor made arbiter in case of dispute—Party wall, Liability of owners for costs of—Suit before obtaining Government surveyor's certificate.*—Under separate agreements made by them respectively with Government, the plaintiff and defendant held adjoining plots of land for building. The agreements contained the same terms and stipulations, among which were the following: "(a) The buildings to be continuous, with party walls common to both adjoining houses. (b) All disputes regarding the cost and maintenance of

RIGHT OF SUIT—*continued*

9 BUILDING, SUIT TO RESTRAIN—*continued*

party walls to be decided by the Government surveyor, whose decision shall be binding on both parties" The plaintiff employed a contractor to erect a house upon his plot of land The house was completed in 1870, the north wall of which was built as a party wall in pursuance of the condition contained in the agreement with Government Disputes subsequently arose between the plaintiff and his contractor, which were not settled until the 26th August 1878 on

rear as the house of the plaintiff The plaintiff demanded payment of half the cost of that part of the wall not used by the defendants but the defendants refused to pay The plaintiff then claimed that part of the wall as his own property and proceeded to open windows in it The defendants objected The plaintiff subsequently filed the present suit, claiming from the defendants payment of half the cost of the said portion of the wall not used by the defendants, and in the event of such payment not being awarded, he prayed for a declaration that he was the sole owner of the said portion of the wall and for an injunction restraining the defendants from disturbing him in the sole enjoyment thereof Both the defendants pleaded limitation and denied their liability to pay any part of the cost of that part of the wall which they did not use The first defendant further alleged that he had paid the whole cost of the foundation and other parts of the said wall, and claimed to set off this payment against the claim of the plaintiff At the original hearing SCOTT J, held that the part of the wall in dispute, although not used by the defendants was a party wall, having regard to the terms of the agreement under which the said wall was erected, and that the suit was not barred, but that there was no right of action for the cost of the party wall independently of the award of the Government surveyor, in whose decision lay all disputes as to such cost, and that, until his decision was given, there was no complete cause of action SCOTT, J, accordingly, on 11th December 1882, decreed that the defendants were severally liable to pay the half of whatever sum the Government surveyor might certify to be due for the cost of the disputed part of the said wall, and that the defendants were entitled to set off, in the calculation of what was due from them, the cost of any work or materials which the Government surveyor might find had been contributed by the first defendant The case was thereupon adjourned, in order that the certificate of the Government surveyor might be obtained The Government surveyor subsequently gave his certificate as to the cost of the unused portion of the said wall but stated that on the evidence before him he was unable to decide as to the ownership of the foundations, etc, of the wall

RIGHT OF SUIT—*continued*

9 BUILDING, SUIT TO RESTRAIN—*concluded.*

The case came on again before SCOTT, J who decided to take evidence on the points left undetermined by the Government surveyor Witnesses were accordingly examined, and on 11th December 1883 the Court disallowed the defendant's claim of set-off, and gave judgment for the plaintiff for half the sum certified by the Government surveyor as the cost of the disputed part of the wall The defendants appealed *Held* that, having regard to the terms of the agreement under which the plaintiff and defendants respectively held their property, the Court was not competent to determine the question of the defendant's set off or the other points raised by the pleadings These were matters to be decided by the Government surveyor, whose certificate was a condition precedent to the plaintiff's right to sue and upon which the Court might give judgment COVERJI LUDDHA *v* MORARJI PUNJA

I. L. R., 9 Bom., 183

69 —— **Suit for removal of obstruction in building**—*Alteration in building* —The alteration of any building does not give the right to a suit to remove it or restore it to its original condition, unless the building in consequence of such alteration obstructs or impedes the access to the plaintiff's premises improperly, or takes away any frontage right from him KOODRUT ALI *v* GHOLAM ALI . 3 Agra, 71

70 ———— **Suit for removal of encroachment**—*Fear of acquiescence* —A suit for the removal of an encroachment is maintainable without actual damage having occurred or the immediate prospect of damage, if it can be shown that some damage may arise from the encroachment hereafter, when, from the plaintiff's right to interfere for a series of years the opposite party would possibly have acquired a right which would bar the plaintiff's remedy JUDOONATH MULLICK *v* KALEE KRISTO TAGORE . 22 W. R., 73

S C *after remand*, JUDOONATH MULLICK *v* KALEE KRISTO TAGORE . 25 W R., 524

10 CASTE QUESTIONS

71. ———— **Suit for damages for withholding a customary present from a member of a caste**—*Omission from distribution of funeral presents* —The plaintiff complained that on the occasion of the distribution of certain funeral presents by the defendant's father, in which as a member of the caste the plaintiff was entitled to share, he had been omitted, and had received nothing He sued the defendants to recover damages for the injury to his character and reputation caused by such omission *Held* that there was no legal right in the plaintiff to the funeral presents and the slight which the omission to give such presents to the plaintiff might imply was to be regarded as the result of a breach of social etiquette, with which the caste was exclusively competent to deal MAYASHANKAR *v* HARISHANKAR

I. L. R., 10 Bom., 661

RIGHT OF SUIT—*continued.*

10. CASTE QUESTIONS—*continued.*

72. ———— **Claim to be chalvadi of Lingayet caste**—*Intrusion in office—Office to which no fees are appurtenant.*—Plaintiff was the hereditary holder of the office of chalvadi or bearer on public occasions of the insignia or symbols of the Lingayet caste at Bagalkot in the district of Belgaum; no fees as of right were appurtenant to that office, but voluntary gratuities might be given to the chalvadi. In an action brought by plaintiff against defendant as an intruder upon his (the plaintiff's) office,—*Held* that the plaintiff's claim to be chalvadi of the Lingayet caste at Bagalkot was a caste question within the meaning of the unrepealed portion of cl. 1, s. 21 of Bombay Regulation II of 1827. SHANKARA *v.* HANMA . **I. L. R., 2 Bom., 470**

73. ———— **Custom—Caste usage**—*Expulsion of member of caste under mistake of fact and without notice.*—In a suit relating to the management of the common property of the members of a Hindu caste, the plaintiff's right to sue was denied on the ground that, having violated the rules of the caste, he had been expelled from it. *Held* (1) that it was open to the Court to determine whether or not the alleged expulsion from caste was valid; (2) that if the plaintiff had not in fact violated the rules of the caste, but was expelled under the *bonâ fide*, but mistaken, belief that he had committed a caste offence, the expulsion was illegal and could not affect his rights. *Per* KERNAN, *J.*—A custom or usage of a caste to expel a member in his absence without notice given or opportunity of explanation offered is not a valid custom. KRISNASAMI CHETTI *v.* VIRASAMI CHETTI **I. L. R., 10 Mad., 133**

74. ———— **Dispute as right to office of khatib**—*Mahomedan Law—Bom. Reg. II of 1827, s. 21.*—S. 21 of Regulation II of 1827 has no application to suits between Mahomedans. A dispute as to the right to an office, such as the office of khatib (or preacher) is said to be among Mahomedans, is not a caste question within the meaning of the term as used in the section; a suit will therefore lie to establish such a right. HASHIM SAHEB VALAD AHMED SAHEB *v.* HUSEINSHA VALAD KARIMSHA FAKIR . . **I. L. R., 13 Bom., 429**

75. ———— **Custom of caste**—*Funeral ceremonies—Right to assistance of fellow-members of caste—Refusal to assist—Cause of action.* The plaintiff, a Hindu and Kharva by caste, alleged in his plaint that, pursuant to a usage of his caste, he, on the occasion of his child's death, called upon the defendants, who were his caste-fellows, to assist him in removing the dead body and performing caste ceremonies incidental thereto; that the defendants refused to do so, and induced other members of the caste to refuse also; that, in consequence thereof, the plaintiff was injured in his caste-status; and he prayed for a declaration that the defendant's acts were unlawful, and that he was lawfully entitled to exercise and enjoy all his customary caste-rights and privileges and also for damages and for an injunction restraining the defendants from preventing other members of the caste from recognizing him and treating him as a member of the caste. *Held* that the plaint disclosed no cause of action, and must be rejected. KANJI BAVLA *v.* ARJUN SHAMJI **I. L. R., 18 Bom., 115**

RIGHT OF SUIT—*continued.*

11. CESS.

76. ———— **Suit to establish right to cess**—*Order of settlement officer refusing to record cess.*—A suit may be maintained by a zamindar to establish his right to a cess and to question the validity of an order of the settlement officer refusing to record the cess. MAHOMED ALI KHAN *v.* OOMRAO SINGH . . . . . **2 N. W., 425**

12. CHARITIES AND TRUSTS.

77. ———— **Suit to recover trust property**—*Advocate General—Dedication of lands for charitable use—Illegal sale—Suit to set aside sale and recover trust property—Code of Civil Procedure, 1882, s. 539.*—The plaintiff's grandfather dedicated certain lands in a village, of which he was the jaghirdar, to the expense of celebrating an annual fair in honour of a saint, and of lighting a lamp at his shrine. He reserved the paramount authority over, and management of, the said lands to his family, of which the plaintiff was the representative. The lands were sold illegally, as alleged by the plaintiff, to the defendant at an auction in execution of a decree obtained against one *N*, who with his predecessors had, as was alleged, been employed to worship at the shrine. The plaintiff accordingly sought to have the sale set aside, and to be put into possession of the lands. *Held* that the object of the suit being merely to recover the trust property from outsiders did not fall within s. 539 of the Code of Civil Procedure, and it could be proceeded with without making the Advocate General a party to it. LAKSHMANDAS *v.* GANPATRAV . . **I. L. R., 8 Bom., 365**

78. ———— **Suit for declaration that property is wakf**—*Act XX of 1863, ss. 14, 15, 18—Civil Procedure Code, s. 539—Act I of 1877 (Specific Relief Act), s. 42.*—A Mahomedan brought a suit against a person in possession of certain property for a declaration that the property was wakf. He did not allege himself to be interested in the property further or otherwise than as being a Mahomedan. He stated as his cause of action that the defendant had, in a former suit between the same parties, filed a written statement in which he denied that the property now in question was wakf. *Held* that, unless it could be shown that the suit was maintainable under some statutory provision, it could not be maintained. *Held* also that inasmuch as no permission had been given to the plaintiff to bring the suit, it was not maintainable under Act XX of 1863 or under s. 539 of the Civil Procedure Code. *Held* further that the suit was not maintainable under the provisions of s. 42 of Act I of 1877 (Specific Relief Act). *Held* therefore that the suit was not

RIGHT OF SUIT—*continued*

12 CHARITIES AND TRUSTS—*continued*

maintainable WAJID ALI SHAH *v.* DIANAT ULLAH BEG . . I L R., 8 All., 31

79 ——— Suit to set aside alienation of wakf property made to a stranger—*Civil Procedure Code (1882), s 539*—When a suit is brought to set aside an alienation made to a stranger, such a suit by the worshipper at a mosque or temple can be maintained and does not fall within s 539 of the Civil Procedure Code That section is only applicable where there is an alleged breach of trust created for a public, charitable, or religious purpose, and the direction of the Court is necessary for the administration of the trust As against strangers s 539 does not apply, HASSAN *v.* SAGUN BALKRISHNA I. L R., 24 Bom., 170

80 ——— breach of *Civil Proced* Worshippers bring a suit complaining of a breach of trust with reference to the funds or property belonging to the idol or appendant to its temple *Quære*—Whether

such idol or temple RADHABAI KOM CHIMNAJI SALI *v.* CHIMNAJI BIN RAMJI SALI [I. L R. 3 Bom., 27

81 ——— Suit on account of interference with right of devotion of mosque—*Religious endowment—Form of suit—Civil Proce*

Code s 30 of the Civil Procedure Code applies only to cases in which many persons are jointly interested in obtaining relief, and not to cases in which an individual right has been violated

ABDUL ...

82 ——— Suit to set aside mortgage of endowed property—"*Wakf*" *property—Suit relating to public charity—Civil Procedure Code, s 539—"Religious institution"—Act VI of 1871 s 24—Mahomedan law—Endowment*—Certain Mahomedans sued to set aside a mortgage of endowed property belonging to a mosque, the decree enforcing the mortgage, and the sale of the mortgaged property in execution of that decree, and for the demolition of buildings erected by the purchaser, and the ejectment of the purchaser *Held* that the plaintiffs, as Mahomedans entitled to frequent the mosque and to use the other religious buildings connected with the endowment, could maintain the suit and s. 539 of the Civil Procedure Code had no application to the case, the endowment being a religious institution within the meaning of s 24 of Act VI of 1871 and therefore governed by Mahomedan law ZAFARYAB ALI *v.* BAKHTAWAR SINGH . I L. R., 5 All., 497

83. ——— Worshipper's suit to recover land—*Trustee not a plaintiff*—An individual ...

SUBBARAYADU *v.* ASANALI SHERIFF [I L R., 23 Mad., 100 note

84 ——— Suit by members of a caste and worshippers at caste temple against trustees of caste and temple property—*Civil Procedure Code (Act X of 1877) ss 30 and 539—Right to manage caste and temple funds—Public charity—Private charity—Parties—Trustees—Negligence—Wilful default—Acquiescence of* ...

the funds required for building the temple was advanced by one N A at that time the leading man in the caste, the rest was obtained from the caste by subscription The firm of N A acted as the bankers to the caste and to the temple, received all the gifts and offerings made by the worshippers and for many years administered all the affairs of the temple The sums advanced by N A were gradually but entirely repaid to him out of the gifts and offerings There were three separate funds of which separate accounts were kept in the books—*viz*, (1) the d rasa fund which was devoted to the temple purposes, such as maintenance of priests repairs etc and gifts to poorer temples; ...

which was devoted to caste purposes such as purchase of caste utensils etc All three funds were collected at the temple Gifts and offerings were made by all worshippers at the temple, whether members of the caste or not Subscriptions were made only by members of the caste All the regular sub- ... the ... the ... by ... six ... d in ... firm, ... mple ... , and

H (defendant No 1) ... firm

RIGHT OF SUIT—*continued.*

12. CHARITIES AND TRUSTS—*continued.*

meanwhile had invested the funds of the temple in eight lots of immoveable property. In 1867 the caste determined to appoint trustees of the temple property, and in September 1867 a trust-deed was executed whereby *H*, *K*, and *G* (defendants Nos. 1, 2, and 3), together with three others who were dead at the time of this suit,—*viz.*, *J R*, *T W*, and *M T*,—were appointed trustees of all the immoveable property belonging to the temple. The deed set forth the objects to which the income of the property should be applied, and provided that the surplus should be invested in Government securities, in corporation shares or in landed property, but in no other shares of any description whatsoever. It also authorized the trustees to invest surplus moneys in the firm of *V N & Co.* It was admitted that, subsequently to June 1869, the trustees managed the temple, and not only the immoveable property, but all the funds. A debt of R2,40,000 was due from the firm of *V N & Co.* to the temple and caste when the trustees took over the management. In 1870 the firm of *V N & Co.* became insolvent, and in their schedule the trustees were entered as creditors in respect of darasa account, R1,57,619; on mahajan account, R68,017; on sadaran account, R22,597. It was admitted that the trustees knew of this entry in the said schedule. They, however, received no dividend, although other creditors, including *K* (defendant No. 2), were paid two annas in the rupee. This sum of R2,40,000 due to the temple was wholly lost. In April 1867, R15,000 of the temple funds were invested—it did not appear by whom—in the name of *G* (defendant No. 3), and in August 1868 a sum of R15,000 was advanced to one *J P*. In 1869 a sum of R10,000 was advanced by the trustees to *N K & Co.*, which was never repaid, nor was any interest received upon it. It was lost on the failure of that firm in 1879. The principal partner of that firm (*N K*) was the only son of *K* (defendant No. 2), who also had an interest in it. In 1877-78 various loans were made by the trustees to three mills in which one or more of the trustees was interested. Of R55,000 lent to the mills and to *N K & Co.*, R42,000 were lost. Half a lakh of outstanding gifts to the temple remained uncollected owing to the negligence of the trustees. Two suits brought by another caste against the trustees were defended out of the temple funds. All the defendants (trustees), with the exception of *K*, were in needy circumstances. In 1880 a hundred members of the caste protested against the management of caste and temple affairs by the defendants. The plaintiffs, six in number, took part in the protest, and filed the present suit in 1881. Thereupon there was a caste agitation in favour of the defendants, who were all shettias of the caste. A meeting of the caste was held, and a series of resolutions, supporting the defendant's management and approving of their conduct, was passed, and a document to that effect was signed by 1,468 persons—the whole caste in Bombay numbering only 1,500. The plaintiffs sought to make the defendants liable in respect of the moneys lost to the caste and temple funds, and prayed for the appointment of new trustees and for the settlement of a scheme. The defendants denied the charges of negligence, and pleaded that the suit was not properly constituted, not having been brought under s. 30 or 539 of the Civil Procedure Code of 1877, and that it was in contravention of Regulation II of 1827, Ch. II, s. 21. They relied upon the fact that the caste had approved of their conduct and had allowed them to defend this suit at the expense of the caste. They contended that under these circumstances the plaintiffs were not entitled to maintain the suit, and that the Court would not interfere with or control the decision of the majority of the caste in matters relating to the internal management of its affairs. *Held* that s. 30 of the Civil Procedure Code (Act X of 1877) did not apply. If the plaintiffs had any right of action, it was a complete right of action vested in each of them, and not a mere joint right shared with others and incomplete unless they united themselves with others. They sued as subscribers to the temple and devotees of the idol, and as such each had a right to complain of maladministration. They were entitled to sue in their own right and in their own name without permission of the Court or notice to other parties interested. *Held* also (following *Thanga Karuppa* v. *Arumuga Nadan, I. L. R., 5 Mad., 383*) that s. 539 of Act X of 1877 did not apply. The three funds administered by the defendants were different in character. The mahajan fund was a purely secular fund; the other two funds were religious and charitable funds. Even if the case came under the Civil Procedure Code (Act XIV of 1882), s. 539 would not apply, that section being permissive or directory, and not mandatory. Any person interested in the proper observance of a religious endowment may sue in his own name to have the trust properly administered. The section does not prohibit a private suit, and does not make the sanction of the Advocate General a condition precedent. The gifts to the temple comprised in the darasa and sadaran funds were irrevocably dedicated to a public charity, and therefore the approval by the caste of the conduct of the trustees was no bar to the suit. They were also dedicated to the idol, who was a public, not a mere private household, divinity. The ideal personality of such an idol is well recognized, and in case of misappropriation of the property he is entitled to the protection of the public authorities, on the ground that it has been devoted to public religious purposes, and must not be wasted even by the donors. The management of the temple belonged to the Dossa Oswall Bania caste, and not to the whole Jain community. Although the donations were irrevocably dedicated to public purposes, the donors had never lost the right, which was attached to the caste from the beginning, of managing the temple which they had founded, and their management could only be interfered with as a public charitable trust on proof of maladministration. On the evidence,—*Held* that the defendants were not liable for losses prior to 1867. It was not clearly proved that they were managers of the temple funds before that date. *Held* also that the defendants were liable for the losses incurred subsequently to 1867. They assumed the management on the execution of the trust-deed in that year, and ought to have taken steps

RIGHT OF SUIT—*continued*

12 CHARITIES AND TRUSTS—*continued*

to recover the moneys which had been improperly advanced on loan or otherwise negligently invested Not having done so they were guilty of wilful neglect, and were liable to refund the moneys which had been lost The liability was, however, confined to the first three defendants, it not being proved that the remaining defendants had ever acted as trustees The negligence of the trustees in not taking steps to recover the R2 40 000 due from the firm of *V N & Co* was a clear breach of trust The evidence showed that, although the whole sum could not have been recovered at any time during the trusteeship of the defendants yet that some portion of the money might have been obtained if due diligence had been used, and that other creditors of the firm had actually been paid 2 annas in the rupee The first three defendants were therefore liable to refund 2 annas in the rupee of such portion of the R2 40 000 as belonged to the darasa and sadaran funds As to the mahajan fund, it belonged to the

the trusteeship, and ordered a scheme to be settled. THAKERSEY DEVRAJ v HURBHUM NARSEY [I. L. R, 8 Bom, 432

85 ——— Suit for possession of endowed property—*Religious trust—Charitable trust—Civil Procedure Code (Act XIV of 1882), ss 30, 539—Act XX of 1863* - The plaintiff sued to recover possession as mutwali of certain parcels of land, alleging that they were dedicated as wakf, and that the profits were "applied to the feeding of wayfarers and travellers, to lighting the mosque and shrine in the evening, and to meeting the expenses of repeating prayers on the occasion of Id and Bakhrid, and that the said profits were never spent for personal purposes" The plaintiff based her right to sue upon the fact that her deceased husband had been mutwalli and she prayed that the property in suit might be declared wakf, and that certain alienations made by her step son since her husband's death might be set aside *Held* that the trust to which the suit related was one partly for charitable and partly for religious purposes. As far as it related to the former, it was governed by s 539 of the Civil Procedure Code, and if viewed in the light of the latter, by Act XX of 1863, and that the suit, not being properly framed in com-

RIGHT OF SUIT—*continued*

12 CHARITIES AND TRUSTS—*continued*

of the Civil Procedure Code LUTIFUNISSA BIBI v NAZIRUN BIBI I. L. R, 11 Calc., 33

86. ——— Suit in respect of religious endowment—*Civil Procedure Code (Act X of 1877), ss 30, 539—Beng Reg XIX of 1810—Act XX of 1863* — [illegible] a certain mosq [illegible] the sanction of [illegible] of the Civil P [illegible] of the mosque [illegible] mutwalli had mortgaged part of the endowed pro- [illegible]

profits of the property belonging to the endowment *Held* that, so far as regarded that portion of the prayer which fell within the provisions of s 539 of the Code, the plaintiffs were not entitled to sue, as they were not 'persons having a direct interest in the trust' within the meaning of the section and that the suit should have been instituted under s 14 of Act XX of 1863 after sanction obtained under s 18 *Held* also that, though the plaintiffs might, possibly have obtained leave to sue under s 30 of the Code on behalf of themselves and the other persons attending the mosque they, not [illegible]

S C JAN ALI v ATAWUR RUHMUN [9 C. L R., 433

See SRINIVASA CHARIAR v RAGHAVA CHARIAAR [I. L. R., 23 Mad, 28

87 ——— Suit to restrain use of property for other than purposes of endowment—*Injunction—Property dedicated to religious purposes*—The plaintiff's ancestor built a [illegible]

munity, the plaintiff was entitled to maintain a suit to restrain defendants from using the ghat for trading purposes JAGGAMONI DASI v NILMONI GHOSAL I. L. R, 9 Calc., 75: 11 C. L. R., 502

88. ——— Leave to sue—*Civil Procedure Code (1882), s 539—Power of Court to grant relief outside the sanction*—When sanction is given

RIGHT OF SUIT—*continued.*

12. CHARITIES AND TRUSTS—*continued.*

to the institution of a suit under s 539 of the Code of Civil Procedure (Act XIV of 1882), the suit must be limited to matters included in the sanction. It is not competent to the Court to enlarge the scope of the suit and grant reliefs other than those included in the terms of the sanction. HUSSEIN MIYAN *v.* COLLECTOR OF KAIRA . . I. L. R., 21 Bom., 257

89. ———— Sanction granted to two persons separately to institute suit in respect of breach of charitable trust—*Civil Procedure Code, s. 539.*—*R* instituted a suit with the Collector's sanction to compel the performance of a charitable trust; *D* was subsequently joined as plaintiff, having also obtained the Collector's sanction to institute the suit. *Held* that the sanction obtained by *D* related back to the institution of the suit. RAMAYYANGAR *v.* KRISHNAYYANGAR

I. L. R., 10 Mad., 185

90. ———— Religious institution, Suit concerning management of—*Sanction of Advocate General, Necessity of—Civil Procedure Code, 1877 and 1882, s. 539.*—In a suit brought in 1881 with no written consent of the Advocate General by the head of an adhinam for declarations that a muth was subject to his control; that he was entitled to appoint a manager; that the present head of the muth was not duly appointed and his nomination by his predecessor was invalid; and for delivery of possession of the moveable and immoveable properties of the muth to a nominee of the plaintiff; the claim extended also to religious establishments at Benares, and elsewhere connected with the muth,—*Held* that the consent of the Advocate General to the suit was not required; the suit having been instituted under the Civil Procedure Code of 1877 and the cause of action not being an alleged breach of trust. GIYANA SAMBANDHA PANDARA SANNADHI *v.* KANDASAMI TAMBIRAN

I. L. R., 10 Mad., 375

91. ———— Public charity—*Trust—Public charitable or religious trust—Offerings made to an idol—Liability of persons in possession of an idol's property—Account—Jurisdiction of Civil Courts in cases relating to public charities—Civil Procedure Code (Act X of 1877), s. 539—"Direct interest," Meaning of.*—1. A trust for a Hindu idol and temple is to be regarded in India as one created "for public charitable purposes" within the meaning of s. 539 of the Code of Civil Procedure (Act X of 1877). 2. The Hindu law recognizes not only corporate bodies with rights of property vested in the corporation apart from its individual members, but also the judicial persons or subjects called foundations. A Hindu who wishes to establish a religious or charitable institution may, according to his law, express his purpose and endow it, and the ruler will give effect to the bounty, or at least protect it. A trust is not required for this purpose as it is by English law. 3. Those who take charge of gifts made to a religious or charitable institution—whether such gifts consist of cash, jewels, or land—incur thereby a responsibility for their due application to the purposes of the institution. They are answerable as trustees would be, even though they have not consciously accepted a trust, and a remedy may be sought against them for maladministration by suit open to any one interested as under the Roman system in a like case by means of a *popularis actio.* The plaintiffs as relators filed this suit under s. 539 of the Code of Civil Procedure (Act X of 1877) against the defendants as trustees of the temple of Shri Ranchhod Raiji at Dakor. The plaintiffs were five in number. The first plaintiff was the hereditary manager of the temple and its appendant villages. The other plaintiffs were priests residing at Dakor, who ordinarily took charge of pilgrims visiting the shrine, and performed worship of the idol on their behalf. The defendants were the shevaks or ministers of the idol—about one hundred and fifty in number—who took office by hereditary descent. They remained in constant attendance on the idol, performed the daily services at the temple, collected all the offerings made at the shrine, and kept them in a bhandar or store-room. The god Shri Ranchhod Raiji was held in great veneration by the followers of the Vaishnava religion throughout Western India. Every full moon thousands of pilgrims resorted to the shrine, and made offerings to the deity, of cash, ornaments, clothes, and other articles amounting in value to about a lakh of rupees in the course of a year. Besides these offerings, the temple enjoyed a grant, in perpetuity, of the revenues of several inam villages, of which Dakor and Kangri yielded the largest income. The plaintiffs sued as persons interested in the maintenance of this public religious and charitable institution, and prayed that the Court would make the defendants, as recipients of the offerings at the idol's shrine, accountable as trustees, for the right disposal of the property thus acquired. The plaintiffs alleged that the income of the temple had largely increased, and had been wrongly appropriated by the defendants to their personal purposes. They therefore prayed for an account, for the appointment of a receiver, for the removal of the shevaks from their office, and for the settlement of a scheme of future management. The defendants answered (*inter alia*) that the plaintiffs had not such a direct interest in the institution as to entitle them to sue under s. 539 of Act X of 1877; that they themselves were owners of the idol and of the idol's property, and that as such they were not liable to render an account of the offerings they had collected at the shrine. They also contended that they were not liable to be removed from their offices, which they and their ancestors had held for several centuries past. The District Judge dismissed the suit, on the preliminary ground that, except the first plaintiff, who was a hereditary manager of the temple, the other plaintiffs had not such a direct interest in the charity as to entitle them to sue under s. 539 of the Code of Civil Procedure (Act X of 1877). *Held,* reversing the decision of the District Judge, that plaintiffs Nos. 2–5, as priests residing at Dakor and taking part in the worship of the idol, were directly interested in its due performance and its maintenance. Though they might not be trustees, they were clearly among those who in practice benefited by the execution of the trust. They had thus an undeniable *locus standi* as relators, and the suit could proceed at their

RIGHT OF SUIT—*continued*

12 CHARITIES AND TRUSTS—*continued*

instance *Held* further that the shevaks were not the owners of the offerings made to the idol As recipients of the those offerings they were responsible for their due application to the purposes of the foundation They were liable as trustees to render an account of their management The Court accordingly directed the District Judge (1) to take steps either by appointing a receiver or otherwise in his discretion for guarding the property of the temple (2) to take an account of the property and of the receipts and disbursements of the temple (3) to make the requisite orders for recovering property appropriated by the shevaks and (4) to draw up a scheme for the future management of the temple and its funds regard being had to the established practice of the institution and to the position of the shevaks and of other persons connected with it The jurisdiction of the Civil Courts in matters of this kind discussed MANOHAR GANESH TAMBEKAR v LAKHMIRAM GOVINDRAM I L R., 12 Bom, 247

BEEAU [illegible]
[I L R., 26 I A 199 4 C W N, 23

See MANOHAR v KESHAVRAM
[I L R., 12 Bom, 267 note

92 ——— **Suit by worshipper of Hindu temple relating to trust**—*Trust for public religious purposes—Private trust—Civil Procedure Code ss 30 539—Act XX of 1863—Hindu Law* —The defendants made a gift of land to a Hindu temple *for the purpose of defraying the* expenses appertaining to the idol The temple was built and the gift made in 1873 The defendants obtained from the revenue authorities mutation of names in the idol's favour and an acknowledgment of the person whom they nominated as agent or manager The plaintiff alleging that they had subsequently repossessed themselves of the land and the profits accruing therefrom and that he was interested as a Hindu in worshipping at the temple and professing to sue on behalf of the entire body of the worshippers thereat sued for declaration that the

[illegible]

maintainable as against those defendants *Per* STRAIGHT, J., that the suit was not maintainable under the Hindu Law that the trust was one for public religious purposes that such a suit, in which the plaintiff asked to have the trust administered by the Court could not be maintained without the sanction required by s 539 of the Code, that assuming s 539 to be inapplicable and Act XX of 1863 to apply the suit could not be maintained without the sanction required by that Act and that with reference to s 30 of the Code no cause of action had accrued to plaintiff alone on which he could maintain the suit *Per* EDGE C J., and TYRRELL J, that if the trust were one for public religious purposes the suit as against the defendants before the Court must fail for non compliance with the provisions of s 539 of the Code and if for private or *quasi* private

those defendants who were not trustees but (if they had wrongfully taken possession) trespassers, that Act XX of 1863 could not apply and that with reference to s 30 of the Code the plaintiff could not maintain the suit alone on his own behalf or on behalf of himself and others against those defendants *Jawahra v Akbar Husain I L R 7 All 178* distinguished *Manohar Ganesh Tambekar v Lakhmiram Govindram I L R 12 Bom 247; Lutifunnissa Bibi v Nazirun Bibi I L R 11 Calc 33* and *Hira Lal v Bhairon I L R 5 All 602* referred to *Wajid Ali Shah v Dianatullah Beg I L R 8 All 31* approved RAGHUBAR DIAL v KESHO RAMANUJ DAS
[I L R, 11 All, 18

93 ——— **Suit to remove a trustee**—*Civil Procedure Code s 539—Interest necessary to support a suit* —The plaintiffs having an interest as the managers of a temple in seeing to the due performance of the religious part of the administration of a certain charity endowed for the sustenance of Brahmans and connected with the temple, and being further interested in its administration as Brahmans entitled under certain circumstances to share in the benefits of the charity sued under s 539 of the Code of Civil Procedure to remove defendant from the trusteeship of the charity on the ground of [illegible] *Held* that the plain[illegible] *Quære*— [illegible] s the will lie [illegible] AYYAN CHETTI I. L. R., 12 Mad., 157

94 ——— *Civil Procedure Code (1882), s 539—Stat 52 Geo III c 101* —A suit to remove a trustee of a charitable trust does not lie under s. 539 of the Code of Civil Procedure *Narasimha v Ayyan Chetti I L R, 12 Mad 157*, followed *Per* SHEPHARD J.—The language of s. 539 is in part borrowed from 52 Geo III, c 101 (Sir Samuel Romilly's Act), and the decisions upon that statute are in a measure reproduced in the section s 539 should accordingly be construed in the light of the decisions on that statute, so far as they are applicable to the

language of the section; and the statute having from the first been held to be inapplicable to cases in which the hostile removal of a trustee is required, s. 539 is likewise inapplicable to such cases. RANGASAMI NAICKAN *v.* VARDAPPA NAICKAN [I. L. R., 17 Mad., 462

95. ——————— *Civil Procedure Code (1882), s. 539—Suit for removal of trustees of a public charity and for account—Jurisdiction of District Judge—Jurisdiction of Subordinate Judge.*—A suit to remove the trustees of a public charity, and to compel them to account and to make good the losses sustained by the charity in consequence of their default, is a suit which falls within the scope of s. 539 of the Code of Civil Procedure (Act XIV of 1882), and must therefore be instituted in a District Court, and not in a Subordinate Judge's Court. HUSSEINMIAN *v.* COLLECTOR OF KAIRA [I. L. R., 21 Bom., 48

96. ——————— *Civil Procedure Code, s. 539—Jurisdiction of District Court.*—In a suit under the Civil Procedure Code, s. 539, in the District Court to remove the hereditary trustee of a public trust for breach of trust, the District Judge held that the suit could not be maintained. The plaintiff appealed, and the appeal came on before two Judges, who differed in opinion. The appeal was thereupon referred under the Civil Procedure Code, s. 575, and was heard by a Bench of three Judges, including the Judges who first heard the appeal. *Held* by BEST and WEIR, *JJ.* (MUTTUSAMI AYYAR, *J.*, dissenting), that the suit was maintainable under the Civil Procedure Code, s. 539. *Narasimha* v. *Ayyan, I. L. R., 12 Mad., 157*, considered. SUBBAYYA *v.* KRISHNA . I. L. R., 14 Mad., 186

97. ——————— *Civil Procedure Code (1882), s. 539—Suit to remove a trustee and to recover possession of trust property in the hands of a third party—Limitation Act (XV of 1877), sch. II, art. 134—Stat. 52 Geo. III, c. 101—Civil Procedure Code Amendment Act (VII of 1888)—Act XX of 1863, s. 14—Duty of Collector in sanctioning suit—Irregularity not affecting merits of suit—Civil Procedure Code, s. 578.*—A suit for the dismissal of a trustee and for the recovery of trust property from the hands of a third party to whom the same has been improperly alienated is within the scope of s. 539 of the Civil Procedure Code. *Subbayya* v. *Krishna, I. L. R., 14 Mad., 186*, followed. *Lakshmandas Parashram* v. *Ganpatrav Krishna, I. L. R., 8 Bom., 365*, distinguished. Art. 134 of the second schedule of the Indian Limitation Act (XV of 1877) applies to such a suit. The difference between the provisions of s. 539 of the Civil Procedure Code and those of 52 Geo. III, c. 101 (Romilly's Act), pointed out. Persons having a right to worship in a temple are within the scope of s. 539. Under that section, as originally enacted, the words were "having a direct interest in the trust," and the word "direct" has been taken out by Act VII of 1888. The inference is that the Legislature [illegible] allow persons having the same sort of interest that is sufficient under s. 14 of Act XX of 1863 to maintain a suit under s. 539. The Collector, in giving his consent to the institution of a suit under s. 539, has to exercise his judgment in the matter, and see not only whether the persons suing are persons having an interest in the trust, but also whether the trust is a public trust of the kind contemplated by the section and whether there are *primâ facie* grounds for thinking that there has been a breach of trust. But where the form of the permission showed that he had omitted to exercise his judgment in the matter of the interest of the plaintiffs in the trust, such omission was held to be a mere irregularity and within the scope of s. 578 of the Civil Procedure Code. SAJEDUR RAJA CHOWDHURI *v.* GOUR MOHUN DAS BAISHNAV [I. L. R., 24 Calc., 418

98. ——————— *Charitable endowments—Interest sufficient to support a suit relating to charity.*—A Hindu, shortly before his death, directed his wife and mother to employ part of his property for the maintenance and upkeep of a charitable institution, being a choultry where Japta Brahmans and travellers were fed, and at the same time empowered his wife to make an adoption, declaring that the adopted son should have no interest in the property devoted to the charitable purpose. On his death, the widow and mother executed a document, relating to the property, to give effect to the wishes of the deceased for the benefit of Brahmans; and three years later the widow took in adoption a boy, whose father acquiesced in the deceased man's dispositions. The charitable trust having been neglected and the adoptive son having taken possession in his own right of the lands constituting the endowment, two Brahman residents in the neighbourhood who had obtained leave under s. 30, Civil Procedure Code, instituted a suit as representing the Brahman community at large to remove the widow from the office of trustee, to have the adopted son declared ineligible for that office and for the appointment of a new trustee. *Held* that the plaintiffs possessed sufficient interest in the charity to enable them to maintain the suit, and that they were entitled to the relief claimed by them. GANAPATI AYYAN *v.* SAVITHRI AMMAL I. L. R., 21 Mad., 10

99. ——————— *Civil Procedure Code (1882), s. 539—Trust.*—A suit may properly be brought and a decree made under s. 539 of the Code of Civil Procedure for the removal of a trustee. *Narasimha* v. *Ayyan Chetti, I. L. R., 12 Mad., 157*; *Sathappayyar* v. *Periasami, I. L. R., 14 Mad., 1*; *Rangasami Naickan* v. *Varadappa Naickan, I. L. R., 17 Mad., 462*; *Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev, I. L. R., 15 Bom., 612*; *Tricumdass Mulji* v. *Khimji Vullabhdass, I. L. R., 16 Bom., 626*; *Hussain Mian* v. *Collector of Karia, I. L. R., 19 Bom., 48*; *Sajedur Raja* v. *Baidyanath Deb, I. L. R., 20 Calc., 397*; *Mohi-ud-din* v. *Syad-ud-din, I. L. R., 20 Calc., 810*; and *Sajedur Raja Chowdhuri* v. *Gour Mohun Das Baishnav, I. L. R., 24 Calc., 418*, referred to. *Subbayya* v. *Krishna, I. L. R., 14 Mad., 186*,

RIGHT OF SUIT—*continued*.

12 CHARITIES AND TRUSTS—*continued*

followed HUSENI BEGAM *v* COLLECTOR OF MORADABAD . I. L. R., 20 All, 46

100. ———————— *Civil Procedure* ... *for* ... the ... reach ... may ... property ... de of Civil Procedure *Huseni Begam v Collector of Moradabad, I L R, 20 All, 46*, approved *Rangasami Naickan v Varadappa Naickan, I L. R, 17 Mad., 462*, dissented from GIRDHARI LAL *v* RAM LAL . . . . I. L. R, 21 All, 200

101. ———————— *Civil Procedure Code, 1882, ss 15, 539—Religious Endowments Act (XX of 1863), ss 14, 15, 18—Suit by a general trustee and a worshipper for removal of trustees*— ... by the general ... ments of the temple might be ... that a scheme might be settled for the management of the trust Leave to file the suit had been obtained under the Religious Endowments Act, 1863, and under s 539 of the Code of Civil Procedure *Held* that the suit was maintainable NARAYANA AYYAR *v* KUMARASAMI MUDALIAR I. L. R, 23 Mad, 537

102. ———————— *Civil Procedure Code (Act XIV of 1882), ss 30, 539—Religious endowments—Removal of sajjadanashin—Contentious and non contentious cases* S 539 of the Code of Civil Procedure applies both to contentious and non contentious cases The decision of BEST and WEIR JJ, in *Subbaya v Krishna, I L. R, 14 Mad, 186*, approved The interest required to enable a person to sue under that section must be an existing one, and not a mere contingency the mere possibility of an interest or the mere possibility of succession to the managership of the properties concerning which the suit is brought is not sufficient to give a right to sue The right of worship of each worshipper in a Mahomedan mosque or religious endowment is an independent right wholly irrespective of the right of the other worshippers, and therefore non compliance by a worshipper with the provisions of s. 30 of the Code of Civil Procedure does not affect a suit for the removal of a trustee of Mahomedan endowment *Jan Ali v Ram Nath Mundul, I. L R, 8 Calc, 32, Jawahra v. Akbar Husain, I L. R, 7 All, 178, Lutifunnissa Bibi v. Nazirun Bibi, I L R, 11 Calc, 33*, and *Zafaryab Ali v Bakhtawar Singh, I L R, 5 All, 497*, referred to. MOHIUDDIN *v* SAYIDUDDIN *alias* NAWAB MEAN

[I. L R., 20 Calc., 810

103. ———— Public charitable trust—*Civil Procedure Code 1882, ss 539, 15—District Court, Jurisdiction of*—A church at Palayur and the property appertaining to it were in the possession of certain of the yogakars or parishioners, who had been elected kaikars or churchwardens, but whose election had since been super... of three other persons who now sued ... were Roman ... above referred ... Apostolic, the ... and two other ... olic yogakars ... Christians and ... to were joined the Chor Episcopa, the vicar app... d to the church by him, and four persons representing the other yogakars The plaint was framed under the Civil Procedure Code, s. 539, and contained besides a prayer for possession, prayers for declaration that the church, etc, was held on trust for worship according to the faith and discipline of the Church of Rome, and for injunctions against the defendants. The suit was tried by the District Judge in whose Court it was instituted although the defendants pleaded to his jurisdiction on the ground that the Civil Procedure Code, s. 539 was inapplicable He passed a decree for the plaintiffs, holding that the church, etc, was dedicated to the trust above stated, although it had been diverted from the purpose of that trust for a time *Held* (1) that the suit not being one brought by beneficiaries against trustees, or for any of the purposes mentioned in the Civil Procedure Code, s 539, that section had no application, (2) that although the suit should accordingly have been brought in the Subordinate Court, the District Judge had jurisdiction to try it, (3) that the decree was right, on its appearing that the church, etc, had been held on the above trust from 1509 to 1882 with a doubtful interruption for one year, although the original trust may have been different AUGUSTINE *v.* MEDLYCOTT

[I. L. R, 15 Mad., 241

104 ———— Suit by trustees to eject persons in wrongful possession of trust property—*Civil Procedure Code (Act XIV of 1882), ss 539, 622—District Judge, Jurisdiction of—Subordinate Judge, Jurisdiction of—Superintendence of High Court*—S 539 of the Code of Civil Procedure (Act XIV of 1882) has no appli... ... trustees of a religious ... ul possession of ... sued, as trustees ... property from defendants, ... be in wrongful possession. The defendants pleaded that they were owners of the property in dispute and applied the income thereof for the purposes of the temple; they disputed the plaintiffs' title to the management or possession of the same The Subordinate Judge, who tried the case in the first instance, held that the defendants were trustees with respect to the property in their possession, and that the suit was one of the nature contemplated by s. 539 of the Code of Civil Procedure He therefore returned the plaint for presentation to the District Judge This order was confirmed on appeal *Held* that the Subordinate

RIGHT OF SUIT—*continued.*

12. CHARITIES AND TRUSTS—*continued.*

Judge had jurisdiction to entertain the suit. *Held* also that the High Court had power, under s. 622 of the Code of Civil Procedure, to interfere in this case, the Subordinate Judge having failed to exercise a jurisdiction vested in him by law. *Held* also that the suit was not one falling under s. 539 of the Code of Civil Procedure. VISHVANATH GOVIND *v.* RAMBHAT . . . . **I. L. R., 15 Bom., 148**

105. ——— **Suit by trustees to eject a trespasser from trust property**—*Civil Procedure Code (1882), s. 539.*—*D* was the manager of a religious endowment called the Chinchvad Sansthan. On his death in 1852, disputes arose between *C* and *G* regarding the management of the sansthan, each claiming to be the heir and successor of *D*. After a long litigation they entered into a compromise in 1881 by which a portion of the sansthan property, consisting of certain inam villages, lands, and varshasans, were assigned to *G*, and *C* was left in charge of the rest of the sansthan property, together with all the rights, privileges, and manpans enjoyed by the hereditary trustee of the endowment. In 1886 by a decree made in a suit called the "Charity Suit," *C* was removed from his office, and the plaintiffs were appointed trustees in his place. In 1889 the plaintiffs filed the present suit to set aside the compromise of 1881 and recover back the sansthan property assigned to *G* under that compromise. *Held* that the suit did not fall under s. 539 of the Code of Civil Procedure (Act XIV of 1882). DHUNDIRAJ GANESH DEV *v.* GANESH **I. L. R., 18 Bom., 721**

106. ——— **Public charitable and religious trust**—*Civil Procedure Code (Act XIV of 1882), s. 539—Property set apart for religious and charitable uses—Trustee—Repudiation of the trust, Effect of—Persons having a direct interest in the trust.*—The plaintiffs sued as relators, under s. 539 of the Code of Civil Procedure (Act XIV of 1882), to have the defendants removed from the management of a religious endowment, called the "Chinchvad savasthan," on the ground that they had mismanaged and misappropriated the trust funds in their hands. The plaintiffs also prayed for the appointment of new trustees and for the settlement of a new scheme of management under the direction of the Court. The plaintiffs and defendant were the descendants of Shri Morya Gosavi, the original founder of the savasthan. Shri Morya Gosavi was a devotee of the deity Shri Mangal Murti. He dedicated a temple to the deity at the village of Chinchvad, and established an annachhatra and sadavart for feeding the poor and the destitute. He buried himself alive, and over his tomb a temple was built to perpetuate his memory. The Raja of Satara conferred on his descendants from time to time grants of lands, villages, and varshasans for the maintenance of the shrine and of the charities connected with it. Votaries of the god Shri Mangal Murti visited the shrine in large numbers, and took part in the annual festivals and celebrations held in honour of the founder of the savasthan. In course of time the Chinchvad savasthan became one of the most popular sacerdotal institutions of the Deccan. In 1744 the Peshwa made a tahanama (or award) by which he set apart one half of the savasthan property exclusively for religious and charitable purposes, and distributed the other half among the descendants of the founder, to provide for their temporal wants. Subsequently to the date of this award, fresh grants were made to the manager of the savasthan by the ruling authorities of the day. In 1774 and 1776 A.D. the new acquisitions were divided on the principle adopted in the Peshwa's award, one-half being reserved exclusively for the savasthan, the other half distributed among the heirs of the grantee. In 1874 the defendant 1 succeeded to the office of manager and trustee of the savasthan. Within a few years after entering upon his office, the defendant 1, in conjunction with his son defendant 2, incurred heavy debts, mortgaged several villages belonging to the savasthan, and dealt with the savasthan income as if it was his own absolute property. The plaintiffs filed the present suit with the consent of the Advocate General in 1883. The defendants pleaded (*inter alia*) that the property in suit was not burdened with a public religious or charitable trust; that they were not trustees, but owners, of the savasthan; and that the plaintiffs had not such direct interest in the property as to entitle them to sue under s. 539 of the Code of Civil Procedure. The District Judge, who tried the case, found that the savasthan was a public religious and charitable institution; that the defendants were trustees in charge of the savasthan property, and that they were guilty of such gross misconduct as to make them unfit to act as trustees in future. He therefore passed a decree, directing the defendants to be removed from their office as trustees, appointed a new trustee in their place, and framed a scheme for the future management of the savasthan. *Held* on the evidence that the management of the Chinchvad savasthan—consisting of the sacred shrines at the villages of Chinchvad, Moregav, Theur, and Sidhateks with their endowments—constituted a public religious and charitable trust within the contemplation of s. 539 of the Code of Civil Procedure. *Held* also that the plaintiffs, being worshippers and devotees of the god Shri Mangal Murti and being also descendants of the original founder of the endowment, had a direct interest in the trust, entitling them to sue under s. 539 of the Code of Civil Procedure. *Held* further that the defendants' assertion of their right to treat the trust property as their private estate and to apply the trust funds to their private purposes was sufficient to justify their removal from the trust. *Held* further, upon the construction of the Peshwa's tahanama (or award), that it was the intention of the governing power in 1744 A.D. that thenceforth the Chinchvad savasthan—consisting of the shrines at Chinchvad, Moregav, Theur, and Sidhatek—should constitute a public devasthan; and that in setting apart a moiety of the property for the savasthan, the object was to provide a fund

RIGHT OF SUIT—*continued.*

12 CHARITIES AND TRUSTS—*continued*

for the support of the four shrines and the ex penses of the customary festivals, as well as of the annachhatra established at Chinchvad CHINTAMAN BAJAJI DEV *v* DHONDO GANESH DEV [I. L R, 15 Bom, 612

107 ——— Cash allowance allowed to worship of idol—*Personal grant—Civil Procedure Code (Act XIV of 1882), s 539*—A plaintiff claimed to be a co trustee of certain dargas and entitled to a share in the management and in the profits thereof, which consisted of a certain cash allowance from Government He sued the defendants for an account and for the recovery of his share *Held* that the suit did not come within the purview of s 539 of the Civil Procedure Code and did not require sanction under that section MIYA VALI ULLA *v* [illegible] AYA SAHEB SANTI MIYA [I L R, 22 Bom, 496

108 Public charitable trust—*Civil Procedure Code 1882, s 539—Consent of Advocate General* Two out of five trustees appointed by a will to administer a public charitable trust brought this suit against the remaining three trustees praying (i) that the first defendant might be ordered to account for a specific sum of money of which it was alleged he had committed a breach of trust, (ii) that the first defendant might be removed from the office of trustee and some other person appointed in his stead, and (iii) for such other or further relief as the nature of the case might require The consent in writing of the Advocate General to the institution of the suit under s 539 of the Civil Procedure Code (XIV of 1882) had not been obtained *Held* that the suit was one which fell within the [illegible] in the absence [illegible] TRICUMDAS

[illegible] 13 Bom, 626

[illegible]

duly appointed successor to the late jheer, and that an appointment to the vacant office of jheer be made by the Court *Held* that the Civil Procedure Code, s. 539 was inapplicable to the suit STRINIVASA AYYANGAR *v* STRINIVASA SWAMI [I. L. R, 16 Mad, 31

[illegible]

removed on the ground that he was wasting the idol's property and setting up an adverse title to it and to have another nominated trustee of the property

RIGHT OF SUIT—*continued*

12 CHARITIES AND TRUSTS—*continued*

appointed in his place The plaintiffs alleged that they and the 42 others named in the schedule were in the habit of worshipping the idol or of contributing to the worship and expenses of it, but it was clearly established by the evidence that any Hindu who chose was at liberty to give puja or render service and worship, and that others than the plaintiffs and the 42 persons named in fact did so and that the plaintiffs and the persons named were therefore not the only persons interested in the suit The suit was one to which the provisions of s 539 [illegible]

[illegible]

RAJA *v* BAIDYANATH DEB [I. L. R., 20 Calc, 397

111 ——— Suit by trustee—*Civil Procedure Code (Act XIV of 1882), ss 30 539—Public charity*—The trustee of a temple sued to recover, from the representatives of the trustee of a fund constituted for special purposes in connection [illegible]

S 539 was intended to apply only to persons who [illegible] believed to have [illegible]

[illegible] 16 Mad, [illegible] KHAN *v* [illegible] 1 All, 167

113 ——— Suit for ejectment of a jeer of religious institution as being illegally appointed—*Prayer for appointment of a new jeer—Elective office*—The jeer of a mutt died in 1888, and the defendant assumed office as his successor The plaintiffs who were disciples of the mutt, [illegible]

appointed to the jeer and also that he was disqualified

RIGHT OF SUIT—*continued.*

12. CHARITIES AND TRUSTS—*concluded.*

for that office by immorality and otherwise. *Held* that the suit was not maintainable. SRINIVASA SWAMI *v.* RAMANUJA CHARIAR

[I. L. R., 22 Mad., 117

114. ——— Public religious and charitable trust—*Civil Procedure Code (Act XIV of 1882), s. 539—Hindu temple, with a dharmashala and sadavart attached to it—Liability of constructive trustee—Suit to remove trustee—Limitation.*—A Hindu built a temple in honour of the deity Shri Pandurang, to which were attached a dharmashala and a sadavart for feeding travellers and giving alms to the poor. For the maintenance of the temple and the charities connected with it, he dedicated certain property by a deed of gift, under which he constituted himself a trustee for life and appointed a panch to act as his successors in the trust. During his life-time he managed the temple as provided in the deed. On his death in 1867, the panch did not take charge, but his son (the defendant) assumed the management. The temple was open to the Hindu community. In 1894 the pujari of the temple and five other worshippers of the idol filed this suit, under s. 539 of the Code of Civil Procedure, with the sanction of the Advocate General, for removing the defendant from the management of the temple on the ground of his misconduct and mismanagement of the trust property. The defendant pleaded (*inter aliâ*) that the property was not a public religious and charitable trust, that he was not a trustee, that the plaintiffs had no right to sue, and that the suit was time-barred. *Held* (1) that, having regard to the fact that a certain number of the public had always used the temple, that there was attached to it a dharmashala, and that the surplus funds not required for the service of the temple were to be applied to feeding travellers and maintaining a sadavart, the intention of the founder was to devote the property to public religious and charitable purposes; (2) that although the defendant was not appointed a trustee, yet by taking charge of the endowment and purporting to manage it as temple property he made himself a constructive trustee, and was liable, as such, to the beneficiaries; (3) that the plaintiffs were entitled to maintain the suit under s. 53 of the Code of Civil Procedure; (4) that the suit was not time-barred, as with every fresh breach of the constructive trust or whenever the direction of the Court was deemed necessary a fresh cause of action arose. JUGAL KISHORE *v.* LAKSHMANDAS RAGHUNATHDAS

[I. L. R., 23 Bom., 659

13. CLAIM TO ATTACHED PROPERTY.

115. ——— Suit without bringing claim under s. 278—*Civil Procedure Code (1882), ss. 278 and 283—Suit to have property declared not liable in execution.*—The provisions of s. 278 of the Code of Civil Procedure and the sections immediately succeeding are not exclusive of the remedy provided by s. 283 of the Code. *Man Kuar* v. *Tara Singh, I. L. R., 7 All., 583,* considered. SUNDAR SINGH *v.* GHASI . . . . I. L. R., 18 All., 410

RIGHT OF SUIT—*continued.*

13. CLAIM TO ATTACHED PROPERTY —*concluded.*

116. ——— Effect on right of suit of temporary cessation of execution-proceedings—*Civil Procedure Code (1882), s. 283—Order partly releasing attachment.*—Where a decree has not been adjusted or otherwise satisfied and is still operative, a temporary cessation of the execution-proceedings under it does not deprive the execution creditor of his rights to sue to set aside an order made under s. 283 of the Civil Procedure Code (Act XIV of 1882), releasing part of the property from attachment, and to have it declared that such part, or some fraction of such part, is liable to attachment. BALAJI SHAMJI NAIK *v.* MOROBA NAIK

[I. L. R., 21 Bom., 58

14. COMPENSATION.

117. ——— Suit for compensation for expenses of releasing cattle—*Cattle seized under Cattle Trespass Act, 1871.*—A suit for compensation for expenses incurred in releasing cattle which were wrongfully impounded by the defendant will not lie in a Civil Court. The Legislature, when establishing pounds by Act I of 1871, gave a special remedy in cases of illegal seizure, and that is the only one available. ASLEM *v.* KALLA DURZI

[2 C. L. R., 344

118. ——— Suit for compensation for wrongful seizure of cattle—*Cattle Trespass Act (I of 1871).*—A suit for compensation for wrongful seizure of cattle will lie in a Civil Court, the provisions of Act I of 1871 being no bar to such a suit. *Nomaz Mollah* v. *Lall Mohun Tagadgeer, 15 W. R., 279,* approved of. *Aslem* v. *Kalla Durzi, 2 C. L. R., 344,* dissented from. SHUTTRUGHON DAS COOMAR *v.* HOKNA SHOWTAL

[I. L. R., 16 Calc., 159

15. CONTRACTS AND AGREEMENTS.

119. ——— Special agreement under which one party has received benefit—*Implied contract.*—Where there is a special agreement between two parties, and that agreement has been performed, and one of them has had all the benefit to which he is entitled thereunder, the other may sue him either upon the special agreement or upon what has been called the implied contract which arises out of the receipt of the benefit. OOMADUTTY *v.* PURESHNATH PANDEY . . 12 W. R., 521

120. ——— Suit to recover difference of exchange against assignee of shipping order.—An action will lie for the recovery of the difference in the rate of exchange against the assignee of a shipping order under which part of the freight was to be paid on delivery at specified rates of exchange. GLADSTONE *v.* JOAKIM . Cor., 148

121. ——— Suit for damages for omission to certify payments to Court—*Fraud.*—A suit will lie in the Civil Court to recover damages for breach of contract by defendant to certify, or for

RIGHT OF SUIT—*continued.*

15. CONTRACTS AND AGREEMENTS—*continued.*

his fraudulently omitting to certify, in consequence of which, on an execution fraudulently issued against the plaintiff, his property was seized. SOOJUN MUNDUL v. WOOZEER MUNDUL [6 W. R., Civ. Ref., 20

12[illegible] ——— Suit for an account for goods [illegible]

[illegible] was to contribute a certain sum either in cash or goods. A trading concern was opened accordingly, [illegible]

[illegible] into one for dissolution of partnership ELIJAH v. ARATOON BROTHERS . . 14 W. R., 47

123. ——— *Suit on agreement to take* [illegible]

[illegible] of money. Subsequently, [illegible]

[13 W. R., 1[illegible]

124. ——— **Suit to set aside patni** [illegible]

[illegible] party to the [illegible] that a suit [illegible] set aside the [illegible] OCHUN DASS [illegible] 1[illegible] W. R., 254

[illegible]

[10 W. R., 414

125. ——— **Suit on agreement not to mortgage or sell except after offer to plaintiff**—*Right of pre-emption—Hypothecation, suit to recover property after.*—The plaintiff alleged that certain property was the hereditary property of himself and his brother *N*; that it had been determined by an award that if the plaintiff or *N* desired to mortgage or sell their respective shares they should, in the first instance, mortgage or sell to one another, and, if one party declined to take on mortgage or purchase, that the other should be at liberty to alienate elsewhere; that *N* had, however, executed a bond in favour of *R*, in [illegible]

[illegible] a deed of sale, and had been executed with an intent [illegible]

[illegible] cient to enable the Court to consider the validity of the claim made by the suit and on the facts and merits to do justice between the parties to the award, the objection to the form of the suit ought not to stand in the way of the plaintiff being decreed his rights under the award. PIRTHEE SINGH v. DYA KISHUN

[5 N. W., 220: Agra, F. B., Ed. 1874, 278

126. ——— **Suit to recover loan for** [illegible]

[illegible] for the lenders in the English form [illegible] of enabling them to enforce the personal engagements of the vakils and managers in the Supreme Court, was held not to deprive the lenders of their right, under the law prevailing among the natives in matters of contract, to sue the vakils in the Courts of the mofussil. *Held also that the laws of 1781 and 1787 were repealed by the laws of [illegible] when this action was brought, and there was nothing in these two former Regulations which made it illegal for the vakil to contract a debt, or for any other native to take an obligation from a vakil without the consent of the officers of Government; but that such an obligation, if founded on a valuable consideration, would be equally binding upon the [illegible] of the defendant, and the decree and the payment would be equally legal as if such consent*

RIGHT OF SUIT—*continued.*

15. CONTRACTS AND AGREEMENTS —*continued.*

had been obtained and registered, though no Court of justice might have jurisdiction to enforce the right. GOPEE MOHUN THAKOOR *v.* RADHANATH [5 W. R., P. C., 72

127. ———— Transfer of Property Act (IV of 1882), ss. 10, 11—*Contemporaneous "ikrarnamah"—Condition restraining alienation—Restriction repugnant to interest created—Lambardar and co-sharer—Collection of rents by co-sharer—Suit by lambardar for money had and received.*—*M*, a co-sharer in a village, transferred to *A*, another co-sharer, a 2 annas share by deed of sale. Upon the same date *A* executed an ikrarnamah, in which he agreed that he would not collect the rents of the 2 annas transferred to him, that he would not ever demand partition of that share, and that he would not alienate or mortgage it or otherwise exercise proprietary rights over it. It was further provided that in the event of *A* committing any breach of covenant the sale should be avoided, and the proprietary rights in the 2 annas share should revest in *M*. A suit was subsequently brought by *M* upon the allegation that, in breach of the covenants of the ikrarnamah, *A* had collected the rents of the share; that, in consequence of his action in collecting the rents, the plaintiff had been compelled to sue the tenants; that in these suits the tenants exhibited receipts given by *A*, on the basis of which the suits were dismissed; and that he had been subjected to various costs and expenses. He therefore claimed by way of damages from *A* certain sums of money realized by *A* as rent from the tenants, and further, by reason of the ikrarnamah, to avoid the sale-deed which preceded it. *Held* that provisions of this kind, which absolutely debar the person to whom the proprietary rights have passed from exercising these rights, impose conditions which no Court ought to recognize or give effect to; that a covenant in a sale-deed the effect of which is to disable the vendee from either alienating or enjoying the interest conveyed to him is not only contrary to public policy, but in violation of the principle of ss. 10 and 11 of the Transfer of Property Act; and that therefore, as the agreement on the basis of which the plaintiff asked for relief was one which no Court should assist him in enforcing, the suit must fail. *Holman* v *Johnson, 1 Cowp., 543; Anantha Tirtha Chariar* v. *Nagamuthu Ambalagaren, I. L. R., 4 Mad. 200; Bradley* v. *Peixoto, Tudor's L. C., R. P., 968;* and *Aminuddaula Muhammad Kakya Hussain* v. *Nateri Srinivasa Charlu, 6 Mad., 356,* referred to. *Balaji J. Rahalkar* v. *Narayanbhat, 3 Bom., A. C., 63,* distinguished. *Held* by MAHMOOD, *J.*, with reference to the sums realized by the defendant as rent, that whatever may be the rights of a lumbardar in reference to the collection of rents, the defendant, being a co-sharer in the village and having, though perhaps irregularly, realized sums of money from the tenants, could not, in a Civil Court and in a suit of this nature, be made to repay the lambardar; and the latter's only remedy was to deduct the items when the bujharat or rendition of accounts between the co sharers and himself took place. MAHARAM DAS *v.* AJUDHIA . . . I. L. R., 8 All., 452

128. ———— Suit for value of goods covered by bill of exchange—*Payee for honour.*—A payee for honour, though entitled to the same remedies upon the bill as the party for whom payment was made, is not entitled to bring a suit in his own name and in his own behalf for the value of the goods for which the bill was drawn. CARMICHAEL *v.* BROJONANTH MULLICK [1 Hyde, 274

129. Promissory note or bond executed in foreign State—*Lex loci contractus—Suit upon consideration for the document—Lex fori—Procedure—Practice—Plaint, Form of—Issue.*—Where according to the *lex loci contractus* a promissory note or bond cannot, in the absence of registration, be a source of legal right, no action on an unregistered note or bond can be maintained. Whether a suit will lie upon the consideration for the instrument is a question of procedure to be governed by the *lex fori*, and in British India such a claim must either be stated in the plaint as an independent ground of claim or treated as such and an issue taken at the first hearing. *Valiappa* v. *Mahommed Khasim, I. L. R., 5 Mad., 166,* cited and followed PALANIAPPA CHETTI *v.* PERIAKARUPPAN CHETTI [I. L. R., 17 Mad., 262

130. ———— Suit on a bond passed to a minor—*Contract Act (IX of 1872), ss. 10 and 11.*—A money bond taken by a minor is good in law, and may be sued on. HANMANT LAKSHMAN *v.* JAYARAO NARSINHA . . . I. L. R., 13 Bom., 50

131. ———— Suit by the heir of the deceased against surety—*Act XXVII of 1860, s. 5—Security-bond—Assignment of security-bond.*—On the issue to defendant 1 of a certificate under Act XXVII of 1860, defendant 2 executed to the District Court a security-bond. The plaintiff, who had established his right to the moneys collected under the certificate, then brought his suit on the security-bond to recover the amount so collected. *Held* that the plaintiff, not having obtained an assignment of the indemnity bond from the District Court, was not entitled to sue the surety. MAYAN *v.* CHATHAPPAN [I. L. R., 14 Mad., 473

132. ———— Suit by assignee of contract for damages for non-delivery—*Assignment of contract—Plea that assignment of contract was a sham—Sham assignment—Fraud—Right of third party to question bonâ fides of assignment—Assignment by deed—Demand for delivery—Contract Act (IX of 1872), s. 93.*—On the 25th December 1886 the defendant contracted to deliver to the plaintiff on the 26th May 1887 one hundred bales of cotton at R196 per candy. On the 28th February 1887 the plaintiff assigned this contract to one *K*, and a few days afterwards, *viz.*, on the 7th March 1887, he became insolvent. In his schedule there was no

RIGHT OF SUIT—*continued*

15 CONTRACTS AND AGREEMENTS —*continued*

mention of this contract, or its assignment, or of the receipt of any consideration for the assignment *K*, as the beneficial assignee of the contract subsequently called on the defendant to give delivery of the goods and offered payment of the price but ... aware of the plaintiff's ... was not a ... value, and ...

... formance ... petition in insolvency ...

for breach of the contract ... assignment to *K*, though in fraud of the Official Assignee and the creditors of the insolvency was not in fraud of the defendant, and that by the dismissal of his petition the parties, as to their rights and liabilities under the contract, had been relegated to the position which they occupied prior to the plaintiff's insolvency *Held* that the plaintiff was not entitled to recover damages from the defendant There had been no demand for delivery by the plaintiff, or on his account, as required by s 93 of the Contract Act *K* had asked for delivery as beneficial owner, but the property had not passed to him by the assignment, and although the defendant would be bound to recognize an assignee who could establish ... ownership in the contract, he was ... fact ...

law by the assignor or ... creditors, on the ground of its not being a real transaction, but where the assignment is not by deed the true nature of it as a sham may be proved In India it is in all cases open to third parties to show that such was the case MULJI GOVINDJI *v* NATHUBHAI HIRACHAND . I L R., 15 Bom, 1

133 ———— Suit by assignee—*Assignment of contract—Novation of contract—Contract Act, s 62—Contract for forward delivery*—The defendant was sued by the plaintiffs as assignees of one *S* for *differences on certain contracts of purchase and* sale of cotton and seeds The defendant contended ... the contracts in question were not assignable ... been asked for ... therefore maintain... ... ion was a good one An assignment of a contract ... distinguished from a debt or other chose in action, to be

RIGHT OF SUIT—*continued*.

15 CONTRACTS AND AGREEMENTS —*concluded*

... legal ... such contracts considered TOD *v* LAKHMIDAS PURSHOTAMDAS . I L R, 16 Bom, 441

134 ———— Compromise of decree Effect of—*Mode of enforcing agreement of compromise—Reciprocal promises—Form of decree— ... Act (IX of 1872), s 51*—A decree for ...

plication for ex... agreement, consisting of reciprocal promises to be performed by the plaintiffs and the defendant, can be sued upon by the plaintiffs when they have *not refused to carry out their promises though they may not have put an allegation in the plaint* saying that they are ready and willing to do so, s 50 of the Indian Contract Act being no bar to such a suit *When the plaintiffs are entitled to* ask for the performance of the part of the contract in which they are interested and the defendant claims execution of the whole, to which the *plaintiffs do not object the Court ought to pass* a decree directing execution of the whole contract instead of rejecting the claim HARI RAGHUNATH JOSHI *v* KRISHNAJI ANANT JOSHI

[I L R, 19 Bom., 548

16 CO-SHARERS

135. ———— Suit by one co sharer for value of personal property alienated by another.—If a co-sharer of personal property sells the ... consent and authority of the ...

KAMINEE ...

136. ——— Suit by one co-sharer for ... of wood removed—*Tenancy in common— ... tenant— ... origi... roduce ... age— Damages Account*—The ... and *A*, were co-owners of a forest *G* mortgaged his interest in the forest to the plaintiff and put him into possession The mortgage was registered Subsequently *G and A joined in a licence to the second and third d... ... to cut and take wood in the forest, which the ...* ... *G* and the ... *ing the defendants from* ... that the claim would not lie, neither for the whole of the damages claimed nor for such part of them as

RIGHT OF SUIT—*continued.*

16. CO-SHARERS—*concluded.*

was equivalent to *G*'s interest in the value of the wood removed,—the only remedy open to the plaintiff being a suit against *A*, his co-tenant, for an account. Though *G*, being out of possession to the knowledge of the licensees, could convey to them no right, yet *A* could; and a license from *A* gave a right to cut wood in the whole of the forest, since a co-tenant may lawfully enjoy the whole property in any way not destructive of its substance so as to amount to an ouster of the other co-tenants, and whatever a co-tenant may do himself he may license another to do. The licensees therefore did no wrong in acting on their license, and no suit lay against them; nor did *G*'s joining in the license do the plaintiff any distinct injury for which an action for damages would lie against him. *Quære*—Whether plaintiff might not, however, have a right of action against *G* to recover any sum which *G* had obtained by assuming falsely a position and rights belonging to the plaintiff. BALVANTRAV ORR *v.* GANPATRAV JADHAV . . . . I. L. R., 7 Bom., 336

137. ———— **Suit by one co-parcener against the others for declaration of right to Government allowance forming part of joint estate.**—One member of an undivided family cannot sue his co-parceners for a declaration that he is entitled to recover the whole of a family varshasan. The only mode in which, as between the members of the joint family, a declaration of right to the varshasan can be properly obtained is by one of the co-parceners bringing a suit for partition of the whole of the family estate, including the varshasan and for a declaration of the shares of the respective co-parceners. TRIMBAK DIXIT *v.* NARAYAN DIXIT [11 Bom., 69

138. ———— **Suit to recover share of produce**—*Property left undivided at partition—Amendment of plaint—Suit for partition—Variance between pleading and proof.*—A claim to a share of the produce of the property left undivided at a partition does not lie, because such a claim is based on the right to a particular share in the property itself which has no existence in the case of an undivided family. A suit for a share of the produce of the property left undivided at partition cannot be amended, by making it a suit for partition, without entirely changing its character. GAVRISHANKAR PARASHURAM *v.* ATMARAM RAJARAM [I. L. R., 18 Bom., 611

17. COSTS.

139. ———— **Suit for costs incurred in resisting a claim to attached property**—*Civil Procedure Code, 1859, s. 246.*—A suit cannot be maintained for costs incurred by the plaintiff in resisting a claim made by the defendant, under s. 246 of the Code of Civil Procedure, the greater part of which was disallowed. It is only when the costs are made a part of the order, and then by execution under it, that a party can in such cases enforce the payment of costs. ANONYMOUS . 3 Mad., 341

RIGHT OF SUIT—*continued.*

17. COSTS—*continued.*

140. ———— **Suit for costs incurred in possessory suit**—*Bom. Act V of 1861.*—No action lies for the recovery of costs incurred by a defendant in defending himself in a possessory suit brought against him in a Mamlatdar's Court under Bombay Act V of 1861. JALAM PUNJA *v.* KHODA JAVRA . . . . 8 Bom., A. C., 29

141. ———— **Claim for costs incurred in another suit**—*Suit in Revenue Court—Damages.*—In a suit for damages for breach of a covenant in an ikrarnamah not to collect the rents of a certain share in a village, and not to sue for the partition of that share, the plaintiff claimed (*inter alia*) some costs and expenses incurred in a suit brought by the defendant in the Revenue Court for partition of the share. *Held* by MAHMOOD, *J.*, with reference to the costs incurred by the plaintiff in the Revenue Court, that such Court in the former suit was entitled to deal with the question of costs, and dealt with it, and the costs could not be made the subject-matter of fresh litigation, and therefore could not be claimed in this suit by way of damages. *Chengalrat Raya Mudali v. Thangatchi Ammal, 6 Mad., 192; Jalam Punja v. Khoda Javra, 8 Bom., A. C., 29; Kabir v. Mahadu, I. L. R., 2 Bom., 360;* and *Pranshankar Shivshankar v. Govindlal Parbhudas, I. L. R., 1 Bom., 467,* referred to. MAHRAM DAS *v.* AJUDHIA . I. L. R., 8 All., 452

142. ———— **Suit to recover costs incurred in former proceedings in Court having jurisdiction.**—An objection to the attachment and sale of a house which was advertised for sale in execution of a decree for enforcement of lien was allowed, upon the ground that the objector had purchased the house from the mortgagor, and his purchase was not subject to the decree, to which he was not a party. The decree-holder then brought a suit against the objector, claiming a declaration of his right to recover the amount due under his decree by enforcement of lien against the house, and that the order releasing the property from attachment should be set aside, and also to recover the costs incurred by him in the execution department on the defendant's objection. *Held* also that, inasmuch as where a Court, having jurisdiction, orders or refuses costs, a separate action for such costs cannot be brought, the plaintiff was not entitled to recover from the defendant the costs incurred by him in the execution department. *Mahram Das v. Ajudhia, I. L. R., 8 All., 452,* followed. KADIR BAKHSH *v.* SALIGRAM [I. L. R., 9 All., 474

143. ———— **Suit by Commissioner for his costs**—*Civil Procedure Code, 1859, ss. 180, 182.*—Where a Commissioner was appointed by a Court under s. 180 of Act VIII of 1859 to take accounts at the request of the plaintiffs, and his costs were not prepaid under s. 182, and the defendant was by the decree ordered to pay the costs of the suit, but the costs of the Commissioner were not entered in the decree,—*Held*, in a suit by the Commissioner against the plaintiffs for remuneration for his labour, that

RIGHT OF SUIT—*continued*

17. COSTS—*concluded*

the plaintiffs were liable. GOPALARATNAMAYYAR *v* BUPALA NARASIMMA NAYUDU

[I. L R., 4 Mad , 399

144. ——— **Suit for costs incurred in criminal case.**—As to recovery of costs of a criminal case in a subsequent civil action. RAM LAL *v* TULA RAM . I. L. R , 4 All , 97

145 —— —— **Damages, Suit for**—*Costs incurred in prosecuting case in Criminal Court* —*Held* that a suit will not lie to recover as damages the expenses incurred by the plaintiff in prosecuting the defendant in a Criminal Court FAZAL IMAM *v* FAZAL RASUL . I. L R., 12 All., 166

See MAHOMED ALI *v* BYAMA

[I L R , 14 Bom , 100

18 CUSTOMARY RIGHTS

146 ——— **Suit to restrain the use for tazias of land used for the purposes of the Holi**—*Easement—Cause of action*—*A*, a Mahomedan, purchased a house adjacent to a piece of waste

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incident thereto, and praying that the defendant

had any proprietary right

could not strictly be regarded as for an easement, the right not being set up in respect of any dominant

NATH . I. L. R., 6 All., 497

RIGHT OF SUIT—*continued*

18 CUSTOMARY RIGHTS—*continued*

147. ——— **Custom of burial**—*Local custom—Right claimed by a certain section of Mahomedans to bury their dead in a certain locality—Right of burial*—Where a certain section of the Mahomedan community had been for many years in the habit of burying their dead near a darga in plaintiff's land, and the plaintiff sued for an injunction restraining them from exercising this right in future,—*Held* that the right of burial claimed by the defendants was not an easement, but a customary right, which, being confined to a limited class of persons and a limited area of land, was sufficiently *certain and reasonable to be recognized as a valid* local custom MOHIDIN *v* SHIVLINGAPPA

[I. L. R., 23 Bom , 666

148 ——— **Suit to enforce payment of dues for performance of marriage ceremonies**—*Cause of action*—No suit lies to enforce payment of murjada (respect money) alleged to be a

[5 W R., 225

149 ——— **Suit to recover fees for use of temple**—*Custom*—A suit to recover the amount of marriage fees which the defendant, it was alleged, became liable to pay for the use of a temple upon his marriage with a woman residing in the village where the temple was situated, is not maintainable unless on proof of a well-established custom to that effect MAADAN *v* ERLANDI 5 Mad , 147

150. ——— **Suit for right to use ghât for religious purpose**—*Abstract right—Cause*

for religious purposes a ghât situate on the Ganges, but that the Mahomedans were in the habit of interfering with the exercise of such right by bathing at the ghât He prayed for a declaration of the right, and for a perpetual injunction to be issued to the Mahomedans generally forbidding them to resort to the ghât No act of trespass was

any

inconvenience to the plaintiff was not maintainable, since the Court had no power to pass a decree against persons who had never interfered with the property in dispute, or to issue an injunction against the whole Mahomedan world

[I. L. R., 1 All., 100

151. **Suit for right to use ghât for collecting religious offerings**—*Right to land of ghât—Cause of action*—Certain Brahmans, on the allegation that a custom existed whereby they had an exclusive right to use a ghât for the purpose

RIGHT OF SUIT—*continued.*

18. CUSTOMARY RIGHTS—*concluded.*

of collecting alms, the land of which did not belong to them, sued for a declaration of the exclusive right to the use of the ghât for that purpose. *Held* that, as the plaintiffs had no right of any kind in the land of the ghat, the suit was not maintainable. HUSAIN ALI *v.* MATUKMAN . I. L. R., 6 All., 39

152. ———— **Right to occupy specific portion of ghât dedicated to the public not susceptible of acquisition by prescription** —*Gangaputras.*—*Held* that no exclusive right of occupation could be acquired by prescription in any specific portion of a bathing ghât the use of which was dedicated to the public. *Husain Ali* v. *Matukman, I. L. R., 6 All., 39,* followed. *Tyron* v. *Smith, 9 A. & E., 406,* and *Turner* v. *Ringwood Highway Board, L. R., 9 Eq., 418,* referred to. MUNICIPAL BOARD OF CAWNPORE *v.* LALLU [I. L. R., 20 All., 200

153. ———— **Suit for perquisites**—*Suit by mahar of village against other mahars to establish his right to share in mahar's perquisites.*—A suit by one of the mahars of a village against his fellow-mahars to establish his right to share in the mahar's prequisites, such as the carcasses of dead animals, etc., will lie, though such a claim be not tenable against the raiyats who may have owned such animals when alive. YELLAPA VALAD BHIMAPA *v.* MANKIA [8 Bom., A. C., 27

19. DEBTOR AND CREDITOR.

154. ———— **Suit by debtor to compel creditor to accept money due**—*Suit on bond—Refusal to accept instalments on bond.*—A bond having been executed, whereby it was stipulated that a debt should be paid by instalments, subject to the condition that, if any one instalment were not paid within a certain time after it became due, the whole amount remaining due should become payable at once, the creditor evaded the debtor's attempts to pay the instalments as they became due, and the debtor brought a suit to compel the creditor to accept an instalment due. *Held* that such a suit would not lie. KRISTAYA *v.* KASIPATI . . I. L. R., 9 Mad., 55

20. DECREES.

155. ———— **Suit to enforce execution of decree in another suit.**—A suit will not lie to enforce execution of a decree in another suit. TAREKNARAIN SINGH *v.* PUNCHA SINGH [W. R., 1864, 376

156. ———— **Suit to enforce execution of decree**—*Mode of enforcing right.*—The proper mode of enforcing a decree is that pointed out by the Code of Civil Procedure, 1859, namely by execution and sale, or by execution and attachment, and the appointment of a receiver under s. 243 to collect the property. Where the Legislature has prescribed a particular mode of enforcing a right created by a decree, the possessor of that right is bound to follow

RIGHT OF SUIT—*continued.*

20. DECREES—*continued.*

the procedure prescribed and no other. MAHOMED AGA ALI KHAN *v.* WIDOW OF BALMAKUND [L. R., 3 I. A., 241: 26 W. R., 82

157. ———— **Suit on decree of High Court**—*Civil Procedure Code, 1877.*—There is nothing in Act X of 1877 which prevents a suit from being instituted on a decree of the High Court. ATTHERMONEY DOSSEE *v.* HURRY DOSS DUTT [I. L. R., 7 Calc., 74: 9 C. L. R., 357

158. ———— **Suit on decree pending appeal.**—*Quære*—Whether a new suit will lie upon a decree pending an appeal. IMAMUN *v.* HURDYAL SINGH . . . . . 5 W. R., 277

159. ———— **Suit for amount due on decree lost in Mutiny.**—A suit was held to lie for the amount of an unsatisfied claim adjudged by a decree which was destroyed during the Mutiny, and the cause of action to date from the lost decree. EMAMUN *v.* HURDYAL SINGH . W. R., 1864, 301

See contra, NUZUR BANOO *v.* HOSSEIN ALI KHAN [W. R., 1864, 378

160. ————**Suit on decree where there were no means of enforcing it by execution.**—A decree in a suit upon a bond against the heir of the deceased obligor awarded to the plaintiff the amount of the bond from the property of the obligee, and directed that "the defendant be released from the claim in this suit." An order for execution of the decree was set aside, on the ground that the decree did not warrant the issue of an attachment, since it was not against any person. *Held* that a suit was maintainable by the plaintiff upon the decree recovered in the former suit, there being no other means of enforcing the former decree or recovering his debt. ANUND ROY *v.* MUNORUT SINGH . . . . . . Marsh., 611

161. ———— **Suit for balance after execution of decree for rent**—*Suit under Rent Act to recover sum due after sale in execution of decree under Beng. Reg. VII of 1799.*—A suit was held to be not maintainable under the Rent Act to recover a sum due under a decree for rent obtained under Regulation VII of 1799, and remaining unsatisfied after sale of the tenure. DHEERAJ MAHTAB CHAND *v.* DENO NATH ROY [Marsh., 340: 2 Hay, 445

162. ———— **Suit on foreign judgment** —*Suit on judgment of Small Cause Courts.*—A suit will not lie in the Courts of India upon the judgment of any Court in British India. The only exception to this rule is in the case of judgments of a Court of Small Causes on which suits are permitted to be brought in the High Court in order to obtain execution against immoveable property. *Quære*—Whether suits on foreign judgments are maintainable in the Civil Courts of India. BHAVANISHANKAR *v.* PARSADRI . . I. L. R., 6 Bom., 292

163. ———————— *Native Court's decree—Code of Civil Procedure (Act XIV of 1882), s. 434.*—A suit cannot generally be maintained in any British Court upon the judgment of a Native

RIGHT OF SUIT—*continued*

20 DECREES—*continued*

Court *Quære*—Whether it could where there had been a notification by the Governor General of India under s 434 of the Civil Procedure Act (X of 1882) HIMMATLAL *v* SHIVAJIRAV

[I L R., 8 Bom., 593

164. ———— *Suit on judgment of Court in Native States*—A suit will be on a judgment of a Court in a Native State MAYARAN *v* RAVJI . I L R., 24 Bom, 86

165 ———— Suit on decree of Small [illegible] *tion*— [illegible] Small [illegible] d but [illegible] ent to [illegible] High [illegible] Court, [illegible]

166 ———— *Suit in High Court*—A suit can be brought in the High Court on a decree of the Small Cause Court KHOBLALL BABOO *v* RAMCHUNDER BOSE

[I. L R., 2 Calc, 434

167 ———— *Decree unsatis-* [illegible] —In a [illegible] t to recover R7 7 [illegible]

168 ———— *Stat 9 & 10 Vict, c 95*—No suit will lie in the High Court on a decree of the Small Cause Court *Mohendronath Ash* v *Beedobodun Dutt, 1 Ind Jur, N S, 220*, *Madan Mohun Bose* v *Laurence, 1 B L R, O C 66*, and *Khoblall Baboo* v *Ramchunder Bose, I L R, 2 Calc, 434* dissented from. GOLAM ARAB *v* CURREEMBOX SHAIKJEE

[I. L. R., 5 Calc, 294 4 C. L. R., 477

169 ———— *Insufficiency of immoreable property to satisfy decree*—A suit may be brought in the High Court of Bombay upon a judgment obtained in the Court of Small Causes of Bombay The execution of the decree in such suits is rigorously confined to immoveable estate The ground of the interference of the High Court in such cases is that practically the judgment-creditor could not recover his debt except by process against the immoveable estate of the debtor In such cases the plaint must contain an averment and the plaintiff must establish to the satisfaction of the High Court that there is not any sufficient moveable property of the defendant against which the decree of the Court of Small Causes can be fully executed and that he has immoveable property situated within the original jurisdiction of the High Court against which execution can be had FAKIRAPPA *v* PANDURANGAPA

[I. L R., 6 Bom, 7

170 ———— *Suit in Small Cause Court*—A suit will not lie in a Small Cause Court on a decree of that Court SANDES *v* JOMIR SHAIKH 9 W. R., 309

171 ———— *Suit in Small Cause Court—Presidency Small Cause Courts Act (XV of 1882), ss 1, 4 94*—A judgment-creditor in the Court of Small Causes had not before the 1st July 1882 the right to sue in that Court on his judgment MERWANJI NOWROJI *v* ASHABAI

[I. L R, 8 Bom., 1

172 ———— Suit on decree barred by limitation —*Quære*—Whether a suit could be maintained on a decree that was held to be barred by lapse of time LAKSHMAMMA *v* VENKATARAGAVA CHARIAR . . . 4 Mad., 89

173. ———— *Neglect to execute decree in suit for possession*—Where a party brings a suit for possession and obtains a decree which he neglects to execute no subsequent suit on the same cause of action will lie GOPI MOHUN DASS *v* TINCOURI GUPTA 1 C. L. R., 254

NUBO DOORGA *v* SEETAMONEE 23 W. R., 407

174. ———— *Neglect to execute decree*—Where persons by their own neglect have lost the remedy by process of execution to which they became entitled by an adjudication in a former suit, they cannot be permitted to revert to the position which they held prior to the institution of that suit, and to bring a fresh suit. GOLAM HOSSEIN *v* ALLA RUKHEE BEEBEE

[3 N. W, 62. Agra, F. B, Ed. 1874, 248

HOSSEIN BUKSH *v* MUSUND HOSSEIN

[18 W R., 260

NURSINGH DOSS *v* KUMROODDEEN

[20 W. R., 412

175 ———— *Neglect to execute decree—Effect of barred decree—Former suit relating to land*—By SPANKIE and TURNBULL, JJ—When the nature of a decree is such that it admits of execution the decree holder cannot, after allowing the limitation period to elapse without issuing process of execution seek by a fresh suit to obtain the relief he should have sought by execution. By TURNER, *Offg* C.J—Although by reason of the

RIGHT OF SUIT—*continued.*

20. DECREES—*continued.*

limitation law process of execution may be barred, the decree is not altogether void. Its effect in ascertaining the rights of the parties is unaffected by any of the provisions of the limitation law. In respect of landed property which has been the subject of a decree, a plaintiff need not necessarily found his suit on the decree. He may assert, as his cause of action, the continued trespass of the defendants subsequently to the decree, which gives him a new cause of action. RAM JUS RAE *v.* RAM NARAIN

[2 N. W., 382: Agra, F. B., Ed. 1874, 226

176. ———— A suit will not lie upon a decree the execution of which is barred by the provisions of the Limitation Act. FAKIRAPPA *v.* PANDURANGAPA . . **I. L. R., 6 Bom., 7**

177. ———— *Omission to enforce decree by execution till barred.*—When a decree is merely declaratory and does not require to be carried into effect by process of execution, the right thereby declared and ascertained exists independently of any process for enforcing it. But when the nature of the decree requires that it should be executed, a decree-holder cannot, after allowing the limitation period to elapse without issuing process of execution, seek by a fresh suit on the decree to obtain that which he should have sought for by executing it. DOOBEE SINGH *v.* JOWKEE RAM

[3 Agra, 381: Agra, F. B., Ed. 1874, 172

YAKOOB ALI *v.* UBDOOLRAHMAN . **3 Agra, 383**
[S. C. Agra, F. B., Ed. 1874, 172

JUGURNATH *v.* BALGOBIND
[1 N. W., 105: Ed. 1873, 154

178. ———— *Suit to enforce declaratory decree for maintenance.*—A decree-holder, having obtained in 1874 a decree entitling her to a certain sum to be paid annually by the judgment-debtor, applied for execution of the decree on the 11th of March 1875, but made no further application until July 1882. *Held,* though the application was barred by lapse of time, yet the decree being a declaratory one, a suit to enforce the annual right to maintenance would lie. SABHANATHA DIKSHATAR *v.* SUBBA LAKSHMI AMMAL . . **I. L. R., 7 Mad., 80**

179. ———— **Declaratory decree**—*Maintenance suit, Decree in—Annual payments.*—A Hindu widow obtained a decree in 1876 which provided that she should receive future maintenance annually at a certain rate, but did not specify any date on which it should become due. In 1887 she filed the present suit claiming arrears of maintenance at the rate fixed in the decree of 1876. *Held* that the suit did not lie. *Sabhanatha* v. *Lakshmi, I. L. R., 7 Mad., 80,* distinguished. VENKANNA *v.* AITAMMA . . . **I. L. R., 12 Mad., 183**

180. ———— **Suit to set aside decree**—*Code of Civil Procedure (Act XIV of 1882), ss. 108, 540, and 623—Amendment of plaint without notice to party.*—The only ways in which a decree may be set aside by a party thereto are by appeal, by proceedings under s. 108, Civil Procedure Code, and similar sections, and by application for review; if the decree is not tainted by fraud, no suit lies to set it aside. The mere fact that an amendment has been made in the pleadings without notice to a party who has not appeared does not nullify the decree subsequently made in the suit. SADHO MISSER *v.* GOLAB SINGH . . **3 C. W. N., 375**

21. DIGNITIES.

181. ———— **Suit for declaration of right to receive marks of distinction.**—A suit for a declaration of a right to receive marks of recognition and honour at idol-festivals, or for damages from priests for withholding the same, is not cognizable by a Civil Court. GOSSAIN DOSS GHOSE *v.* GOORO DOSS CHUCKERBUTTY

[16 W. R., 198

182. ———— **Suit to establish right to mere dignity**—*Dignity unconnected with emolument.*—Plaintiff sued for a declaration of his right to take a cupola to a certain temple, and to place it upon the car of the idol, and to take a nandicola (bamboo) with tom-toms from his house to the temple, and to offer the first cocoanut to the idol at the annual festival held in honour of a certain Dingayet saint. *Held* that the suit was not maintainable, as it was brought to vindicate plaintiff's right, not to an office, but to a mere dignity unconnected with any fees, profits, or emoluments. SANGAPA BIN BASLINGAPA *v.* GANGAPA BIN NIRANJAPA

[I. L. R., 2 Bom., 476

183. ———— *Suit to establish right to parade bullock on the Pola—Damages—Dignity.*—A suit does not lie in a Civil Court for a declaration that the plaintiffs have the right of parading their bullock on the Pola (the last day of the month of Shravan) of one year, and the defendants on the Pola of the next; for damages for the invasion of the plaintiff's right in a given year; and for an injunction restraining the defendants from interfering with the said right. RAMA *v.* SHIVRAM

[I. L. R., 6 Bom., 116

184. ———— *Suit claiming right to have palki carried crossways.—Quære—*Whether a suit lies in the Civil Courts against the chief priest of the Lingayats by the swami or chief priest of the Smartava sect of Brahmins claiming, by grant from the supreme power of the State, the privilege of adavi palki, of being carried, on ceremonial occasions, in a palanquin borne crossways, so that the poles traverse the line of march. SUNKUR BHARTI SWAMI *v.* SIDHA LINGAYAH CHARANTI

[6 W. R., P. C., 39: 3 Moore's I. A., 198

185. ———— *Mans, Suit for right to—Perpetual injunction against invasion of these mans—Right to worship—Small gifts by presents of rice, cocoanuts, vida, and version, attached to such mans, how far considered as emoluments.*—The plaintiffs and the defendants, as members of a family of Ganvkars, claimed to be

RIGHT OF SUIT—*continued.*

21. DIGNITIES—*concluded.*

decree, and granted a perpetual injunction against the defendants, prohibiting them from interference with the plaintiff's enjoyment On appeal by the ... ng the ... plain- ... s were ... uments ... priest, ... sion of worshipping the deity, and of a piece of vension on

185. ——————— *Cause of action —Civil right—Precedence at religious festival.*—The plaintiff alleged that he and his ancestors had possessed for 300 years the privilege of receiving before others sacred ashes, sandal, betel and nut,

GOUNDAN *v.* KOLANTHAYAN I. L. R., 7 Mad., 91

22 DOCTOR'S FEES.

187.——————Suit for doctor's fees—*Right of doctor to recover fees.*—The fact of a doctor

23. DOCUMENTS, LOSS OR DESTRUCTION OF.

188. ——————Suit on lost cheque—*Cause of action—Civil Procedure Code, 1877, s. 61.*—The indorsees of a cheque sued the indorser, stating in their plaint that the cheque had been lost and that the defendant refused to give them a duplicate of it, and claiming a duplicate of it, or the refund of the money they had paid the defendant on the cheque.

RIGHT OF SUIT—*continued.*

23. DOCUMENTS, LOSS OR DESTRUCTION OF —*concluded.*

Held that the plaint disclosed a cause of action against the defendant. BALDEO PRASAD *v.* GRISH CHANDRA BOSE I. L. R., 2 All., 754

189 Suit to compel execution of another document where one has been destroyed before registration.—A suit will lie to compel the defendant to execute another instrument of sale where the first one has been destroyed by fire soon after its execution, and has on that account, though compulsorily registrable, become incapable of being registered NYNAKKA ROUTHEN *v.* VAVANA MAHOMED NAINA ROUTHEN

[5 Mad., 123

190. — — Suit to compel execution

REDDI *v.* RAMALINGACHI REDDI

[I. L. R., 20 Mad., 250

24. EASEMENTS

191. — —— Obstruction—*Acquiescence—Suit for removal of obstruction—Decree for plaintiff qualified by declaring that parties retain rights*

houses. ... land ther ... used as a ... mohulla

respect of an interference with a private easement, was maintainable without proof of special damage. *Karim Baksh v. Budha, I. L. R., 1 All., 249; Gehanaji v. Ganpati, I. L. R., 2 Bom., 469*, and *Uda*

which their neighbours had a right to use. *Uda Begam v. Imam-ud-din, I. L. R., 1 All., 82*, and

RIGHT OF SUIT—*continued.*

24. EASEMENTS—*concluded.*

192. ——— **Privacy, Right of**—*Custom.*—A customary right of privacy, under certain conditions, exists in India and in the North-Western Provinces, and is not unreasonable, but merely an application of the maxims *sic utere tuo ut alienum non laedas* and *aedificare in tuo proprio solo non licet quod alteri noceat.* A substantial interference with such a right, where it exists, if without the consent or acquiescence of the owner of the dominant tenement, affords such owner a good cause of action. GOKAL PRASAD *v.* RADHO . **I. L. R., 10 All., 358**

25. ENDOWMENTS, SUITS RELATING TO.

193. ——— **Suit by a dharmakarta disaffirming the acts of his predecessor**—*Act XX of 1863, s. 7—Mad. Reg. VII of 1817, s. 12—Suit to set aside lease granted by former dharmakarta of temple—Limitation—Cause of action.*—The plaintiff, who had been appointed in 1886 by the Sub-Collector to be dharmakarta of a Hindu temple, for which no committee had been appointed under the Religious Endowments Act, s. 7, sued in 1886 to recover possession of land demised to the defendant on a perpetual lease in or about 1856 by a previous dharmakarta, who died in 1885. *Held* that, Madras Regulation VII of 1817 having been repealed as regards Hindu temples by Act XX of 1863, the appointment by the Sub-Collector gave the plaintiff no right to sue: accordingly, it was necessary to determine the question whether he had such right apart from that appointment. *Held* that, assuming he had such right, the plaintiff, since he did not derive title through his predecessor in office (the grantor of the lease), would be entitled to disaffirm his acts and could maintain the suit. The cause of action arose, and the period of limitation would therefore run not from the date of the lease, but from the date of the accession of the plaintiff to his office. MAHOMED *v.* GANAPATI . **I. L. R., 13 Mad., 277**

194. ——— **Suit by a trustee of a devasom disaffirming the act of his predecessor**—*Adverse possession—Limitation.*—The trustee of a Malabar devasom, who had succeeded to his office in June 1883, sued in 1887 to recover for the devasom possession of land which had been demised on kanom by his predecessor in February 1881, on the ground that the demise was invalid as against the devasom. The defendant had been in possession of the land for more than twelve years, falsely asserting the title of kanomdar with the permission of the plaintiff's predecessor in office. *Held* (1) the suit was not barred by limitation; (2) the plaintiff was entitled to maintain the suit for the purpose of recovering for the trusts of the devasom property improperly alienated by his predecessor. *Suppammal* v. *The Collector of Tanjore, I. L. R., 12 Mad., 387*, distinguished. VEDAPURATTI *v.* VALLABHA . **I. L. R., 13 Mad., 402**

195. ——— **Suit by dharmakarta of temple to recover temple property**—*Religious Endowments Act (XX of 1863), s. 12.*—The right to bring suits for the recovery of the property of a religious or charitable institution is vested in the trustee or manager of such institution, unless he is precluded by any special law from exercising it. There is nothing in the Religious Endowments Act to take away such powers. S. 12 relates only to the rents of property transferred by Government to the committees of such institutions. SANKARA MURTI MUDALIAR *v.* CHIDAMBARA NADAN

[I. L. R., 17 Mad., 143

196. ——— **Suit to prevent Committee under Act XX of 1863 from illegal interference**—*Decision as to validity of testamentary paper.*—The khaleefa of an endowment having, by a will or testamentary paper, appointed a successor, and given various directions respecting the endowed property, sent a copy of the paper to the Committee appointed under Act XX of 1863 for their information. The Committee having thereupon expressed their opinion that the document was of no effect, the khaleefa sued "to prevent the Committee from illegal interference, and to reverse their order respecting the will." *Held* that such a suit was not maintainable, and that no legal cause of suit appeared. HISAM-OOD-DEEN KHAN *v.* KHALEEFA UNWAR-OOLLAH

[2 N. W., 400

197. ——— **Alienation of wakf property—Suit to set aside such alienation**—*Mahomedan Law—Wakf—Mutawali—Civil Procedure Code (Act XIV of 1882), s. 539.*—Plaintiffs sued to recover possession of certain lands, alleging that they had been granted in wakf to their ancestor and his lineal descendants to defray the expenses for, or connected with, the services of a certain mosque; that their father (defendant No. 3) and cousins (defendants Nos. 4 and 5), who were mutawallis in charge of the said property, had illegally alienated some of these lands, and had also ceased to render any service to the mosque, whereupon they (the plaintiffs) had been acting as mutwalis in their stead. They therefore claimed to be entitled, as such, to the management and enjoyment of the lands in dispute. It was contended (*inter alia*) that the plaintiffs could not sue in the lifetime of their father (defendant No. 3), he not having transferred his rights to them. *Held* that the plaintiffs were entitled to sue to have the alienation made by their father and cousins set aside and the wakf property restored to the service of the mosque. They were not merely beneficiaries, but members of the family of the mutwalis, and were the persons on whom, on the death of the existing mutwalis, the office of mutwali would fall by descent, if, indeed, it had not already fallen upon them, as alleged in the plaint, by abandonment and resignation. Wakf property cannot be alienated, and any person interested in the endowment can sue to have alienations set aside and the property restored to the trust. *Per* RANADE, *J.*—As a suit for possession, the suit was defective in form, and could not be maintained. It was a suit for partition of a moiety of the lands, and the owner of the other moiety was not a party. The suit

RIGHT OF SUIT—*continued*

25 ENDOWMENTS, SUITS RELATING TO —*concluded*

was, however, really a suit for a declaration that the lands were the inam property of the mosque, and as such, was not liable to alienation for the private debts of defendants Nos 3 4, and 5 The plaintiffs were entitled to sue for such a declaration, although they could not obtain actual possession ... under ... hen a ... e to a ... osque ... full ... XIV ... where ... for a ... l the ... direction of the Court is necessary for the administration of the trust As against strangers s 539 does not apply HASSAN *v* SAGUN BALKRISHNA [I. L R , 24 Bom , 170

26 ENHANCEMENT, NOTICE OF

198 ———— **Suit to set aside notice of enhancement**—*Act X of 1859, ss 13 and 14* — Where notice of enhancement of rent has been served under s 13, Act X of 1859, upon a raiyat who has no right of occupancy, and whose rent has not been fixed by agreement with his landlord, such raiyat cannot maintain a suit to set aside the notice of enhancement His remedy, in case the rent is excessive, is under s 14. MOHEEM *v* RAHEEMOTOOLLAH [Marsh., 341 : 2 Hay, 433

27 EXECUTION OF DECREE

199 ———— **Suit after adverse order in execution**—*Civil Procedure Code, 1877, s 283* — S. 283 of Act X of 1877 enables a party against whom an order has been made in execution proceedings to bring a suit to establish his rights, whatever they may be, but it says nothing as to the *nature* of the suit or the Court in which it is to be brought Whether the party is to sue in the Civil Court or in the Small Cause Court depends entirely upon the nature of the claim and the right which is *sought to* be enforced. A person whose goods are illegally sold under an execution does not lose his right to them, though he may have claimed them unsuccessfully in the execution proceedings He may follow them into the hands of the purchaser, or of any other person, and may sue for them or their ...

200. ———— *Order striking off objection to attachment—Suit for damages for wrongful attachment—Suit to establish right—Civil Procedure Code, 1877, s 283* —An order striking off an objection to the attachment of property attached in execution of a decree for default of prosecution is not "conclusive," as regards the right which

RIGHT OF SUIT—*continued*

27. EXECUTION OF DECREE—*continued*

the objector claimed to the property, within the meaning of s 283 of Act X of 1877 *Held* therefore where a person objected to the attachment of certain moveable property attached in execution of a decree, claiming it as his own and his objection was struck off for default of prosecution, that such per- ...

BROWN . . . I. L. R , 3 All., 004

201. ———— *Objection to attachment by judgment-debtor on behalf of others —Order against decree holder—Civil Procedure Code (Act XIV of 1882), ss 244, 278, 279, 280, 281, 282, 283* —Where a judgment debtor claims ...

s 244 of the Code of Civil Procedure But where the judgment debtor raises the claim or objection on behalf of third parties who are not represented before the Court, the order passed thereon must be regarded as an order under s 280 of the Code, and the only mode in which that order can be contested is in a regular suit as provided by s 283 In execution of a decree against a judgment debtor in his private capacity, the judgment creditor attached certain property Thereupon the judgment debtor objected that the property attached had been dedicated by him some time previously as wakf under a registered wakfnamah, and that he was only in possession as mutwali under the deed The lower Court found ...

of the Civil Procedure Code On behalf of the judgment creditor it was contended that the order was one under s 244, and was thus appealable *Held* that the order was one under s 280, and that no appeal lay, the remedy of the judgment-creditor being by way of a regular suit as provided by s 283 ROOP LALL DASS *v* BEKANI MEAH MOHINEE MOHUN ROY *v* BEKANI MEAH [I. L R., 15 Calc , 437

See RAMANATHAN CHETTIAR *v* LEVVAI MARAKAYAR . . I. L. R , 23 Mad., 195

202. ———— *Civil Procedure Code (Act XIV of 1882), ss 280 283—Judgment-debtor, Suit by, to establish title to property the subject matter of claim in execution-proceedings* —A judgment-debtor is not necessarily a party against whom an order is made within the meaning of that term as used in s 283 of the Code of

RIGHT OF SUIT—*continued.*

27. EXECUTION OF DECREE—*continued.*

the subject-matter of a claim in execution-proceedings, and in respect of which an order has been made under s. 280 of the Code. KEDAR NATH CHATTERJI *v.* RAKHAL DAS CHATTERJI [I. L. R., 15 Calc., 674

203. ——— *Money-decree against mortgagor—Sale of equity of redemption by mortgagor—Mortgaged land attached and sold in execution—Claim by purchaser of equity of redemption—Civil Procedure Code (Act VIII of 1859), s. 246—Civil Procedure Code (Act XIV of 1882), ss. 278 to 283.*—In 1870 *B* mortgaged to *N*, with possession, a certain piece of land. On 17th June 1871 *M* and *T* obtained a money-decree against *B*. On 9th March 1872 the defendants bought from *B* his equity of redemption. In July 1872 *M* and *T* attached the land in execution of their decree. The defendants objected to the attachment under s. 246 of the Civil Procedure Code (Act VIII of 1859), but on investigation of their claim an order was made disallowing their claim on the 23rd December 1872. In June 1873 the defendants paid off the mortgage-debt and were put into possession by the mortgagee. In October 1873 *M* and *T* put up the land for sale in execution of their decree, and the plaintiff became the purchaser. On seeking to obtain possession, the plaintiff was resisted by the defendants, whose claim was allowed by the Subordinate Judge after inquiry. The plaintiff therefore brought this suit under s. 335 of the Civil Procedure Code (Act XIV of 1882). The lower Courts rejected his claim. On appeal to the High Court,—*Held* that, where, under s. 246 of the Civil Procedure Code (Act VIII of 1859) or the corresponding sections (278 to 283) of the Civil Procedure Codes of 1877 and 1882, an order has been passed against any person making a claim to property under attachment, such person may bring a suit to establish his title to the property within one year from the date of such order; but in default of his bringing such suit within the prescribed time, he is precluded from asserting his title against the auction-purchaser, whether as plaintiff or defendant. In the present case an order had been passed against the defendants under s. 246 of the Civil Procedure Code, 1859, on the 23rd December 1872; and as they had brought no suit within a year from that date, they could not now contest the plaintiff's title to the property. The defendants, however, having, since date of the said order, paid off the mortgage,—*Held* that it would be contrary to justice, equity, and good conscience for the Court to assist the plaintiff in obtaining possession unless he paid the defendants the amount paid by them to the mortgagee to free the property from the incumbrance. NILO PANDUBANG *v.* RAMA PATLOJI . I. L. R., 9 Bom., 35

Distinguished in JOY PROKASH SINGH *v.* ABHAY KUMAR CHUND . . . 1 C. W. N., 701

204. ——— *Decree against father—Family property attached—Objection by sons—Release of sons' shares—Suit to contest order of release—Cause of action.*—Certain land, the property of an undivided Hindu family, having been attached in execution of a decree against the father upon a bond, whereby the said land was hypothecated to secure the repayment of the debt, the sons intervened, objecting to the attachment of their shares in the said land, and their shares were released from attachment. The decree-holder then sued the sons to have it declared that their shares were liable to be sold in execution of the decree against the father. *Held*, overruling *Chockalinga* v. *Subbaraya, I. L. R., 5 Mad., 133*, that the suit was maintainable. RAMAKRISHNA *v.* NAMASIVAYA [I. L. R., 7 Mad., 295

205. ——— *Civil Procedure Code (Act XIV of 1882), s. 283—Hindu law, Alienation—Mitakshara—Mortgage by father—Liability of sons not made parties.*—The *L* Bank advanced money to *C*, a Hindu, governed by the Mitakshara school of law, upon mortgage of ancestral property. *S*, who was stated to be *C*'s only son, joined in the mortgage. Subsequently the Bank obtained a decree against *C* and *S* for the amount due on the mortgage. On attempting to sell the mortgaged property, other sons of *C* objected. This objection was allowed, and the mortgagees referred to a regular suit. They then sued all the sons of *C* to establish their lien on the mortgaged property. *Held* that the suit was maintainable under s. 283 of the Civil Procedure Code. *Nuthoo Lall Chowdhry* v. *Shoukee Lall, 10 B. L. R., 200,* and *Dhaee* v. *Hurry Prosad,* unreported, distinguished. SITANATH KOER *v.* LAND MORTGAGE BANK OF INDIA [I. L. R., 9 Calc., 888: 12 C. L. R., 574

206. ——— **Execution of decree, Suit for wrong done in**—*Suit for wrong done under colour of decree.*—The execution of an imperfect decree does not involve the doing of a wrong unless the decree is wrongly interpreted. An action will lie in the Civil Court where a wrong is committed under colour of a decree of another Court. DALMIAH *v.* RADHA PERSHAD SINGH . . 19 W. R., 188

207. ——— **Suit to remove obstruction to execution of decree.**—A suit may be brought for the removal of an obstruction to the execution of a decree. TAKHUROODDEEN MAHOMED ESHAN CHOWDHRY *v.* KURIMBUX CHOWDHRY . 3 W. R., 20

208. ——— **Suit to stay execution of decree**—*Suit to stay execution against certain property until judgment-creditor had proceeded against other property—Res judicata—Suit for land—Jurisdiction—Letters Patent, cl. 12.*—One *K C* was entitled to a share in pergunnah Alumpore. Before he obtained possession, Government revenue on the whole estate fell due. *K C* failed to pay his share, and his co-sharer *K*, to save the estate, mortgaged her share of the estate to one *H B* and with the amount so borrowed paid the whole sum due, and subsequently sued *K C* for the amount, eventually obtaining a decree. Subsequently this decree became vested in one *R*, and the pergunnah Alumpore came into the possession of one *K G*, who in 1874 took an assignment of the mortgage executed by *K* in favour of *H B*. The plaintiffs

RIGHT OF SUIT—*continued*

27 EXECUTION OF DECREE—*continued*

also alleged that since the execution proceedings had commenced they
made in 1877 b
it was agreed
against Alump
liability in respect of the charge on that property and in consideration *K G* executed a patni lease to *H B* of a portion of Alumpore at a small rent *P* obtained an order for execution against the property of *K C*, and, having transferred his decree to the High Court proceeded to enforce the decree against the plaintiff the widow of *K C* and her son by attaching the family dwelling house in Calcutta The widow and son then brought this suit against *K G R* and *H B* to have the share of *K C* in Alumpore ascertained and praying for a decree calling upon *K G* to pay the amount of the value of the share of Alumpore in satisfaction of *R*'s decree *Held* that the suit could not be maintained so far as it attempted to make the decree a charge against Alumpore *Held* on appeal that the suit was rightly dismissed that as far as *R* was concerned it had already been decided that *R* was entitled if he so chose to execute his decree against the Calcutta property and that therefore that question was *res judicata* and that as regards the plaintiff's claim that the patni given by *K G* to *H B* should be treated as part payment to *R* such a question could only be decided in execution proceedings that the mere existence of the agreement between *K G*

v KALIPROSONO GHOSE I L R, 8 Calc, 402

209 ——— Execution against a person not the legal representative—*Deceased*
with *N* and
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obtained a
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cree to the

On the 20th of August 1885 they made an application to the District Judge of Moradabad for execution of their decree and in it it was stated that the application was for execution against *A* and after
A D K
lents of
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Trans
port Department judgment debtors It was further stated that the judgment debtor is dead and his heirs are living and in possession of his estate and *A L* himself has realized R9 637-4 9 due

RIGHT OF SUIT—*continued*

27 EXECUTION OF DECREE—*concluded*

to the deceased judgment debtor from the Commis

issued to *A L* as also to the other persons named

connection or partnership between him and the

represent... treated him as a person in possession of a sum of money belonging to the deceased and therefore liable to the extent of the sum so received by him

therefore barred as not having been brought within

object ... vestigation being made into such objection and lastly of its being allowed or disallowed and these did not exist in this case The second contention also must fail as the Subordinate Judge never treated the proceedings in execution against *A L* upon the footing that he was the legal representative of the deceased judgment debtor *Mahomed Aga Ali Khan* v *Balmukund* L R 8 I A 241 *Nadir Hossain* v *Bepin Chund Bassarat* 3 C L R 437, were referred to ANGAN LAL v GUDAR MAL
[I L R, 10 All, 479

28 FERRY SUIT RELATING TO

...UND SINGH
[I L R., 4 Calc., 599 3 C L R., 427

RIGHT OF SUIT—*continued.*

29. FRAUD.

211. ——— — **Suit to set aside decree and sale in execution on the ground of fraud**—*Decree obtained by fraud—Civil Procedure Code (1882), ss. 108 and 244.*—A suit will lie to set aside a decree, and a sale held in execution of such decree, when both the sale and the decree are impeached on the ground of fraud. *Mohendro Narain Chaturaj* v. *Gopal Mondul, I. L. R., 17 Calc., 769,* and *Jagan Nath Gorai* v. *Watson, I. L. R., 19 Calc., 341,* distinguished. ABDUL MAZUMDAR *v.* MAHOMED GAZI CHOWDHRY

[I. L. R., 21 Calc., 605

See BHUBAN MOHAN PAL *v.* NUNDO LAL DEY

[I. L. R., 26 Calc., 324

and MOTI LAL CHAKRABUTTY *v.* RUSSICK CHANDRA BAIRAGI . I. L. R., 26 Calc., 326 note

Also PROSSONNO KUMAR SANYAL *v.* KALI DAS SANYAL . . . I. L. R., 19 Calc., 683

[L. R., 19 I. A., 166

212. ——— **Suit to set aside ex-parte decree and sale in execution thereof, on the ground of fraud**—*Res judicata—Effect of not appealing against an appealable order—Civil Procedure Code (1882), ss. 13, 108, 244, and 311.*—The plaintiff, having applied unsuccessfully under ss. 108 and 311 of the Civil Procedure Code to set aside an *ex-parte* decree against him and the sale of his property in execution thereof on the ground of fraud, and without preferring an appeal against the order rejecting his application under s. 108 of the Code, instituted this suit praying for the same relief. The Subordinate Judge dismissed the suit as not maintainable. *Held* that such a suit was maintainable, and that ss. 13 and 244 of the Civil Procedure Code were no bar thereto. The fact that his application under s. 108 was unsuccessful, and that he did not appeal against the order rejecting that application, did not disentitle him from prosecuting his remedy by suit on the ground of fraud. *Abdul Mazumdar* v. *Mohomed Gazi Chowdhry, I. L. R., 21 Calc., 605,* approved. *Held* also that, when there is an appeal against a decision, the effect of not appealing is that the decision holds good for what it is worth; so far as concerns any other modes of relief available, the person not appealing is in no worse position than if he had appealed and failed. *Raj Kishen Mookerjee* v. *Modhoo Soodun Mundle, 17 W. R., 413,* distinguished. PRAN NATH ROY *v.* MOHESH CHANDRA MOITRA . I. L. R., 24 Calc., 546

213. ——— **Suit in Recorder's Court to set aside for fraud decree obtained in Small Cause Court**—*Perjury.*—Where a decree has been obtained by a fraud practised on another, by which that other has been prevented from placing his case before the tribunal, which was called upon to adjudicate upon it, in the way most to his advantage, the decree is not binding upon him and may be set aside in a separate suit, and not only by an application made in the suit in which the decree was passed to the Court by which it was passed. But it is not the law that because a person against whom a decree has been passed alleges that it is wrong, and that it was obtained by perjury committed by or at the instance of the other side (which is fraud of the worst description) that he can obtain a rehearing of the questions in dispute in a fresh suit, by merely changing the form in which he places it before the Court, and alleging in his plaint that the first decree was obtained by the perjury of the person in whose favour it was given. In this case a suit brought in the Court of the Recorder of Rangoon to set aside a decree of the Court of Small Causes at Rangoon on the ground that it had been obtained by fraud was held under the circumstances of the case to be not maintainable. MAHOMED GOLAB *v.* MAHOMED SULLIMAN . . . I. L. R., 21 Calc., 612

RIGHT OF SUIT—*continued.*

29. FRAUD—*concluded.*

214. ——— **Suit to set aside a sale on the ground of fraud, challenging the decree in execution of which the sale took place as fraudulent, although the said decree was set aside on the ground of non-service of summons**—*Sale in execution of ex-parte decree—Civil Procedure Code (Act XIV of 1882), ss. 108 and 244.*—An *ex-parte* decree for rent was obtained against *A* and others, and in execution of that decree certain lands of the judgment-debtors were sold and were purchased by a third party. Subsequently, at the instance of *A*, the said *ex-parte* decree was set aside on the ground of non-service of summons, and the original suit was restored, but that was dismissed for default, as the then plaintiff did not proceed with it. An application was then made by *A* to set aside the sale on the ground of fraud which was rejected, because the auction-purchaser was not made a party to the proceedings. *A* then brought a suit for declaration of title to a portion of the land sold and for confirmation of possession, challenging not only the sale, but also the decree, on the ground of fraud. The defence mainly was that, regard being had to the provisions of s. 244 of the Civil Procedure Code, the suit was not maintainable. *Held* that, although there was no decree to be actually set aside, the plaintiff was entitled to show that the decree under which the sale was held was obtained by fraud as against him, and that therefore the suit was maintainable. *Abdul Mazumdar* v. *Mahomed Gazi Chowdhry, I. L. R., 21 Calc., 605,* and *Pran Nath Roy* v. *Mohesh Chandra Moitra, I. L. R., 24 Calc., 546,* referred to. RAM NARAIN TEWARI *v.* SHEW BHUNJAN ROY

[I. L. R., 27 Calc., 197

30. FRESH SUITS.

215. ——— **Suit after dimissal of suit instituted in incompetent Court**—*Act XXII of 1872, Effect of—Decrees made before Act came into operation.*—No provision of Act XXII of 1872 sets aside decrees passed by Appellate Courts before the date on which it came into operation, or restores decrees of the Court of first instance which had been annulled by the Appellate Court; nor is there any provision which debars a plaintiff, whose suit has been dismissed on the ground of its institution in a Court incompetent to receive it, from re-instituting

RIGHT OF SUIT—*continued*

30 FRESH SUITS—*continued*

his suit in a competent Court CHOONEE LALL v KUDHAIRA 6 N W, 34

216 ———— Suit for possession after failure to obtain it in execution—*Auction purchaser, Suit by, for possession—Execution pro*

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purchase, will lie when it is shown that an attempt has been made to obtain possession in execution proceedings and that such attempt has been unsuccessful In the case of *Lalit Coomar Bose* v *Ishan*

purchaser, he is bound to have recourse to that section rather than to bring a fresh suit ISWAR PERSHAD GURGO v JAI NARAIN GIRI

I L R, 12 Calc, 169

217 ———— *Suit to obtain possession of land sold in execution of a decree—*

218 ———— *Obstruction to execution of decree—Merger of cause of action—Civil Procedure Code, 1882 s 328—S A, R and S B were members of an undivided Hindu family*

up possession, contending that he was not bound by

RIGHT OF SUIT—*continued*

30 FRESH SUITS—*concluded*

the mortgage, as he was not at the time joint with *M* and the other sons of *S B* and that the loan was not one required for family necessity The plaintiff's application was dismissed In 1882 the plaintiff brought a suit against *B*, in which he prayed for a decree giving him possession of the room on the terms of the decree in 1877 By the defendant it was (*inter alia*) contended that the previous suit on the mortgage had exhausted the plaintiff's cause of action, and that the plaintiff had no further right against the defendant *Held* that the decree in the former suit could not affect the defendant, as he was not a party to it nor was he represented. If he had been represented he could not have resisted the execution of the decree Not having been

The previous decree had awarded possession of the whole house to the plaintiff The existence of that decree could not be a reason for not awarding part

Accordingly the ... himself of the remedy under that section did not prevent him from proceeding against the defendant by a regular suit BALVANT SANTARAM v BABAJI BIN SAMBHAPA I L R, 8 Bom, 603

219 ———— *Civil Procedure Code, ss 318 335—Suit to recover possession of property sold in execution of decree*—S attached certain land and a house in execution of a decree

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which was found locked up by the Court ... that *M* prevented him from enjoying both the land and house *M* pleaded that *S* had never been put into possession and again set up his title as purchaser from *R* and possession under such title The Munsif found that *S* had been put into formal or constructive possession of the land but not of the house, and decreed the claim On appeal the District Judge

I L R, 10 Mad, 65

RIGHT OF SUIT—*continued.*

31. GOVERNMENT SCHOOL, SUIT FOR BENEFIT OF.

220. ———— **Suit by secretary and manager of Government aided school**—*Improvement, Damages for removal of.*—In a suit by the secretary and manager of a Government aided *school for damages against the owner of the school* premises for breaking down the building and removing the materials belonging to plaintiff,—*Held* that the plaintiff, as secretary and manager, could maintain the action for the benefit of the school; that on the facts the plaintiff was not entitled to greater damages than had been awarded to him for the value of the *materials removed by the defendant, or to* compensation for the improvements made by him to the building; and that there was no presumption of gift in the case. SREEHURY ROY *v.* HILLS

[6 W. R., Civ. Ref., 21

32. IDOLS, SUITS CONCERNING.

221. ———— **Suit to establish right to deal with Hindu idols**—*Property—Jurisdiction of Civil Court.*—Hindu idols being property, the right to deal with such property is a right cognizable by Civil Courts. SUBBARAYA GURUKAL *v.* CHELLAPPA MUDALI . I. L. R., 4 Mad., 315

222. ———— **Suit for damages on account of omission to offer food to idol**—*Cause of action.*—The plaintiff, alleging that he was a member of a family of Guravs holding a vatan attached to a temple, complained that the defendant was the holder of an inam allowance, granted in consideration of his daily offering to the idol some rice and cake, and burning a lamp; and that he had omitted to make such offering for one year. The plaintiff claimed R15 damages. *Held* that the plaintiff had no cause of action. The defendant's obligation, if any, was towards the idol; and, if that obligation had not been performed, it could only be enforced by some person claiming to have a right to insist that the worship of the idol should be properly performed. DHADPHALE *v.* GURAV . I. L. R., 6 Bom., 122

223. ———— **Suit to establish right to remove idol for turn of worship.**—When a plaintiff and defendant are jointly entitled to the profits from an idol in the defendant's temple, and the plaintiff is obstructed by the defendant in the use and worship of the idol, a suit will lie for a declaration that the plaintiff is entitled to have the idol removed to his own house during the period he is entitled to the profits of it. DWARKANATH ROY *v.* JANNOBEE CHOWDHRAIN . . 4 W. R., 79

33. INCOME TAX.

224. ———— **Suit for refund of income tax**—*Income Tax Act, XXXII of 1860, s. 137.*—A person seeking a refund of income tax illegally assessed upon him may, under s. 137, Act XXXII of 1860, apply to the Commissioner, *i.e.*, it is "lawful" for him so to apply, but there is no law that he must do so. He may legally sue in a Civil Court to recover the illegal assessment. COLLECTOR OF FUREEDPORE *v.* GOROO DOSS ROY . . . 11 W. R., 425

RIGHT OF SUIT—*continued.*

34. INJURIES BY REPRESENTATIVES OF DECEASED.

225. ———— **Suit for damages for destruction of life**—*Son adopted by widow after death of deceased, Right of, to sue—Damages.*—A son adopted by the widow of a deceased Hindu (in respect of whose estate no probate, letters of administration, or certificate of heirship has been granted) is the legal representative of the deceased, and as such was entitled to maintain a suit, under Act XIII of 1855, for the benefit of the persons, if any, entitled to compensation for the injury occasioned to them by the death of the deceased against those whose negligence caused that death. Such an adopted son was not, however, entitled to have any portion of the damages awarded in the suit allotted to him as a child of the deceased. *Quære*—Whether a son, if adopted by deceased in his lifetime, would be entitled to damages under that Act. VINAYAK RAGHUNATH *v.* GREAT INDIAN PENINSULA RAILWAY COMPANY . . . . 7 Bom., O. C., 113

226. ———— **Suit for wrong done by deceased person**—*Act XII of 1855—Defamation.*—A suit was maintainable under Act XII of 1855 against personal representatives for a wrong done by the deceased within a year of his death, although such wrong be of a purely personal character,—as, for example, defamation. GOKUL CHUNDER *v.* BUREEK BEGAM Marsh., 344: 2 Hay, 325

227. ———— *Act XII of 1855—Survival of cause of action.*—Act XII of 1855 did not apply to wrongs which do not survive to the representatives of a deceased person. A widow who is the heir of her deceased husband is liable to make good the wrong committed by the husband. The plaintiff's right of suit does not abate by the death of the husband, but survives against his heir. CHUNDER MONEE DASSEE *v.* SANTO MONEE DASSEE

[1 W. R., 251

228. ———— **Suit against representative of agent of Official Assignee**—*Act XII of 1855—Suit for money and for delivery of bonds and papers*—Act XII of 1855 applied to suits for wrongs which, according to the law then in force, did not survive to or against executors or administrators. A suit for recovery of moneys due by an agent of the Official Assignee of an insolvent debtor's estate and for delivery of certain papers and documents belonging to such insolvent estate, will lie against the legal representative of such agent after his decease, and the right of action will not expire on his death. NUJUF ALI *v.* PATTERSON . . 2 N. W., 103

35. INJURY TO ENJOYMENT OF PROPERTY.

229. ———— **Suit for removal of trees**—*Contingent damage—Cause of action.*—The plaintiff claimed the removal of certain trees, planted by the defendant on his own land, on the ground that the trees had been planted so near his land that, when they grew up, they would injure his crops. *Held* that, until the plaintiff's enjoyment of his own land

RIGHT OF SUIT—contd.

35. INJURY TO ENJOYMENT OF PROPERTY—continued.

was directed [illegible] growth of the [illegible] ask for their removal and he had therefore no cause of action. PAN [illegible]

(I. L. R., 5 All. [illegible])

230. ——— Burial ground—*Land long used as a burial ground by the Mahomedan inhabitants of a village—Erection of wall by some of the Mahomedans—Right of other Mahomedans* [illegible]

[illegible]

to all the Mahomedan inhabitants of the village for the purpose of a burial ground.—*Held* that the defendants in having erected the wall in dispute so as to exclude the plaintiffs from a part of the common land there was a violation of the plaintiffs' rights, and that therefore the plaintiffs were entitled to bring the suit for the removal of the wall. TAYYIB *v.* LAIQ

I. L. R., 18 Bom., 630

231. ——— Mortgage of two portions of a house with a common party wall to two separate mortgagees—*Interference with common wall by one of the mortgagees—Transfer of Property Act (IV of 1882), s. 76.*—The owner of a house having cut a door which gave communication between one half of the house and the other mortgaged each half separately to a separate mortgagee. One of such mortgagees reopened the door communicating with the other mortgagee's portion of the house. *Held* that a good action would lie on behalf of the other mortgagee against the mortgagee who had opened the door to compel him to close it. LACHMI NARAIN *v.* JAIDU [illegible]

[I. L. R., 16 All., 260

232. ——— Effect of an embankment erected by a superior riparian owner on the cultivation of lands lower down the stream—*Cause of action.*—The defendants being owners of land on the banks of a jungle stream, raised embankments which prevented their lands from being flooded but caused the stream to overflow the land of the plaintiff situated lower down the stream. In an action by the plaintiff against the defendants for damages it appeared that it was not reasonably practicable for the defendants to defend their lands from inundation by any means other than those adopted which would not have caused damage to the plaintiff. *Held* that no actionable wrong had been committed by the defendants, and that the suit was consequently not maintainable. GOPAL REDDI *v.* CHENNA REDDI

I. L. R., 18 Mad., 158

233. ——— Right to access of light and air—*Suit by person who had not obtained an easement by prescription—Easement—Trespass.*—The owner of a house, the light coming to which is obstructed by an erection made upon adjoining land by a person who, *quâ* such adjoining land is a trespasser, may possibly have an action against the person causing obstruction, even though he has not obtained

RIGHT OF SUIT—contd.

35. INJURY TO ENJOYMENT OF PROPERTY—continued.

[illegible]

I. L. R., 15 All., [illegible]

36. INSOLVENCY.

234. ——— Right of [illegible] assignee [illegible]

[illegible]

I. L. R., 18 [illegible]

37. INSTIGATING PROSECUTION [illegible]

235. ——— [illegible] instigating proceedings [illegible]

[illegible]

38. INTEREST [illegible]

236. ——— Suit for interest [illegible] deposited under decree [illegible] appeal [illegible] JACK.

[illegible]

RIGHT OF SUIT—*continued.*

38. INTEREST, SUITS FOR—*concluded.*

237. ——— Suit for interest on money for period defendant obstructed the plaintiff in his attempts to obtain it.—Plaintiffs, in execution of a decree against *A*, attached certain money deposited in the Collectorate to which *A* was entitled, but were opposed by *B*, alleging that *A*'s rights in the money had been transferred to him. The plaintiffs finally succeeded in obtaining the money, and then sued *B* for interest upon it during the time he prevented them from obtaining it. *Held* the suit was maintainable and the plaintiff was entitled to recover. PARBUTTY CHURN SOOR *v.* PROMOTHONATH GHOSE . . W. R., 1864, 174

39. INTESTACY.

238. ——— Suit by one executor de son tort against another—*Letters of administration—Succession Act (X of 1865), ss. 190 and 266—Administration suit.*—*D*, a Parsi, died intestate in 1877, leaving him surviving a widow, three daughters, and two sons, *A* and *F*. On *D*'s death, his sons, without taking out administration, assumed the management of the estate, and each received sums of money on account of it. The widow and daughters of the deceased obtained letters of administration, but limited to the extent of their interests in the estate. In 1888 *A* brought a suit against his brother *F* and the other members of the family to recover out of the estate a certain sum of money advanced by him to *D*. *Held* that, the estate being unrepresented, the suit could not be maintained (s. 190 of Act X of 1865). The letters of administration issued to the widow and daughters of the deceased, being limited only to the extent of their shares in the estate, were not letters of administration such as are meant by s. 190 of the Indian Succession Act (X of 1865). *Held* also that the only course open to the plaintiff was to take proceedings for the appointment of an administrator of the estate who would either administer it by the payment of the debts and the distribution of the surplus (if any) amongst the heirs, after taking an account of all property already received out of it by the creditors or heirs, or who could be compelled to do so by an administration suit. FRAMJI DORABJI GHASWALA *v.* ADARJI DORABJI GHASWALA

[I. L. R., 18 Bom., 337

40. JOINT RIGHT.

239. ——— Suit by one of several heirs against creditor for share of debt—*Contract—Joint obligation—Act XXVII of 1860—Contract Act, ss. 42, 45.*—*Held* by the Full Bench (MAHMOOD, *J.*, dissenting) that when, upon the death of the obligee of a money-bond, the right to realize the money has devolved in specific shares upon his heirs, each of such heirs cannot maintain a separate suit for recovery of his share of the money due on the bond. KANDHIYA LAL *v.* CHANDAR

[I. L. R., 7 All., 313

RIGHT OF SUIT—*continued.*

41. JUDICIAL OFFICERS, SUITS AGAINS

240. ——— Suit against Governm for acts of Magistrate.—A suit did not lie aga Government for the proceedings of a Magistr under Ch. XX of the Criminal Procedure Code, 18 BAGAISHREE DYAL *v.* GOVERNMENT . 2 Agra,

241. ——— Suit to have land decla private property—*Criminal Procedure C 1861, ss. 308, 311—Order of Magistrate declar land to be public.*—The concluding clause of s. of the Code of Criminal Procedure, though it vents the Civil Courts from entertaining a suit restrain a Magistrate from carrying out an or made under s. 308, or a suit for damages against Magistrate or any other person in carrying out s order in the manner provided by law, does not b person against whom such an order has been carr into effect from instituting a suit to prove that l declared by the Magistrate to be public, is his priv property. LALJI UKHEDA *v.* JOWBA DOWBA

[8 Bom., A. C.,

242. ——— Suit against Judge maliciously issuing illegal order—*Want jurisdiction—Knowledge of want of jurisdiction* A plaint against a Judge averring that the Jud knowingly and maliciously, issued an illegal order the plaintiff's injury, does not disclose a suffici cause of action against the Judge. It must not o aver that the Judge had no jurisdiction, but a that he had no reasonable and probable cause supposing that he had jurisdiction. PRAHL MAHARUDRA *v.* WATT . . . 10 Bom., 3

243. ——— Suit against Collector f illegal proceedings—*Entry of name in Coll tor's books—Improper action of Collector.*—T mere entry of the name of one parcener in immo able property in the Collector's books as the occup or owner is not sufficient ground for an action b co-parcener against the Collector, inasmuch as Collector's books are kept for purposes of reven and not for purposes of title. But if the Collec improperly enjoin the plaintiff from taking, or ot parties from paying, to the plaintiff his share of rents or profits, an action may be maintained agai the Collector. COLLECTOR OF POONA *v.* BHAVANE BALKRISHNA . . . . 10 Bom., 1

244. ——— *Entry of na in Collector's books—Bom. Reg. XVI of 18 s. 19.*—Although the entry by a Collector of a pa cular person's name as "occupant" affords, howe mistaken, no ground for an action against the Coll tor, yet where there is an apparent and reason ground for apprehending legal injury from Collector's proceedings,—as when the Collector affi one person's title to the exclusion of another entering his name in the register of "watan (compiled under Regulation XVI of 1827, s. 19). where damage to a person's right is likely to ar from the Collector's act,—it is not improper to j the Collector as a party to a suit. SANGAPA MAL *v.* BHIMANGOWDA MARIAPA . . 10 Bom., 1

RIGHT OF SUIT—*continued*

42 KING OF OUDH, SUIT AGAINST

245 ———— Suit against King of Oudh before Act XIII of 1868—*Consent of Governor General* —A suit against the King of Oudh con ... f the Governor General ... d even though ... had been given, ... 1868 BEGUM BIBEE v KING OF OUDH . 11 W. R., 116

43 LANDLORD AND TENANT, SUITS CONCERNING

246 ———— Suit for use and occupation—*Suit by Receiver—Suit to recover money* ... —A suit was brought by the ... re Estate to ... ner, a sum of ... anjore Estate ... August 1866 ... fendant, who ... The Judge of the Court ... cred that the subject matter of the plaint did not constitute a cause of action to the plaintiff and dismissed the plaint subject to the opinion of the High Court *Held* that the suit was maintainable by the Receiver to recover the fair rent payable for the use and occupation of the land under the muchalka, which was ... lence of what was the fair amount of rent ... tion of such property, due ... the muchalka *Held also* that the right of suit did not extend to recover anything as interest on the rent due MORRIS v MUTHUSAMI PILLAI

[6 Mad, 363

See MORRIS v. SAMBAMURTHI RAYAR

[6 Mad, 122

247 ———— Suit to recover arrears of ... to Government under certificate ... portion of the ... petition stating that the amount paid in was partly due to the Government, and asking that his property might be released from attachment On payment of the balance claimed under the certificate and costs the certificate was discharged. *Held* that a suit to recover the amount paid to Government, brought on the ground that that amount was really payable to the zamindar, would not lie *Quære*—Whether such a suit would lie if the plaintiff were compelled to pay again to the zamindar BEPIN BEHARI SINGH v. GOVERNMENT . . I. L. R, 5 Calc., 325

248 ———— Suit as to validity of rent-free grant—*Suit for arrears of rent—Suit for*

RIGHT OF SUIT—*continued*

43 LANDLORD AND TENANT, SUITS CONCERNING—*continued*

assessment—A suit for "arrears of rent" is not maintainable in order to raise the question as to the validity of an alleged rent free grant The question should be raised by a suit to assess the holding HUREE CHUND v BRIJ KOMAR SINGH

[1 Agra, Rev, 35

249 ———— Suit for excess payment—*Omission to make deductions from rent*—Where a person has a right to make deductions of rent payable to the surburakar under his kabuliat on account of rent due from rayats or others, and pays his full rent ...

250 ———— Suit for excess payment of rent—*Receipt by one landlord of rents that ought to have been paid to another*—Where a landlord receives rents which exceed the rents properly payable to himself the party to whom the excess is pay- ... DER GOOHO ...

251 ———— Suit for rents collected by unauthorized person without title—*Cause of action*—Where *A* without title has collected rents due to *B*, *B* may sue *A* for the recovery from him of the rents so received RAM CHURN BANERJEE v MUDDUN MOHUN TEWAREE

[Marsh, 269, 2 Hay, 198

... that do ... pay- ... ionable wrong to dissuade tena ... nts to his landlord who can recover them by law DALGLEISH v JEEBUN MAHTO *alias* JHAW MAHTO

[25 W R, 230

253 ———— Suit to enforce acceptance of pottah—*Jurisdiction of Civil Courts*—A regular suit in the Civil Courts to enforce the acceptance of a pottah is maintainable KARIM v MUHAMMAD KADAR . I. L. R., 2 Mad., 60

254 ———— Suit by lessor against person injuring land leased—*Suit for damages*—A lessor may sue a third party for damages for injury sustained by reason of excavations made by such party on lands leased out by the plaintiff to a lessee DHEERMONEY DOSSEE v CROFT

[3 W. R., S C C. Ref., 20

255 ———— Remedy of tenant aggrieved by notice of attachment—*Madras Rent Recovery Act VIII of 1865, ss 39 40, 78—Civil Procedure Code s 11*—A tenant having received a notice of attachment under s 39 of the Rent Recovery Act, sued in a District Munsif's Court to have the notice cancelled no specific damage being alleged. *Held* that the suit did not lie MAHOMED v LAKSHMIPATI . . I. L. R., 10 Mad., 368

RIGHT OF SUIT—*continued.*

43. LANDLORD AND TENANT, SUITS CONCERNING—*concluded.*

256. **Suit to determine which of two claimants of rent is landlord**—*Civil Procedure Code (Act XIV of 1882), s. 28.*—A tenant has no right to bring a suit to have it determined which of two defendants, both of whom claimed rent from him, is his landlord. KOYLASH CHANDRA DUTT *v.* GOLUK CHUNDER PODDAR [2 C. W. N., 61

44. LOSS OF SERVICE.

257. **Suit by Hindu father for compensation for the loss of his daughter's services in consequence of her abduction**—*Compensation for costs of prosecution.*—A Hindu sued for compensation for the loss of his daughter's services in consequence of her abduction by the defendant, and for costs incurred by him in prosecuting the defendant criminally for such abduction, for which he was convicted. The daughter was a married woman, who had been deserted by her husband, and at the time of her abduction was living with the plaintiff, her father. *Held* by STUART, C.J., that the suit by the father for compensation for the loss of his daughter's services in consequence of her abduction was under the circumstances maintainable, and that the plaintiff was entitled to recover the costs of the criminal prosecution. *Held* by OLDFIELD, J., that a suit by a Hindu father for the loss of his daughter's services in consequence of her abduction is not maintainable. RAM LAL *v.* TULA RAM [I. L. R., 4 All., 97

45. MAINTENANCE.

258. ——— **Suit by Mahomedan woman against Hindu for maintenance of her illegitimate child.**—Where a suit was brought against a Hindu by a woman who was a Mahomedan and the wife of a Mahomedan, for maintenance of her illegitimate child, of which she alleged the defendant to be the father, it was held that such a suit would not lie. ADDOYTO CHUNDER DASS *v.* WOOJAN BEEBEE . . . . 4 C. L. R., 154

46. MESNE PROFITS.

259. ——— **Suit for mesne profits.**—The party in possession is the only person legally competent to sue for mesne profits. KHETTER MONEE DOSSEE *v.* GOPEEMOHUN ROY [1 Ind. Jur., O. S., 83 1 Hay, 178

260. ——— *Right to receive mesne profits, Transferability of—Suit by assignee—Transfer of Property Act, s. 1.*—The right to recover mesne profits, which are in the nature of damages, is not transferable. DURGA CHUNDER ROY *v.* KOILAS CHUNDER ROY . 2 C. W. N., 43

261. ——— *Suit for mesne profits in respect of right to turn of worship.*—A suit for wasilat in respect of profits derived from a

RIGHT OF SUIT—*continued.*

46. MESNE PROFITS—*concluded.*

turn of worship which are in their nature uncertain and voluntary is not maintainable. *Ramesur Mookerjee v. Ishan Chunder Mookerjee, 10 W. R., 457,* followed. KASHI CHANDRA CHUCKERBUTTY *v.* KOILASH CHANDRA BANDOPADHYA [I. L. R., 26 Calc., 356 3 C. W. N., 279

47. MISREPRESENTATION.

262. ——— **Suit for loss by misrepresentation** — *Bonâ fide communication.* — Where defendants were asked to obtain information from a railway company as to the probable cost of carriage of coal, which they were about to sell to plaintiff, and they did so, communicating in good faith to plaintiff the result, no right of suit could arise against defendants, although plaintiff was ultimately compelled to pay to the railway company a much larger sum than defendant had represented. BENGAL COAL COMPANY *v.* ELGIN COTTON COMPANY . . 2 N. W., 13

263. ——— *Suit against an attesting witness to a security-bond for appearance of an insolvent judgment-debtor.*—The plaintiff held a money-decree against *M*, who was arrested in execution of it. On being brought to the Court, however, *M* applied for his discharge as an insolvent under s. 273 of the Civil Procedure Code (Act VIII of 1859). He was released on the security of *G*, who executed a bond for the appearance of *M* at the inquiry into his insolvency. The defendant attested the bond, and wrote in the attestation that *G* was a solvent person. In consequence of the non-appearance of *M*, the plaintiff sought to execute his decree against the surety, *G*, who on his arrest also applied for his discharge on the ground of his insolvency, and was discharged after inquiry. The plaintiff thereupon sued the defendant for the amount of his decree and cost of execution, on the ground of his representation in the attestation that *G* was insolvent. The Subordinate Judge rejected, but the District Judge on appeal allowed, the plaintiff's claim. *Held* by the High Court, on second appeal, that the plaintiff had no cause of action against the defendant, whether the suit was considered as brought upon a covenant or misrepresentation, as the defendant was neither a co-obligor in the security-bond of *G* nor did he make any promise in the attestation of it to compensate the plaintiff for the non-appearance of *M* nor any representation to the plaintiff. *Quære*—Whether the nazir was liable to the plaintiff for negligence in not taking a proper surety? NAGO MAHADEV *v.* NARAYAN RAMCHANDRA I. L. R., 4 Bom., 465

264. ——— *Loan obtained by guardian as such—Liability for such loan—Warranty by guardian of authority to borrow—Misrepresentation on point of law—Contract Act (IX of 1872), s. 235—Guardian's liability—Breach of warranty—Principal and agent.*—Plaintiff, having lent a sum of money to one *R* as guardian of her minor son, brought a suit against the minor, represented by his guardian, to recover it. In

RIGHT OF SUIT—*continued.*

47. MISREPRESENTATION—*concluded.*

... which directed ... f the ... e got ... f had

...

by *R* as to her power to ... estate, it was one on a point of law, and, as such, it was incapable of supporting the suit *Beattie* v *Ebury, 7 L E, Ch, 777,* followed. MANIBHAI PREMABHAI *v* BAI RUPALIBA

[I. L. R, 24 Bom, 166

48 MONEY ADVANCED TO GUARDIAN FOR MINOR

265. ——— **Advance by plaintiff for costs of minor defendants**—*Contract Act (IX of 1872), ss 68 70—Civil Procedure Code (Act XIV of 1882), s 220—Practice—Costs of guardian ad litem—Right to recover amount advanced* —Plaintiff, having in a prior suit sued the defendants, who were minors and their father for specific performance, was ordered by the Court to advance money to the guardian *ad litem* of the minors (who was appointed by the Court), to enable him to conduct their defence. Plaintiff succeeded, but the Court refused to provide, in its decree, for the repayment to plaintiff of the amount so advanced On the plaintiff bringing this suit to recover that amount,—*Held per* SUBRAMANIA, AYYAR, J (1) that the Court in which the prior suit had been brought had power neither to direct the plaintiff to make the advances to the guardian, as had been done, nor to award the amount so paid as costs in the cause. The present suit therefore was not unsustainable f ... of it was one f ... previous suit ; ... were not such ... under s 70 of the Contract Act, inasmuch as the defendants could not be said to have enjoyed the benefit of the expenditure, (3) that payments or charges connected with legal expenses in which infants are concerned may, in certain circumstances, come under the head of necessaries within the meaning of s 68 of the Contract Act. Disbursements

RIGHT OF SUIT—*continued.*

48. MONEY ADVANCED TO GUARDIAN FOR MINOR—*concluded*

properly made in defence of the suit by the guardian *ad litem* out of the plaintiff's advances might be allowable, if it be alleged and proved that there ...

below, when an issue relating to it could have been framed *Per* DAVIES J, that a matter of this ... which ... ssful, a ... d as to ... s made ... ng the defence and a decree passed in his favour for the total amount of costs found to have been properly incurred in the case by the guardian out of such advances. VENKATA VIJAYA GOPALARAJU *v* TIMMAYYA PANTULU I. L. R, 22 Mad, 314

49 MONEY HAD AND RECEIVED.

266 ——— **Suit for pay received and not given**—*Madras Police Act (XXIV of 1859) s 53*—The plaintiff, a head constable of police, sued the defendant, an inspector of police, for money had and received to the plaintiff's use. The defendant had received the pay of the plaintiff, but failed to give it to the plaintiff *Held* that the right of suit was not taken away by s 53 of Act XXIV of 1859 (Madras Police Act) and that the plaintiff was entitled to recover the amount sued for GUNDAM VENKATASAMI *v* CHINNAM PURUSHOTTAMA

[5 Mad., 466

50 MONEY LENT.

267. ——— **Insufficiently stamped document**—*Suit on hatchitta for money lent—Evidence Act, s 91—Whether a suit maintainable if brought upon an insufficiently stamped document, where the defendant admitted the loan* —In a suit brought in the Court of Small Causes on a hatchitta bearing a stamp of one anna, the defendant admitted the loan, but pleaded payment The Judge, coming to the conclusion that the document sued upon was a promissory note and should have been stamped with a two anna stamp, refused to admit it in evidence He also came to the conclusion that the plaintiff had no cause of action independently of the document, and dismissed the suit *Held* that the plaintiff had a cause of action independently of the document. *Held* also that an implied contract to repay money lent always arises from the fact that the money is lent, even though no express promise, either written or verbal, is made to repay it Therefore, in a case where the defendant admits the loan and has not repaid it, the plaintiff may maintain an action against him for breach of his implied promise or contract, entirely independent of any security which may have been given for the advance *Akbar* v. *Sheikh Khan,*

RIGHT OF SUIT—*continued.*

50. MONEY LENT—*concluded.*

I. L. R., 7 Calc., 256, explained. *Golap Chand Marwaree v. Mohokoom Kooaree, I. L. R., 3 Calc., 314*, followed. PRAMATHA NATH SANDAL *v.* DWARKA NATH DEY . I. L. R., 23 Calc., 851

51. MONEY PAID.

268. — ——— **Suit for money paid before pupil was allowed to remain in Government school**—*Right of Government to make rules and regulations as to admission to schools.*—The Government has a right to make rules and regulations as to the terms on which pupils should be admitted into, and allowed to remain in, their schools. Where it is necessary, according to the rules, that a sum of money should be paid in order to a pupil remaining in a Government school, and such sum is paid, and the pupil allowed to remain, a suit will not lie to recover the money so paid. HURRO MOHUN GAEN *v.* BONOMALEE MITTER . . . 11 W. R., 359

52. MUNICIPAL OFFICERS, SUITS AGAINST.

269. ——— **Suit against Municipal Commissioners to recover assessment illegally levied under Mad. Act X of 1865**—*Cause of action.*—A suit cannot be maintained to recover assessment unlawfully levied by Municipal Commissioners under Madras Act X of 1865. BHIMAVARAPU BALARAMAYA *v.* HODSON . 3 Mad., 370

270. ——— **Suit for injury by Municipal Commissioners under Act XXVI of 1850**—*Remedies given by Government rules.*—Where a party was injured by an order of Municipal Commissioners under Act XXVI of 1850, issued in respect of a subject within their jurisdiction, he was debarred from bringing a suit in the Civil Court to annul such order, until he had exhausted the remedies afforded to him by the rules framed by Government in accordance with the provisions of the Act. SAKHARAM SHRIDHAR GADKARI *v.* CHAIRMAN OF THE MUNICIPALITY OF KALIAAN

[7 Bom., A. C., 33

271. ——— **Suit against trustees for distress for unpaid rates**—*Bom. Acts II of 1865 and IV of 1867—Liability of Municipal Commissioners.*—No suit can be maintained against the Justices of the Peace of the City of Bombay in respect of an alleged wrongful distress for unpaid rates levied by the Municipal Commissioner of that city, either under the provisions of Act II of 1865 (Bombay) or Act IV of 1867 (Bombay) In such a suit the Municipal Commissioner himself or the actual tortfeasor is the proper defendant. SHIVSHANKAR GOVINDRAM *v.* JUSTICES OF THE PEACE FOR BOMBAY

[5 Bom., O. C., 145

272. ——— **Suit in respect of act done under Beng. Act III of 1864**—*Attachment and sale of property for non-payment of fine—Suit for damages—Liability of Municipality.*—

RIGHT OF SUIT—*continued.*

52. MUNICIPAL OFFICERS, SUITS AGAINST—*continued.*

The Howrah Municipality prosecuted plaintiff under Bengal Act III of 1864, s. 67 and bye-laws, and procured the infliction upon him of a fine which was realized by attachment and sale of moveable property. Plaintiff then brought a suit against the Corporation for the value of the goods sold and damages. *Held* that the suit was not maintainable against the Municipal Corporation. MOTEE LALL BOSE *v.* HOWRAH MUNICIPALITY . . . 23 W. R., 222

273. ——— **Suit for damages and injunction restraining Municipality from stopping water-supply**—*Bombay District Municipal Act (XXVI of 1850)—Bombay District Municipal Act (Bom. Act VI of 1873), s. 14, Rules framed under—Rule 16—Jurisdiction of Civil Courts.*—The plaintiffs having sued the Municipality of Sholapur for damages and for an injunction restraining the Municipality from stopping the supply of water to their house, the first Court allowed the claim, but the Judge in appeal dismissed the suit, holding that it was premature, and that the plaintiffs had no right to sue the Municipality for damages under rule 16 of the Rules framed by the Municipality under s. 14 of the District Municipal Act (Bombay Act VI of 1873), that rule providing that "parties dissatisfied with a decision of the managing committee or any sub-committee may prefer an appeal to the Municipality, whose decision shall be final." *Held*, reversing the decree, that the rule must be construed as permissive, and not mandatory. It referred to departmental procedure only, and did not debar the institution of the civil suit. VASUDEVACHARYA *v.* MUNICIPALITY OF SHOLAPUR

[I. L. R., 22 Bom., 384

274. ——— **Suit to establish right to build structure forbidden by Municipality** — *Bombay District Municipal Act (VI of 1873), s. 33.*—S. 33 of the Bombay District Municipal Act (VI of 1873) gives the Municipality a discretion to issue such orders as it thinks proper with reference to a proposed building. Civil Courts cannot interfere with that discretion, unless it is exercised in a capricious, wanton, and oppressive manner. The plaintiff was the owner of two houses on each side of the passage of a khidki, or open square, containing three or four other houses. He proposed to connect the two houses by building a storey across the passage at such a height as not to interfere with the passage of those who were entitled to go to and fro. He applied to the local Municipality for permission to build in the manner he proposed. The Municipality forbade the work, on the ground that it was likely to interfere with the access of light and air to the neighbouring houses. The plaintiff thereupon sued the Municipality to establish his right to build the proposed structure. It was contended for the plaintiff that the Municipality ought not to have refused permission in the interest of the neighbouring householders, who were able to protect their own rights in case of injury. *Held* that the suit would not lie, as the order of the Municipality refusing permission was not an

RIGHT OF SUIT—*continued*

52 MUNICIPAL OFFICERS, SUITS AGAINST —*concluded.*

unreasonable one under the circumstances of the case *Held* further that the authority of the Municipality was not in any way affected by the circumstance that the proposed erection might be an encroachment on private rights subjecting the plaintiff to an action by the persons injured NAGAR VALAB NARSI v MUNICIPALITY OF DHANDHUKA [I L R, 12 Bom, 490

276 ——— Suit for declaration of right to be entered in list of candidates for appointment as member of a Municipal Board — *Jurisdiction — Suit brought against the Municipal Board in its corporate capacity* — Where a plaintiff sued for a declaration of his right to have his name entered in the list of persons entitled to be candidates for election as members of a Municipal Board and brought his suit against the ... held that such ... which ... exercising ... it was ... d from the list of candidates ABDUR RAHIM v. MUNICIPAL BOARD OF KOIL . I L R, 22 All., 143

277 ——— Suit to have assessment declared ultra vires—*Bengal Municipal Act (Beng. Act III of 1884) s 85* — A suit is maintainable by a rate payer in a Civil Court for a decision that an assessment made by a Municipality is *ultra vires* and not binding on him NAVADIP CHANDRA PAL v PURNANANDA SAHA 3 C. W. N, 73

53. OBSTRUCTION TO PUBLIC HIGHWAY

278 ——— Suit for obstruction of highway—*Special damage, Proof of*—The rule

279. ——— Suit for removal of obstruction—*Proof of special injury*—In all civil suits for the removal of a public obstruction the plaintiff must show that he himself has suffered some particular inconvenience or injury resulting from the obstruction GEHANAJI BIN KES PATIL v GANPATI BIN LAKSHUMAN I. L. R, 2 Bom, 469

RAJ NARAIN MITTER v EKADASI BAG [I L. R., 27 Calc, 793

280. ——— Suit for declaration of right to use street and injunction to remove obstruction—*No proof of special damage*—A

RIGHT OF SUIT—*continued.*

53 OBSTRUCTION TO PUBLIC HIGHWAY —*continued*

to resort to and draw water from a well It appeared in evidence, although it was not alleged in the plaint, that the plaintiff had to use the land between the newly erected gate and the well when he repaired his house The plaintiff, not having obtained permission to sue under the Civil Procedure Code, s 30, sued for a declaration of his right to use the street and draw water from the well and for an injunction compelling the removal of the gate *Held* that the suit was within the rule precluding private actions for public wrongs without special damage alleged and proved, and was accordingly not maintainable SIDDESWARA v KRISHNA I. L R., 14 Mad., 177

281. ——— Suit to establish right of access to public thoroughfare—*Easement*—

land to *M* and constructed a new thoroughfare *M* used and occupied such land so as to obstruct *F*'s access to the new thoroughfare and his use of the drain *F* therefore sued him to establish a right of

would have been bound to provide adequately for his access to the new thoroughfare and for his drainage FAZAL HAQ v MAHA CHAND I. L R, 1 All., 557

282 ——— Suit against persons preventing conduct of procession on public highway—*Right to conduct procession*—The right to conduct a marriage procession along the public highway can only be questioned by the Magistrate, and an action will lie against private persons forcibly stopping such a procession even *semble*—where it is unusual for persons of the plaintiff's caste to conduct one SIVAPPACHARI v MAHALINGA CHETTI . . . . . 1 Mad, 50

283 ——— Suit to establish right to carry tabuts along public road—*Obstruction to public road—Special damage—Public inconvenience*—Plaintiffs, who were Mussulmans, sued to establish their right to carry tabuts in procession along a certain road to the sea, and alleged that the defendants (also Mussulmans) obstructed them in doing so The plaint, however did not allege any personal loss or damage to the plaintiffs arising from the obstruction Both the lower Courts found as a fact that the road along which plaintiffs desired to carry their tabuts to the sea was a public road *Held*

RIGHT OF SUIT—*continued.*

53. OBSTRUCTION TO PUBLIC HIGHWAY —*continued.*

on special appeal that plaintiffs could not maintain a civil suit in respect of such obstruction, unless they could prove some particular damage to themselves personally, in addition to the general inconvenience occasioned to the public. The mere absence of the religious or sentimental gratification arising from carrying tabuts along a public road is not any such particular loss or injury as would be sufficient, according to English and Indian precedents, to sustain a civil action. Authorities as to what constitutes special damage sufficient to sustain a civil suit in such cases, referred to. SATKU VALAD KADIR *v.* IBRAHIM VALAD MIRZA . I. L. R., 2 Bom., 457

284. ———— **Suit to enforce right to conduct a religious procession along a public road**—*Special damage.*—A civil action will not lie to enforce a right to conduct a religious procession along a public road without an allegation of some personal loss or damage to the plaintiff. *Satku* v. *Ibrahim, I. L. R., 2 Bom., 457,* followed. SUJAUDIN *v.* MADHAVDAS . I. L. R., 18 Bom., 693

See MOHAMED ABDUL HAFIZ *v.* LATIF HOSSEIN [I. L. R., 24 Calc., 524

285. ———— **Suit to restrain procession in honour of idols**—*Right to conduct processions.*—Persons of whatever sect are entitled to conduct religious processions through public streets, so that they do not interfere with the ordinary use of such streets by the public, and subject to such directions as the Magistrate may lawfully give to prevent obstruction of the thoroughfare or breaches of the public peace. PARTHASARADI AYYANGAR *v.* CHINNAKRISHNA AYYANGAR . I. L. R., 5 Mad., 304

See SUNDRAM CHETTI *v.* QUEEN. PONNUSAMI CHETTI *v.* QUEEN . . I. L. R., 6 Mad., 203

286. ———— **Suit for abatement of nuisance**—*Suit after refusal of Magistrate to interfere.*—A person injured by the erection of an obstruction on a public highway is not precluded from suing the person by whom it has been caused by the circumstance that he has previously applied to the Magistrate for an order for its removal, and that the Magistrate had refused to make any order. RAM TUNNOO *v.* SREENATH DOSS [Marsh., 537: 2 Hay, 659

287. ———— **Special damage**—*Lease—Right of lessee—Trespass.*—The plaintiff, a holder of a ten years' lease of the share and rights of one of the co-sharers of a village, sued for the demolition of certain buildings and constructions on a plot of land within the area of the village, on the ground that the public had been very much inconvenienced in going to and coming from the road, and in taking carts, carriages, cattle, etc., and that he, by reason of his own inconvenience and also as lessee in possession of the entire rights of his lessor, had legally and justly a right to bring the action. The findings of fact were that by the terms of the lease plaintiff was entitled to maintain the action as representing the zamindari rights of his lessor; that the obstructions complained of existed when the lease was granted; that the roadway mentioned in the plaint was one used by the public in general as a footpath and also for vehicles, and that the buildings complained of had encroached on the road. The suit was dismissed by the first Court, but decreed in appeal by the lower Appellate Court. *Held* that, in the absence of damage over and above that which in common with the rest of the public the plaintiff has sustained, his action must fail. Public nuisance is actionable only at the suit of a party who has sustained special damage, and the case law of British India in this respect is the same as the rule of English law on the subject. Further, that the lease to plaintiff failed to show either that the land upon which the defendant had built is included in the lease, or that it intended to confer upon the plaintiff any right to question the legality of the erections existing at the time of the lease. *Satku* v. *Ibrahim Aga, I. L. R., 2 Bom., 457,* and *Karim Bakksh* v. *Budha, I. L. R., 1 All., 249,* referred to. RAMPHAL RAI *v.* RAGHUNANDAN PRASAD [I. L. R., 10 All., 498

288. ———— **Suit by zamindar for removal of building**—*Obstruction by building—Special damage.*—The plaintiff, who is the zamindar of the village, brought an action claiming to have a chabutra or building erected by the defendant in one of the village roads removed. The road in question was a katcha road used by the village over which the public had a right of way, and it had been dedicated as a road for the use and convenience of the general public. The plaintiff got a decree for the removal of the chabutra, and the defendant appealed. *Held* that the rule of English law that a member of the public cannot maintain an action for obstruction to a public road without showing special injury to himself beyond that suffered by any member of the public does not apply to a zamindar who or whose predecessor in title had dedicated to the public the road over his zamindari land. A zamindar, in giving the public a right of road of way over his land, does not give the public or any one else a right to interfere with the soil of the road, as by erecting a building upon it. In such a case the zamindar has, in common with the public, the right to use the road as a road; over and above it, he has a right to the soil in the road, which he had never given to the public. In an action of this kind the zamindar does not sue as a guardian of the public, but in respect of an interference with his own rights of property. *Baroda Prasad Mustafee* v. *Gorachand Mustafee, 3 B. L. R., A. C., 295: 12 W. R. 160,* discussed. *Dovaston* v. *Payne, 2 Smith's L. C., 9th Ed., 154; R.* v. *Pratt, 4 E. & B., 860; Rolls* v. *Vestry of St. George the Martyr, Southwark, 14 Ch. D., 785;* and *Goodson* v. *Richardson, L. R., 9 Ch. D., 221,* referred to. TOTA *v.* SARDUL SINGH . . I. L. R., 10 All., 533

RIGHT OF SUIT—*continued.*

53 OBSTRUCTION TO PUBLIC HIGHWAY —*concluded.*

289. ———— **Suit to remove obstruction in public right of way**—*Special injury—Cause of action—Jurisdiction of Civil Court* —In a suit for the removal of an obstruction in a public pathway, it was found by the Courts below that the plaintiffs were deprived of the only means of grazing their cattle by the obstruction, and that they lost some cows thereby It was contended, on behalf of the defendant on second appeal, that such damage would not entitle the plaintiffs to maintain a suit in the Civil Court *Held* that the injury caused to the plaintiffs by the obstruction of the way leading from the village where they resided to that in which they had their fields and pastures, was peculiar to them and to their calling, and it caused them substantial loss of time and inconvenience, and that it was sufficient to entitle the plaintiffs to maintain the action *Held* also that the death of the cows was too remotely and indirectly connected with the obstruction to furnish a cause of action *Winterbottom* v *Lord Derby*, *L R*, *2 Exch*, *316*, *Ricket* v *Metropolitan Railway Co*, *L R*, *2 H L*, *175*, *Cook & Co* v. *Mayor*

zada Roy, *I L R*, *3 Calc*, *20* *Blagrave* v *Bristol Water Works Co*, *1 H. & N*, *369*, and *Rose* v. *Miles*, *4 M & S*, *101*, referred to ABZUL MIAH v NASIR MAHOMMED . I. L. R, 22 Calc, 551

54. OFFICE OR EMOLUMENT.

290 ———— **Suit to recover right to officiate at funeral ceremonies**—*Transfer of right to officiate* —A Birth Moha Brahminy, or right to officiate at funeral ceremonies, is incapable of transfer, and therefore a suit to recover it will not lie JHUMMUN PANDEY v DINONATH PANDEY [18 W. R., 171

291. ———— **Right to officiate at a marriage**—*Yajman, Liability of—Cause of action for fees—Invasion of privileges* —A village

NATH JOSHI v BALAJI KUSAJI PATIL [I. L. R., 14 Bom, 167

292. ———— **Action for interfering with right of performing ceremonies**—*Right of yajmans to select purohit* —An action is

bstain from employing another. DAMOODUR MISSER v ROODURMAR MISSER . Marsh, 161

S C. ROODURMAN MISSER v DAMOODUR MISSER [1 Hay, 365

RIGHT OF SUIT—*continued.*

54 OFFICE OR EMOLUMENT—*continued*

293. ———— **Suit for right to perform pujari duties**—*Right to proceeds of mundar* —An action will lie to obtain a binding declaration of a person's right to perform the duties of pujari and to receive the proceeds of a mundar PRANSHANKAR v. PRANNATH MAHANAND . 1 Bom, 12

294 ———— **Suit for an office to which no fixed fees are attached**—*Civil Procedure Code, 1882 s 11* —Under s 11 of the Code of Civil Procedure (Act XIV of 1882), a suit for an office will lie, even though the office be a religious one, to which no fixed fees are attached. HASHIM SAHEB VALAD AHMED SAHEB v HUSEINSHA VALAD KARIMSHA FAKIR . . I. L. R, 13 Bom, 429

295. ———— **Hereditary right to an office**—*Civil Procedure Code, s 11—Declaratory decree—Jurisdiction—Emolument* —A suit for the establishment of a right to the hereditary title of musicians to a satra will lie under s 11 of the Code of Civil Procedure, notwithstanding that the right sought to be established is one which brings in no profit to those claiming it. MAMAT RAM BAYAN v. BABU RAM ATAI BURA BHAKAT [I. L R, 15 Calc, 159

296. ———— **Suit by vendee of office to**

v YADATTIL VELLAYANGOT ACHUDA PISHARODI [3 Mad., 380

297. ———— **Suit to enforce agreement**—*Agreement amongst Maha Brahmans as to distribution of offerings—Cause of action* —Amongst the Maha-Brahmans of a particular village an agree

creed, and what is the usage they have accepted as established for the regulation of their rights *inter se.* A claim to the exclusive right to perform certain

RIGHT OF SUIT—*continued.*

54. OFFICE OR EMOLUMENT—*continued.*

portions of the religious worship in a Hindu temple, and to restrain a rival sect from joining in such wor-hip otherwise than as ordinary worshippers, can be enforced by the decree of a Civil Court. A claim to damages for the loss of honours and voluntary offerings which would have been made by worshippers at a temple to the holders of a religious office therein, had the latter not been disturbed by the defendants in the performance of the duties of such office, is not enforceable by law. KRISHNASAMI TATACHARYAR v. KRISHNAMA CHARYAR

[I. L. R., 5 Mad., 313

299. ——— Suit to establish privilege of administering purohitam to pilgrims—*Alienability of such right.*—A suit will lie for the exclusive right to the privilege of administering purohitam to pilgrims resorting to Rameswaram. The privilege claimed was admitted to be capable of alienation or delegation, and was therefore no longer the subject of religious sentiment, but a mere proprietary right. On the merits the plaintiffs were held to have failed to support their claim. RAMASAWMY AIYAN v. VENKATA ACHARI

[2 W. R., P. C., 21: 9 Moore's I. A., 344

300. ——— Suit to establish right to receive fees from pilgrims resorting to shrine.—The plaintiff sued to establish his exclusive right to receive fees paid to the purohit by the pilgrims resorting to a temple and to recover a sum of money received by the defendants as fees. *Held* that, in the absence of any contract between the parties or of any such proof of long and uninterrupted usage as in the absence of a documentary title would suffice to establish a prescriptive right, the plaintiff's suit must be dismissed. KRISHNA AIYAN v. ANANTARAMA AIYAN . . . . 2 Mad., 330

301. ——— Suit for confirmation of possession of land on which places of worship are erected—*Alleged hostile intention.*—In a suit for confirmation of possession of a hill, with the places of worship appertaining thereto and the idols set up thereon, the alleged cause of action being that defendant intended to lay claim to the offerings made and proposed to call in question plaintiff's possessory right,—*Held* that the plaint disclosed no cause of action whatever. POORUN CHAND GALEECHA v. PARESH NATH SINGH . 12 W. R., 82

302. ——— Suit for damages for disturbance of office of village priest—*Suit for fees not received.*—A suit for damages may be brought by a person holding the office of village priest by prescription against an intruder who deprives him of the exercise and benefits of that office. VITHAL KRISHNA JOSHI v. ANANT RAMCHANDRA . . . . . 11 Bom., 6

303. ——— Suit for a declaration of plaintiffs' right to officiate as priests and receive offerings—*Jurisdiction of Civil Court.*—A suit will lie in a Civil Court for a declaration of the plaintiffs' right to officiate, in alternate years, as priests in a temple and receive the offerings to the idol. LIMBA BIN KRISHNA v. RAMA BIN PIMPLU

[I. L. R., 13 Bom., 348

304. ——— Suit for pecuniary benefits from performance of religious services.—A claim to certain pecuniary benefits and payments in kind, which a plaintiff alleges himself to be entitled to receive from the defendants in respect of the performance of certain religious services, is a claim which the Courts of justice are bound to entertain; and if, in order to determine the plaintiff's right to such benefits, it becomes necessary to determine incidentally the right to perform the services, the Courts must try and must decide that right. KRISHNAMA v. KRISHNASAMI

[I. L. R., 2 Mad., 62

S. C. TIRU KRISHNAMA CHARIAR v. KRISHNA SAWMI TATA CHARIAR . L. R., 6 I. A., 120

See also KAMALAM v. SADAGOPA SAMI

[I. L. R., 1 Mad., 356

and CHINNA UMMAYI v. TEGARAI CHETTI

[I. L. R., 1 Mad., 168

305. ——— Suit to establish right to offerings—*Jurisdiction of Civil Court—Code of Civil Procedure (Act XIV of 1882), s. 11, expl. III.*—A suit claiming a right to the regular offerings made out of the funds of a temple which are of a substantial value as emoluments is a suit of a civil nature within the meaning of the explanation to s. 11 of the Code of Civil Procedure. *Krishnama* v. *Krishnasami, I. L. R., 2 Mad., 62,* referred to. *Narayan Vithle Parab* v. *Krishnaji Sadashiv, I. L. R., 10 Bom., 233,* distinguished. KALI KANTA SURMA v. GOURI PROSAD SURMA

[I. L. R., 17 Calc., 906

306. ——— A suit for wasilat in respect of profits derived from a turn of worship, whether maintainable—*Anticipated profits of turn of worship.*—A suit for wasilat in respect of profits derived from a turn of worship, which are in their nature uncertain and voluntary, is not maintainable. *Ramessur Mookerjee* v. *Ishan Chunder Mookerjee, 10 W. R., 457,* followed. KASHI CHANDRA CHUCKERBUTTY v. KAILASH CHUNDRA BANDOPADHYA I. L. R., 26 Calc., 356

[3 C. W. N., 279

307. ——— Suit for declaration and enforcement of a hereditary right to officiate as priest—*Code of Civil Procedure (Act XIV of 1882), s. 11—Mesne profits—Suit to have a share in the offerings made to a deity by one member of a family against another, based upon an implied arrangement amongst them.*—A suit by one member of a family against another, for the declaration and enforcement of a hereditary right to officiate as priest at the worship performed by votaries at the foot of a certain tree, and so to have a share in the offerings made to the deity, is maintainable. *Kali Kanta Surma* v. *Gouri Prosad Surma, I. L. R., 17 Calc., 906,* followed. *Jowahir*

RIGHT OF SUIT—*continued.*

54 OFFICE OR EMOLUMENT—*continued.*

Misser v Bhaggu Misser, S D A., 1857, Vol I, 362, and *Kashi Chundra Chuckerbutty v Kailash Chundra Bandopadhya, I L R, 26 Calc, 356,* distinguished. DINO NATH CHUCKERBUTTY *v* PRATAP CHANDRA GOSWAMI [I. L R, 27 Calc, 30 4 C. W. N., 79

308 ——— Suit for damages for intrusion on office of chalvadi—*Suit to recover gratuities received by intruder in office—Caste* [illegible]

[illegible] No but adi. [illegible] lant [illegible] *Held* for [illegible] by defendant to the use of plaintiff SHANKARA BIN MARABASAPA *v* HANMA BIN BHIMA [I. L R, 2 Bom., 470

309 ——— Suit for loss of fees received by Kazi of Bombay—*Intruder on office*—The sums received by the Kazi of Bombay in respect of his office of Kazi are not mere gratuities, but are fixed and certain payments annexed to the discharge of official duties, and are therefore sums in respect of the privation whereof by a wrongful intruder an action either for money had and received or for disturbance in the office will lie MUHAMMAD YUSSUB *v* AHMED . 1 Bom, Ap., 18

SITARAMBHAT *v* SITARAM GANESH [6 Bom, A C, 250

310. ——— Suit for declaration of exclusive right to receive fees in office of [illegible]

[illegible] the plaintiff, the suit could not be maintained RAM DEYHUL *v* CHUKHOO [1 N. W., 208: Ed. 1873, 291

311. Suit by dismissed holder of land for service—*Hereditary village office—Title to emoluments.*—Where an hereditary village officer, who had been dismissed from his office, sued to recover the land which had formed the emoluments of the office, and which had been enfranchised and granted to the person holding the office at the time of the enfranchisement,—*Held* that the suit would not lie SRINIVASAYYAR *v* LAKSHMAMMA [I. L. R., 7 Mad., 206

BADA *v.* HUSSU BHAI . I. L. R., 7 Mad., 236

312. ——— Suit for land appertaining to hereditary office, but enfranchised—*Mad Reg VI of 1831—Madras Act IV of 1866—Karnam's inam land—Inam Commissioner's title-deed—Title to emoluments of office*—The lands forming the emoluments of an hereditary village office, having been separated from the office by Government, were enfranchised and granted by the Inam Commissioner to *V*, who had been appointed to and at the date of enfranchisement held the office without possessing any hereditary claim thereto. In a suit by *R*, who claimed to be of the family of the hereditary office holders, to recover the land from *V*,—*Held* by the Full Bench (HUTCHINS J., dissenting) that *R* could not recover VENKATA *v* RAMA . . I. L. R., 8 Mad., 249

313 ——— Suit by the holder of the office to recover all the land—*Inam attached to the hereditary office of nattamgar—Enfranchisement of inam lands in favour of two persons*—Inam lands constituting the emolument of the office of nattamgar were enfranchised in favour of the plaintiff and defendant separately In November 1890 the defendant was informed that a pattah for half of the lands would be issued in his name, and it was so issued in the following May. In April 1891 (after the resolution to enfranchise the lands was come to) the plaintiff was appointed to be the sole nattamgar, and he now sued in 1894 for the cancellation of the enfranchisement pottah issued to the defendant and for the issue of a pottah in his own name in respect of the lands comprised therein and for possession of the lands *Held* that the plaintiff was not entitled to the relief sought SANKARA SUBBAYYAR *v* RAMASAMI AYYANGAR [I. L. R., 20 Mad, 454

314. ——— Karnam, Hereditary office of—*Enfranchisement of endowment—Devolution of land enfranchised*—The holder of an hereditary office of karnam had two undivided sons, in favour of one of whom he resigned his office Subsequently a revision of the village establishment took place, the new karnam was removed from the office, and, the lands which constituted its endowment having been enfranchised by the Inam Commissioner, a title-deed in respect of them was issued to him. After his death without issue his nephews sued to establish their right to the land. *Held* that the land passed to the grantee personally, and not to his family, and [illegible] pro- [illegible] suit [illegible] *L.* [illegible] *v.* VENKATARAMAYYA . I. L. R., 16 Mad., 284

315 ——— Lands constituting emoluments of karnam's office—*Enfranchisement of the inam in favour of a widow.*—Lands constituting the emoluments of the office of karnam were enfranchised in favour of a widow who had been in possession since the death of her husband, which took place about eighteen years previously. They were subsequently sold by her *Held* that the vendee's title was good against the reversionary heir of the

RIGHT OF SUIT—*continued.*

54. OFFICE OR EMOLUMENT—*continued.*

portions of the religious worship in a Hindu temple, and to restrain a rival sect from joining in such worship otherwise than as ordinary worshippers, can be enforced by the decree of a Civil Court. A claim to damages for the loss of honours and voluntary offerings which would have been made by worshippers at a temple to the holders of a religious office therein, had the latter not been disturbed by the defendants in the performance of the duties of such office, is not enforceable by law. KRISHNASAMI TATACHARYAR *v.* KRISHNAMA CHARYAR

[I. L. R., 5 Mad., 313

299. ——— **Suit to establish privilege of administering purohitam to pilgrims**—*Alienability of such right.*—A suit will lie for the exclusive right to the privilege of administering purohitam to pilgrims resorting to Ramaswaram. The privilege claimed was admitted to be capable of alienation or delegation, and was therefore no longer the subject of religious sentiment, but a mere proprietary right. On the merits the plaintiffs were held to have failed to support their claim. RAMASAWMY AIYAN *v.* VENKATA ACHARI

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303. ——— **Suit for a declaration of plaintiffs' right to officiate as priests and receive offerings**—*Jurisdiction of Civil Court.*—A suit will lie in a Civil Court for a declaration of the plaintiffs' right to officiate, in alternate years, as priests in a temple and receive the offerings to the idol. LIMBA BIN KRISHNA *v.* RAMA BIN PIMPLU

[I. L. R., 13 Bom., 348

304. ——— **Suit for pecuniary benefits from performance of religious services.**—A claim to certain pecuniary benefits and payments in kind, which a plaintiff alleges himself to be entitled to receive from the defendants in respect of the performance of certain religious services, is a claim which the Courts of justice are bound to entertain; and if, in order to determine the plaintiff's right to such benefits, it becomes necessary to determine incidentally the right to perform the services, the Courts must try and must decide that right. KRISHNAMA *v.* KRISHNASAMI

[I. L. R., 2 Mad., 62

S. C. TIRU KRISHNAMA CHARIAR *v.* KRISHNASAWMI TATA CHARIAR . L. R., 6 I. A., 120

See also KAMALAM *v.* SADAGOPA SAMI

[I. L. R., 1 Mad., 356

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[I. L. R., 1 Mad., 168

305. ——— **Suit to establish right to offerings**—*Jurisdiction of Civil Court—Code of Civil Procedure (Act XIV of 1882), s. 11, expl. III.*—A suit claiming a right to the regular offerings made out of the funds of a temple which are of a substantial value as emoluments is a suit of a civil nature within the meaning of the explanation to s. 11 of the Code of Civil Procedure. *Krishnama* v. *Krishnasami, I. L. R., 2 Mad., 62,* referred to. *Narayan Vithle Parab* v. *Krishnaji Sadashiv, I. L. R., 10 Bom., 233,* distinguished. KALI KANTA SURMA *v.* GOURI PROSAD SURMA

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[3 C. W. N., 279

307. ——— **Suit for declaration and enforcement of a hereditary right to officiate as priest**—*Code of Civil Procedure (Act XIV of 1882), s. 11—Mesne profits—Suit to have a share in the offerings made to a deity by one member of a family against another, based upon an implied arrangement amongst them.*—A suit by one member of a family against another, for the declaration and enforcement of a hereditary right to officiate as priest at the worship performed by votaries at the foot of a certain tree, and so to have a share in the offerings made to the deity, is maintainable. *Kali Kanta Surma* v. *Gouri Prosad Surma, I. L. R., 17 Calc., 906,* followed. *Jowahir*

RIGHT OF SUIT—*continued*

54 OFFICE OR EMOLUMENT—*continued*

Misser v *Bhaggu Misser S D A 1857, Vol I 362*, and *Kashi Chundra Chuckerbutty* v *Kailash Chundra Bandopadhya I L R 26 Calc, 356* distinguished DINO NATH CHUCKERBUTTY v PRATAP CHANDRA GOSWAMI
[I L R, 27 Calc, 30
4 C W. N, 79

308 ———— Suit for damages for intrusion on office of chalvadi—*Suit to recover gratuities received by intruder in office—Caste question—Bom Reg II of 1827 s 21—Suit to es*

MARABASAPA v HANMA BIN BHIMA
[I. L R, 2 Bom., 470

309 ———— Suit for loss of fees received by Kazi of Bombay *Intruder on office*—The sums received by the Kazi of Bombay in respect of his office of Kazi are not mere gratuities but are fixed and certain payments annexed to the discharge of official duties and are therefore sums in respect of the privation whereof by a wrongful intruder an action either for money had and received or for disturbance in the office will lie MUHAMMAD YUSSUB v AHMED 1 Bom., Ap, 18

SITARAMBHAT v SITARAM GANESH
[6 Bom, A C, 250

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[1 N W, 208 Ed 1873, 291

311. ———— Suit by dismissed holder

and granted to the person holding the office at the time of the enfranchisement —*Held that the suit* would not lie SRINIVASAYYAR v LAKSHMAMMA
[I. L R, 7 Mad., 208

BADA v HUSSU BHAI I. L R, 7 Mad, 236

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[I. L R, 20 Mad, 454

314 ———— Karnam, Hereditary office of—*Enfranchisement of endowment—Devolution of land enfranchised*—The holder of an hereditary office of karnam had two undivided sons in favour of one of whom he resigned his office Subsequently a revision of the village establishment took place, the new karnam was removed from the office and the lands which constituted its endowment having been enfranchised by the Inam Commissioner a title deed in respect of them was issued to him. After his death without issue his nephews sued to establish their right to the land. *Held* that the land passed to the grantee personally, and not to his family, and consequently devolved on his death as private property The plaintiffs therefore had no right of suit as regarded the property *Venkata* v *Rama I. L. R 8 Mad 249*, followed VENKATARAYADU v VENKATARAMAYYA I. L. R., 15 Mad, 284

315 ———— Lands constituting emoluments of karnam's office—*Enfranchisement of the inam in favour of a widow*—Lands constitut-

title was good against the reversionary heir of the

RIGHT OF SUIT—*continued.*

54. OFFICE OR EMOLUMENT—*continued.*

husband, and the plaintiff had therefore no right to suit to recover them. DHARANIPRAGADA DURGAMMA v. KADAMBARI VIRRAZU [I. L. R., 21 Mad., 47

See SUBBARAYA MUDALI v. KAMU CHETTI [I. L. R., 23 Mad., 47

316. ———— **Inam Commissioner's grant** — *Hereditary office-holder — Enfranchisement.*—A grant of a portion of inam lands by Government on enfranchisement is not illegal because the grantee, though a member of the family of hereditary office-holders, was not himself actually in office at the time of enfranchisement. Such a grant cannot be set aside in a civil suit. TARIYA GOWDU v. VONAMO GOWDU . . I. L. R., 22 Mad., 204

317. ———— **Office of karnam in a zamindari village, Succession to**—*Mad. Reg. XXXIX of 1802, s. 7—Female claimant—Incapacity of next heir.*—The karnam of a zamindari village having died, leaving a widow his heir, the zamindar appointed her to the office of karnam. The nearest male sapinda of the deceased karnam (from whom he was divided) sued to establish his right to the office of karnam. *Held* (1) that a woman cannot hold the office of karnam. *Held* further (2) that, when the immediate heir is incapacitated, the nearest male sapinda of the deceased karnam is entitled to succeed to the office; he was therefore the proper person to maintain the suit. CHANDRAMMA v. VENKATRAJU . . I. L. R., 10 Mad., 226

318. ———— **Civil Court's jurisdiction over suit in respect of an injury caused by exclusion from an hereditary office**—*Bombay Hereditary Offices Act (III of 1874), s. 40—Election of an officiator—Free election—Agreement in restraint of free election—Bom. Act X of 1876, s. 4—Its application to suits between private persons.*—The plaintiff and his co sharers in a kulkarni vatan entered into an agreement in 1869 for the performance of the duties of the vatan by the several sharers in turn. The agreement provided that, if sharers prevented the nomination of a sharer to officiate in his turn, he should pay R100 as damages to the person thus excluded from office. The plaintiff alleged that in 1883 it was his turn to officiate; that the defendants, instead of electing him in accordance with the agreement, nominated another person, who was confirmed in the appointment by the Collector. The plaintiff therefore sued the defendants to recover R100 as damages for breach of the agreement of 1869. *Held* that the agreement could not be enforced by a civil suit, and it was opposed to the policy of s 40 of Bombay Act III of 1874, which contemplates a free election of an officiator by the whole body of registered representative vatandars to whom the Collector issues his notice—an election unfettered by any promises made beforehand by any of the sharers. *Held* also that a suit in respect of any injury caused by exclusion from office or service is barred by the second paragraph of cl. (*a*) of s. 4 of Act X of 1876. Having regard to the wording of the several clauses of s. 4, the bar therein provided is not limited to suits against Government. NARO PANDURANG v. MAHADEV PURSHOTAM [I. L. R., 12 Bom., 614

RIGHT OF SUIT—*continued.*

54. OFFICE OR EMOLUMENT—*concluded.*

55. OFFICIAL ASSIGNEE.

319. ———— **Suit for unauthorized payment made by assignee**—*Insolvent Act (11 & 12 Vict., c. 21), ss. 28 and 29—Fraud.*—The account of an estate, formerly in the hands of a derivative executor who became insolvent and died in 1856, having been pending in Court for many years some of the parties being interested in the original estate and others as the insolvent's creditors, a compromise was effected, under which a suit, brought in 1858 by the Official Assignee, representing the deceased insolvent, was dismissed by the consent of parties in 1875. Part of a sum of money, paid to the credit of the insolvent's estate in pursuance of the compromise, was made over, upon the passing of the consent-decree, with the knowledge of the assignee, but without notice to or the sanction of the Court to a person who had assisted in taking the account. From the representatives of the latter, he being now deceased, the successor in office of the assignee claimed repayment. In regard to the facts that he was neither a party to, nor had any control over, the compromised suit; that he owed no duty to the Court in respect of it nor to the creditors of the estate; and that he had taken no unfair advantage of the assignee,—*Held* that there were no grounds upon which this repayment could be claimed. ABDOOL HOSSEIN ZENAIL ABADI v. TURNER . I. L. R., 11 Bom., 620 [L. R., 14 I. A., 111

56. ORDERS, SUITS TO SET ASIDE.

320. ———— **Order in contested application**—*Improper procedure.*—*A* has no right of suit against *B* to set aside an order of Court on an application in a suit, which application has been contested between them and decided in favour of *B*. Such a mode of procedure for the purpose of getting an order of Court reversed is not allowed by law. NORROTOM SIKDAR v. JUGGERNATH SHAW [Bourke, O. C., 371

SHIBESHUREE DEBIA v. MOTHOORANATH ACHARJEE . . . . 5 W. R., 202

321. ———— **Order under s. 63, Beng. Act VIII of 1869**—*Order releasing property from attachment.*—A suit will lie to set aside an order passed under s. 63 of Bengal Act VIII of 1869, releasing property from attachment. WOOMA CHURN CHATTERJEE v. KADUMBINI DABEE [3 C. L. R., 146

322. ———— **Order refusing to entertain objection**—*Resumption by Government—Objection by party whose lands have been wrongly resumed.*—The property of the plaintiff having been

56 ORDERS, SUITS TO SET ASIDE—*continued*

included among the lands to which certain resumption proceedings between the Government and a third party related the plaintiff preferred an objection, which was disallowed by the Collector The Special Commissioner on appeal declined, for want of jurisdiction to entertain the objection *Held* that the order of the Special Commissioner could not constitute any cause of action either against the Government or a third party SHIBOO SOONDUREE DEBEA *v* SECRETARY OF STATE 7 W R, 373

323 ——— **Order setting aside sale**—*Civil Procedure Code 1859 ss 256, 257*—A suit will lie to contest an order setting aside a sale not warranted by the provisions of ss 256 and 257 of Act VIII of 1859 where the legal rights of the person bringing the suit have been injuriously affected by such order AMRIT MISSER *v* GURDA PARDAN [7 N W, 183

324 ——— **Order passed in execution of decree of Small Cause Court**—*Order as to liability to attachment*—An order passed in execution of a decree of a Small Cause Court with respect to the liability of property to attachment and sale is not final but may be questioned in a regular suit in the same manner as a like order might be questioned when passed in execution of a decree of an ordinary Civil Court RAMESHUR KULWAR *v* BEHAREE SETH [3 N W, 208 Agra, F B, Ed 1874, 254

325 ——— **Order of Court setting aside a will and vesting minor's property in manager** *Suit to direct widow to make adoption—Order made with jurisdiction*—There exists no right of suit to set aside an order of the Court which has jurisdiction deciding that a will is not … declaratory decree declaring such direction to be a valid direction PEAREE DAYEE *v* HURBENSEE KOOER 19 W R, 127

326 ——— **Order granting certificate under Act XXVII of 1860**—*Suit to annul certificate—Procedure*—A suit does not lie to annul a certificate for the collection of debts granted under Act XXVII of 1860 the mode of proceeding provided by the Act being the only remedy PAYYAYINDA AVIDATHA PERINGADI IDRAYI *v* PUDIYA MADATHUMAL PERINGADI AMANATHA 5 Mad., 283

RUGHOOBUR DYAL SINGH *v* RAM NARAIN KOLYA 22 W R, 312

327 ——— **Order determining title to money deposited in Court**—*Civil Procedure Code ss 272 278 283*—A suit will lie to set aside an order such as is contemplated by the provisions of s 272 of the Code of Civil Procedure that is an order determining any question of title or priority as between the decree-holder and any other person in respect of money in deposit in a Court of justice The mode of investigation and the nature of the order to be made under s 272 and the extent to which such an order is final are provided for in ss 278 283 of the Code of Civil Procedure TIKUM SINGH *v* SHEO RAM SINGH

[I. L. R., 19 Calc., 283

328 ——— **Suit to set aside order of Criminal Court** *Suit to set aside order of Magistrate under Act XXI of 1841*—The proper course for a party dissatisfied with the order of a Magistrate passed with jurisdiction under Act XXI of 1841 to pursue was to appeal against that order, and not to bring a civil suit for its reversal. OMOOLA KOOWUR *v* GOHUN PATUCK

[1 Ind. Jur, O S, 36

S C OMOOLA KOOWUR *v* SOHUN PATUCK [1 Hay, 29

S C SOHUN PATUCK *v* OMOOLA KOOWUR [Marsh, 7

KEDAR NATH MOOKERJEE *v* PARBUTTY PEISHKAR [2 W R, 267

PRANKISHEN SURMA *v* RAMROODER SURMA [Marsh., 214

S C RAMROODER SURMA *v* PRANKISHEN SURMA [2 Hay, 86

RAMKISHORE BHUTTACHARJEE *v* BISESHUR BHUTTACHARJEE Marsh., 231

S C BISESHUR BHUTTACHARJEE *v* RAMKISHORE BHUTTACHARJEE . 1 Hay, 559

57 POSSESSION SUITS FOR

329 ——— **Suit for possession or dispossession after obtaining peaceable possession without execution of decree**—If a party in whose favour a decree for possession has been passed peaceably obtains possession without the aid of the Court and is subsequently dispossessed, he can maintain an action against the persons who have dispossessed him although he has not taken out execution of the decree RAM NEWAZ SINGH *v* KISHUN RAI 6 N W., 137

See GOPAL DAS *v* THAN SINGH

[I. L. R., 4 All, 184

330 ——— **Suit for possession of land taken away in execution of decree in boundary suit**—A party has no right to bring a civil suit to get possession of land which has been taken from him and awarded to his adversary in the execution of a decree in a boundary suit WATSON *v* BEJOY GOBIND BURAL. SHAMASOONDERY DEBEA *v*. BEJOY GOBIND BURAL W. R., 1864, 331

331 ——— **Suit for possession after dispossession under decree obtained by mortgagees**—*Cause of action*—In the year 1839 the defendants ancestor had mortgaged a share in a mouzah to the ancestor of the plaintiffs The mortgagee sued to foreclose the mortgage and obtained a decree, in execution of which he obtained possession

RIGHT OF SUIT—*continued.*

57. POSSESSION, SUITS FOR—*continued.*

of the share. After this, some prior mortgagees obtained a decree in the Sudder Court in 1847, to the effect that the disputed property should be taken away from the plaintiff's ancestor and given to the prior mortgagees till their lien was satisfied, when he should obtain possession as before. The lien of the prior mortgagees was satisfied in 1870, when the defendants obtained possession. The plaintiffs sued to recover possession. *Held* that no right of action accrued to the plaintiffs by reason of the satisfaction of the decree of the prior mortgagees and the recovery of the possession of the estate by the defendants. SHIMBHOO v NARAIN SINGH

[5 N. W., 153

332. ———— **Suit for separate possession of share of estate.**—A suit will lie for the separate possession of a share of an estate in proportion to the plaintiff's share. GOLOKE CHUNDER CHUCKERBUTTY v. KALLEE KINKUR CHUCKERBUTTY

[1 W. R., 164

333. ———— **Suit by holder under durpatnidar for share of estate.**—A patni estate was the inheritance of five brothers, two of whom appropriated the whole of it. *Held* that the holder under a kaimi pottah from the dur-patnidar of the three ousted brothers could sue to obtain possession of his share of the estate. TARA SOONDERY DEBIA v. SHAMA SOONDERY DEBIA . 4 W. R., 58

334. ———— **Suit by minor for his share of undivided property.**—A suit cannot be brought on behalf of a Hindu minor to secure his share in undivided family property, unless there is evidence of such malversation as will endanger the minor's interests if his share be not separately secured. CHOKKALINGAM PILLAI v. SVAMIYAR PILLAI. SVAMIYAR PILLAI v. CHOKKALINGAM PILLAI . 1 Mad., 105

335. ———— **Suit by minor for partition**—*Prejudice of interests of minor.*—A suit on behalf of a minor for partition will lie, if the interests of the minor are likely to be prejudiced by the property being left in the hands of the co-parceners from whom it is sought to recover it. KAMAKSHI AMMAL v. CHIDAMBARA REDDI . 3 Mad., 94

ALIMELAMMAH v. ARUNACHELLAM PILLAI

[3 Mad., 69

336. ———— **Suit by tenant having right to possession, but not right of occupancy**—*Act X of 1859, s. 6, and s. 23, cl. 6.*—If a tenant has the right to the possession, he may sue under cl. 6; s. 23, Act X of 1859, although he may not have a right of occupancy under s. 6 of the Act. WATSON & Co. v. DWARKANATH SIRCAR . . Marsh., 415 : 2 Hay, 533

DHAJAH ROY v. SUKHAWUT HOSSEIN

[Marsh., 492

S. C. SUKHAWUT HOSSEIN v. DHAJAH ROY

[2 Hay, 597

RIGHT OF SUIT—*continued.*

57. POSSESSION, SUITS FOR—*concluded.*

337. ———— **Suit for possession by unregistered purchaser after ejectment**—*Beng. Act VIII of 1869, ss. 26, 64—Effect of sale of tenure by shareholder in zamindari—Onus of proof.* —*K*, the recorded tenant of a mirasi mokurrari tenure, died leaving *G*, his son and heir, who sold the tenure, which eventually came into the hands of the plaintiffs' father, and afterwards on his death became vested in the plaintiffs, but neither they nor their father, though they made attempts to do so, ever obtained the registration of their names as tenants. *R*, one of the two shareholders in the zamindari, brought a suit for arrears of rent of the tenure against *G*, and in execution of the decree he obtained in that suit the tenure was sold and purchased by the other zamindar, by whom the plaintiffs were dispossessed. *Held* that the plaintiffs were not precluded by the fact that their names were not registered as tenants, under s. 26 of the Rent Act, from bringing a suit to recover possession of the tenure. The holder of the decree, in execution of which the tenure was sold, assuming him to be only a shareholder in the zamindari right, had no right under s. 64 to sell the tenure, but only the interest of the person against whom the decree was passed. The onus was on the defendant to show that the sale under the decree for rent was of such a nature as to give him priority over the plaintiffs. KRISTO CHUNDER GHOSE v. RAJ KRISTO BANDYOPADHYA

[I. L. R., 12 Calc., 24

338. ———— **Suit for possession by purchaser at sale in execution of decree**—*Civil Procedure Code (Act XIV of 1882), ss. 11, 318—Concurrent remedies.*—A purchaser at a sale in execution, not having applied to the Court for possession under s 318 of the Code of Civil Procedure, brought a regular suit to obtain possession of the property purchased. *Held* that, although a remedy might be open to the plaintiff under s. 318, still he was not precluded from bringing a regular suit, the remedies being concurrent. KISHORI MOHUN ROY CHOWDHRY v. CHUNDER NATH PAL

[I. L. R., 14 Calc., 644

339. ———— **Symbolical possession obtained in execution of former decree**—*Fresh suit against the same defendants to obtain actual possession.*—A plaintiff who has obtained only symbolical possession in execution of a former decree is entitled to maintain a fresh suit against the same defendant to obtain real possession. SHANKAR BISTO NADGIR v. NARSINGRAV RAMCHANDRA JAHAGIRDAR

[I. L. R., 22 Bom., 667

58. PRIVACY, INVASION OF.

340. ———— **Easement**—*Suit for injunction—Jurisdiction of Civil Court.* The invasion of privacy by opening windows is not a wrong for which an action will lie. *Komathi* v. *Gurunada Pillai, 3 Mad., 141,* followed. AZUF v. AMEERUBIBI

[I. L. R., 18 Mad., 163

RIGHT OF SUIT—*continued*

59 PROPERTY AT DISPOSAL OF GOVERNMENT

341 ——— **Property found by police, and, no claim being proved, placed at disposal of Government by order of Magistrate under Criminal Procedure Code (1882),** ... er ... e- ... al ... nt ... k

Koore Singh v *Government*, ... nd *Queen Empress* v *Tribhovan Manekchand, I L R.*, *9 Bom*, *131*, referred to SECRETARY OF STATE FOR INDIA v VAKHATSANGJI MEGHRAJJI
[I. L. R, 19 Bom., 668

60 PUBLIC OR PRIVATE RIGHTS

342 ——— **Right to graze cattle—** ... *Code ss 31, 53—Public right—* ... ats of right ... ild be brought upon it unless special ... roved VENKATACHALA v KUPPUSAMI
[I. L. R., 11 Mad, 42

61. PUBLIC WORSHIP, SUITS REGARDING RIGHT OF.

343 ——— **Suit to remove place of** ... *—Right* ... nd a the ... place of ... more or ... l ... d ... SESHAYYANGAR ... I. L. R., ... Mad., 153

MADARY v GOBURDUN HULWAI
[I. L. R., 7 Calc, 694: 9 C. L. R., 303

PARTHASARADI AYYANGAR v CHINNA KRISHNA AYYANGAR . . . I. L. R., 5 Mad., 304

344. ——— **Suit founded on sanctity of place of public worship—***Suit to restrain procession in public streets*—No sect is entitled to deprive othe ... streets f r ... their place ...

RIGHT OF SUIT—*continued*

61 PUBLIC WORSHIP, SUITS REGARDING RIGHT OF—*concluded*

carried on therein day and night SUNDRAM CHETTI v. QUEEN. PONNUSAMI CHETTI v QUEEN
[I. L. R., 6 Mad., 203

345 ——— **Suit to restrain superintendent of mosque from using it for other purposes or obstructing worshippers—***Suit* ... mosque ... tend d to be used, and from doing acts ... likely to obstruct worshippers in entering or leaving such mosque ABDUL RAHMAN v YAR MUHAMMAD
[I. L. R., 3 All, 636

62 REGISTRATION OF NAME

346. ——— **Suit as proprietor of estate to compel entry in Collector's book—***Right to share in land*—A person claiming a share in land by right of heirship has no right of suit against a Collector to obtain entry of his name in the revenue books the proper form of suit is against the co heirs for a declaration of his right to a share, and an award of such share FATMA KOM NURI SAHEB v DARYA SAHEB . . . 10 Bom, 187

347 ——— **Suit to compel registration** ... *speculative nature*— ... e is in possession ... rt will cause ... with ut stating that the property ... used to make the entry and without joining as defendant the only person who had power to do so was held to be not maintainable IBRAI BYARI v KAUNDINYA
[2 Mad., 363

348 ——— **Suit to compel registration of name as proprietor—***Collector in Chota Nagpore—Beng Regs I of 1793, s 9, and XIII of 1833*—A Collector in Chota Nagpore cannot be compelled by suit to register the name of any one as proprietor of an estate LALLA BISSEN PERSHAD v COLLECTOR OF HAZAREEBAGH . 13 W. R., 307

349. ——— **Suit to compel registration of another person's name—***Lessee holding as* ... may register as farmer ... given, ... nt of ... sue to compel the registration ... COLLECTOR OF MIDNAPORE v RAMDHONE DUTT
[Marsh., 65. 1 Hay, 133

350. ——— **Right of suit by a se patnidar against a dar-patnidar for registration of name**—A se patnidar is not entitled to sue ... his name in ... tni tenure, but ... n of his right ... LAL SINGH v OMAO ALI . . . . . . C W. N,

RIGHT OF SUIT—*continued.*

63. RESUMPTION, SUIT FOR UNLAWFUL.

351. ———— **Suit for damage for unlawful resumption by Government.**—Government may be sued by any person injured by its acts of unlawful resumption. RAMNARAIN MOOKERJEE *v.* MAHTAB CHUNDER . 1 Ind. Jur., O. S., 48

64. REVENUE, SALE FOR ARREARS OF.

352. ———— **Suit for property attached by revenue authorities**—*Act XXXII of 1860—Effect on suit of failure to deposit the revenue or give security.*—When a third party objected to the auction sale of certain immoveable property which had been attached by the revenue authorities, it was held that his right to bring an action to prove that the property was his was not barred by s. 18, Act XXXII of 1860, because he had omitted to deposit the money demanded by Government or to file security. SHEO PERSHAD SINGH *v.* GOPAL LALL . . . . . 14 W. R., 276

353. ———— **Payment of Government revenue by mortgagees in possession to save the property**—*Payment of mortgage-money into Court by mortgagors and relinquishment of possession by mortgagees, Subsequent suit by mortgagees to recover the—Government revenue paid by them by sale of the mortgaged property—Act IV of 1882 (Transfer of Property Act), s. 83.*—The plaintiffs were mortgagees in possession of certain shares in a village under a mortgage, which, as to the principal amount advanced, was a simple mortgage; as to the interest a usufructuary mortgage. The mortgagees, to save the property from sale, paid up certain arrears of Government revenue. Subsequently the defendant, who was the representative of the mortgagers under s. 83 of the Transfer of Property Act, paid the original sum due under the mortgage into Court. The mortgagees withdrew the money so paid in and deposited the mortgage-deed in Court. The mortgagees then, after relinquishing possession of the mortgaged property, sued to recover the money which they had paid as Government revenue by sale of the mortgaged property. *Held* that, though the mortgagees might originally have treated the amount paid by them as Government revenue as part of the mortgage-money, they did not by such payment obtain a lien independently of their position as mortgagees, and when once they had abandoned their lien on the mortgaged property by accepting the money paid into Court by the mortgagors and by relinquishing possession of the mortgaged property, they could not afterwards revive it; and their suit, which was for realization of the Government revenue paid by them by sale of the mortgaged property, must fail. *Semble*—A mortgagee, who had given up his lien under circumstances similar to those above described, might bring a simple money suit to recover money paid by him to save the property from sale in execution for arrears of Government revenue. *Kinu Ram Dass* v. *Mozaffer Husain Shaha, I. L. R., 14 Calc., 809; Lachman Singh* v. *Salig Ram, I. L. R., 8 All., 384; Achut Ramchandra Pai* v. *Hari Kamti, I. L. R., 11 Bom., 313; Girdhar Lal* v. *Bhola Nath, I. L. R., 10 All., 611; Parsotam Das* v. *Jaijit Singh, Weekly Notes, All., 1890, p. 90; Nikka Mal* v. *Sulaiman Shaikh Gardner, I. L. R., 2 All., 193; Kristo Mohinee Dossee* v *Kaliprosono Ghose, I. L. R., 8 Calc., 402;* and *Nugender Chunder Ghose* v. *Kaminee Dossee, 11 Moore's I. A., 241,* referred to. ANANDI RAM *v.* DUR NAJAF ALI BEGAM

[I. L. R., 13 All., 195

RIGHT OF SUIT—*continued.*

64. REVENUE, SALE FOR ARREARS OF—*concluded.*

354. ———— **Sale for arrears of revenue**—*N.-W. P. Land Revenue Act (XIX of 1873), ss. 185, 186—Disposal of surplus proceeds—Distribution amongst creditors of defaulters—Suit by one of such creditors against another—Cause of action.*—An estate which had been mortgaged separately to two different mortgagees was sold for default in payment of Government revenue. By the sale a much larger sum than was sufficient to satisfy the arrears of revenue was realized. The Collector, instead of paying the surplus to the defaulter, mortgagor, paid therewith one of the mortgagees in full and the other in part. The mortgagee who had been paid in part only sued the other mortgagee for the balance due on his (the plaintiff's) mortgage, alleging that it was prior to that of the defendant and ought to have been paid off in full. *Held* that the suit would not lie. The action of the Collector in contravention of the express provisions of s. 185 of Act XIX of 1873 gave the plaintiff no cause of action against the other mortgagee. KUNJ BEHARI LAL *v.* PARSOTAM NARAIN . . I. L. R., 21 All., 137

65. REVENUE, SUIT FOR ARREARS OF.

355. ———— **Suit for arrears of Government revenue**—*Act XIV of 1863, s. 1, cl. 1.*—In a suit under cl. 1, s. 1, Act XIV of 1863, for the recovery of arrears of Government revenue, the plaintiff was a lambardar and paid the Government revenue and the defendants severally paid rent to him according to the rent roll, the net profits, after the Government demand and other payments had been made, being divided among them. *Held* that the suit would not lie under that section. MUHKUN *v.* JUSRAM . . . 4 N. W., 165

66. ROAD AND OTHER CESSES, SALE FOR ARREARS OF.

356. ———— **Omission to appeal to Commissioner**—*Act XI of 1859, s. 33—Public Demands Recovery Act (Beng. Act VII of 1880), s. 2.*—A suit to set aside a sale for arrears of road and public cesses will lie, although no previous appeal to the Commissioner have been made under s. 33 of Act XI of 1859. Such a sale is not one for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable within the meaning of that section. MOHIBUL HUQ *v.* SHEO SAHAY SINGH

[I. L. R., 25 Calc., 85

357. ———— **Suit to set aside a sale for arrears of cesses on the ground that no**

RIGHT OF SUIT—*continued*

66 ROAD AND OTHER CESSES, SALE FOR ARREARS OF—*concluded*

notice was issued under s 10 of the Act, whether maintainable in the Civil Court—*Public Demands Recovery Act (Beng Act VII of 1880), ss 2, 8, and 10—Beng Act VII of 1868, ss 2 and 8*—A suit to set aside a sale held for arrears of cesses on the ground that no notice of the certificate under s 10 of Bengal Act VII of 1880 was served upon the plaintiff is maintainable in the Civil Court Baijnath Sahai v Ramgut Singh, I L R, 23 Calc, 775, and Saroda Charan v Kista Mohun, 1 C W N, 516, referred to CHUNDER KUMAR MUKERJEE v SECRETARY OF STATE FOR INDIA

I. L. R., 27 Calc., 698: 4 C. W. N., 586

67 SALE IN EXECUTION OF DECREE

358. ———— **Suit to set aside sale**—*Civil Procedure Code, 1859, s 257—Suit by representative of judgment debtor*—S 257, Act VIII of 1859, did not bar the representative of a judgment debtor from bringing a regular suit to set aside an execution sale except on the score of its having been irregularly conducted JUMMAL ALI v TIRBHEE LALL DOSS . **12 W. R., 41**

359 ———— *Suit on ground of fraud—Civil Procedure Code, 1859, s 256*—S 256 of Act VIII of 1859 did not bar a suit . . . to set aside an execu- . . . udu- . . . pre vious satisfied decree . . . es of irregularity in the sale proceedings BUDREE v LOKEMUN . . . **3 Agra, 89**

360 ———— *Civil Procedure Code, 1859, s 257*—An order cannot be said to have been made under s 257, Code of Civil Procedure, so as to bar a suit to set aside a sale in execution of decree, when the judgment debtor was not aware of the proceedings SREEMUNTO PURAMANICK v OBHOY CHURN MANNA . **11 W. R., 297**

361 ———— *Suit to set aside . . . sale—Omission to claim pro . . .*

execution of . . .
property, and they were unaware that it was incumbered, otherwise they would have discharged the debt, neither did they know the land had been attached and was to be sold in execution The sale was confirmed, and they sued to set aside the order confirming the sale *Held* that the suit would not lie. HOSSEIN BEG v JEEWA RAM **5 N. W., 139**

362 ———— *Right of purchaser under previous private sale—Notice of transfer—Landlord and tenant—Beng Act VIII of 1869, s 26*—The plaintiff purchased under a private conveyance from the registered tenant of a permanent transferable interest in land such as is described in s 26 of Bengal Act VIII of 1869, but no

RIGHT OF SUIT—*continued.*

67. SALE IN EXECUTION OF DECREE—*continued.*

notice of the transfer was given to the zamindar The zamindar subsequently brought a suit against the tenant for arrears of rent and obtained a decree, in execution of which he caused the tenure to be sold, . . .

proper party to take such . . . appeal against the order rejecting it *Held*, in a suit brought against the zamindar and the tenant to set aside the sale that in the absence of fraud the suit . . .

363. ———— *Act X of 1859, s 151—Sale for arrears of rent*—S 151, Act X of 1859, barred a regular suit by a judgment-debtor to set aside a sale in execution of a decree for arrears of rent RUTTUN MONEE DASSEE v KALEEKISSEN CHUCKERBUTTY . **W R, F. B, 147**

364 ———— *Act X of 1859, s 151 and ss 110, 111—Dismissal of objections*—A suit to set aside a sale in execution of a Civil Court's decree of a saleable under tenure other than that from which the arrears of the rent were due was not barred by s 151, Act X of 1859 The provisions of s 110, Act X of 1859, were applicable in such a case, and a party whose objection under s 111 was overruled had a right to bring a suit in the Civil Court JUGGESSUR SUHAYE v GOPAL LALL

11 W. R., 280

365. ———— *Non registration of name—Suit by unregistered holder to set aside sale of under-tenure*—The holder of an under-tenure, though his name has not been registered as the owner may bring a suit to set aside a sale of the under tenure made in execution of a decree for rent . . . former holder on the ground that the . . .

366. ———— *Illegal sale by Collector*—A suit will lie to set aside the proceedings of a Collector who acts without jurisdiction in selling land not within his jurisdiction KHOONOO v AOODAL SINGH . . **8 W. R., 511**

JOKEE LAL v NURSING NARAIN SINGH

4 W. R., Act X, 5

367. ———— *Sale under Criminal Procedure Code, 1861, s 185* A suit held not to lie to set aside a sale of property

RIGHT OF SUIT—*continued.*

67. SALE IN EXECUTION OF DECREE —*continued.*

out under s. 185 of the Criminal Procedure Code, 1861. BUKHOOREE SINGH v. GOVERNMENT [8 W. R., 207

368. ———— *Suit to set aside sale for irregularity—Beng. Act VII of 1880—Civil Procedure Code, 1882, ss. 311, 312.*—The words "in respect of sales in execution of decrees" in s. 19 of Bengal Act VII of 1880 do not include any proceedings instituted after the sale for setting it aside. Ss. 311 and 312, therefore, of the Civil Procedure Code do not apply to sales under a certificate. A suit therefore to set aside such a sale for irregularity is not barred by s. 312. SADHUSARAN SINGH v. PANCHDEO LAL [I. L. R., 14 Calc., 1

RAM LOGAN OJHA v. BHAWANI OJHA [I. L. R., 14 Calc., 9

369. ———— *Fraud—Sale under Act X of 1859—Civil Procedure Code, s. 244—Act XXIII of 1861, s. 11.*—*B* obtained an *ex-parte* decree for arrears of rent against *S* under Act X of 1859, and in execution of that decree brought the tenure to sale. At the sale the tenure was purchased by *N*. *S* then brought a suit against *B* and *N* to set aside the sale on the ground that the rent-decree and all execution proceedings taken thereunder were fraudulent, and alleging that *B* was the actual purchaser in the name of *N*. An objection was taken that the suit would not lie, and that the questions in the suit were such as could have been determined, and were determined, by the Court executing the decree. *Held* that neither s. 244 of the Civil Procedure Code nor the corresponding s. 11 of Act XXIII of 1861 has any application to proceedings in execution of a decree under Act X of 1869, and that the suit, being one to set aside the sale on the ground of fraud, was maintainable. *Saroda Churn Chuckerbutty* v. *Mahomed Isuf Meah, I. L. R., 11 Calc., 376,* distinguished. BROJO GOPAL SARKAR v. BUSIRUNNISSA BIBI . I. L. R., 15 Calc., 179

See MOHENDRO NARAIN CHATURAJ v. GOPAL MONDUL . . . I. L. R., 17 Calc., 769

PROSUNNO KUMAR SANYAL v. KALI DAS SANYAL [I. L. R., 19 Calc., 683: L. R., 19 I. A., 166

BHUBON MOHAN PAL v. NUNDA LAL DEY [I. L. R., 26 Calc., 324

and MOTI LAL CHAKRABUTTY v RUSSICK CHANDRA BAIRAGI . . I. L. R., 26 Calc., 326 note

370. ———— *Transfer of Property Act (IV of 1882), s. 99, Sale contrary to provisions of—Civil Procedure Code (Act XIV of 1882), s. 244—Sale by mortgagee in execution of decree.*—Property subject to a mortgage having been sold by the mortgagee as holder of a decree against the mortgagors, a separate suit was brought by the mortgagors to set aside the sale as being in contravention of s. 99 of the Transfer of Property Act. On objection being taken that the suit was not maintainable, the matter being one for determination in execution proceedings under s. 244 of the Code of Civil Procedure,—*Held* (1) that, although the sale was contrary to the provisions of s. 99 of the Transfer of Property Act, that section being for the benefit only of a particular class of persons, namely, those concerned with a right to redeem mortgaged property, such a sale was not void, but voidable; (2) that the question, being one arising between the parties to the suit wherein the sale was made and relating to execution, could not be raised and decided in a suit, but should be raised and tried only in execution proceedings taken under s. 244 of the Code of Civil Procedure, and the sale set aside if such relief were not, for any reason, barred; (3) that the sale having been confirmed, such confirmation was final, and precluded the mortgagors from seeking the relief to which they would otherwise have been entitled; and (4) that, notwithstanding such sale and confirmation, the mortgagors might not be precluded from suing to redeem the mortgaged property on payment of the amount given credit for by the mortgagee in respect of the sale. MAYAN PATHUTI v. PAKURAN [I. L. R., 22 Mad., 347

371. ———— *Civil Procedure Code (Act XIV of 1882), s. 287—Sale in execution subject to mortgage—Suit to set aside sale for re-sale of property free from mortgage lien.*—The plaintiff, having sold property in execution of a decree subject to a certain mortgage lien which had been duly investigated and allowed, brought this suit to have the sale set aside and praying for a re-sale of the property free from the mortgage lien. *Held* that he was not entitled to the relief sought. His proper remedy was to have brought a suit for a declaration that the alleged mortgage was null and void, and to have stayed the sale till the determination of that suit. PARSHOTAM MAUJI v. GANESH VINAYAK . . . I. L. R., 23 Bom., 759

372. ———— *Suit to recover property sold on grounds which might have been made grounds for appeal against the original decree—Acquiescence in execution proceedings.*—When a party to a decree and subsequent proceedings in execution thereof has suffered execution to proceed and property to be sold without appealing, he cannot sue to recover the property so sold on grounds which might have been taken in appeal from the decree or from orders in execution. BENI PRASAD KUNWAR v. LUKHNA KUNWAR . I. L. R, 21 All., 323

373. ———— Suit to confirm sale—*Civil Procedure Code, 1859, ss. 256, 257—Sale in execution of decree—Order setting aside sale—Suit to set aside such order.*—Certain immoveable property was put up for sale in the execution of *B*'s decree, and was purchased by him. Subsequently, on the same day, such property was put up for sale in the execution of *S*'s decree, and was purchased by him. *B* objected to the confirmation of the sale to *S*, on the ground that *S*'s decree had been satisfied previously to such sale, and the Court executing

RIGHT OF SUIT—*continued*.

67. SALE IN EXECUTION OF DECREE —*continued*

the decrees made an order setting aside such sale on that ground. *S* thereupon sued *B* to have such order set aside and to have such sale confirmed and to obtain possession of such property *Held* that inasmuch as such order had not been made under s 257 of Act VIII of 1859, but had been made at the instance of a purchaser under another decree, and *B's decree*, as a matter of fact, had not been satisfied *S's* suit to have such order set aside was maintainable SANGAM RAM *v* SHEOBART BHAGAT [I. L R, 3 All, 112

374 ———— *Civil Procedure Code, 1859, ss 256, 257—Sale in execution of decree—Suit to set aside order setting aside sale*—The Court executing a decree, having made an order setting aside a sale, under Act VIII of 1859 of immoveable property in the execution of the decree the purchaser at such sale sued the decree holder and the judgment debtor to have such order set aside and to have such sale confirmed in his favour *Held* (OLDFIELD J, dissenting) that the suit was maintainable, the provisions of s 257 precluding an appeal from an order setting aside a sale, and not a suit to contest the validity of such an order, and that the order setting aside the sale in this case being *ultra vires*, the auction purchaser was entitled to the relief he claimed DIWAN SINGH *v* BHARAT SINGH [I. L R, 3 All., 206

375. ———— *Civil Procedure Code, 1877, ss 311, 312—Suit to have execution sale, after being set aside, confirmed*—*Held* (OLDFIELD, J, dissenting) that a suit by the purchaser at a sale of immoveable property in execution of a decree, which has been set aside under ss 311 and 312 of Act X of 1877, to have such sale confirmed on the ground that there was no irregularity in the publication or conduct thereof, is not barred by the last clause of s 312 or by the last clause of s 588, but is maintainable AZIM-UD DIN *v* BALDEO I. L, R, 3 All, 554

376 ———— *Civil Procedure Code, 1859, ss 256, 257—Sale in execution—Order* [illegible]

[illegible] and was purchased by *M* On the 25th April 1877 such sale was set aside under s 256 of Act VIII of 1859 on the ground that the order attaching such property and the notifications of sale had not, as required by s 222, been signed by the Court executing the decree but by the Munsarim of the Court. On the 27th June 1877 *M* conveyed such property to *H*, who purchased it *bonâ fide* and for value, and satisfied the incumbrances existing thereon On the 15th April 1878 *R* sued *H* and *M* to [illegible]

RIGHT OF SUIT—*continued*.

67 SALE IN EXECUTION OF DECREE —*continued*

[illegible]

Court executing the decree and not by the Court, as required by s 222 of Act VIII of 1859, and inasmuch as it would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed to allow *R*, after standing by for a year, and permitting dealings with the property to come in and take advantage of the change of circumstances, and obtain a property become much more valuable at the price he originally offered, *R* ought not to obtain the relief which he sought *Held* by STRAIGHT, J that the fact that the Court executing the decree had not signed the order of attachment and the notifications of sale vitiated the [illegible]

[I L R., 3 All, 701

377. ———— *Civil Procedure Code, ss 244, 278, 283—Suit to confirm sale after it is set aside—Person not party to proceedings—Specific Relief Act, s 42*—*M*, in whose name property had been purchased at an execution sale which was improperly set aside brought a suit to have the [illegible]

Held that such a suit could only be maintained under s 42 of the Specific Relief Act (I of 1877), but that s 244 of the Civil Procedure Code indicated the intention of the Legislature that such questions should be determined in the execution department, and, reading together the provisions of ss 244, 278, and 283 of the Code, the suit was premature and therefore not maintainable MAN KUAR *v* TARA SINGH I. L. R., 7 All, 583

378 ———— *Suit to have confirmed a sale set aside by Collector—Transfer of execution of a decree to Collector—Power of Collector—Civil Procedure Code (1882), ss 312, 320, and 588, cl 16—Rules framed by Government under s 320—Jurisdiction of Civil Court—Sale in execution of decree*—Certain property was sold in execution of a decree by the Collector to whom the execution had been transferred under s 320 of the Code of Civil Procedure (Act XIV of 1882) The Collector set aside the sale before the date of confirmation, on the sole ground that the judgment debtor had subsequent to the sale, made full payment of the sum decreed Thereupon the auction-purchaser filed a [illegible]

RIGHT OF SUIT—*continued.*

67. SALE IN EXECUTION OF DECREE —*continued.*

barred under the last clause of s. 312 nor under s. 588, cl. 16. *Held* also that the rules framed by Government under s. 320 of the Code only restricted the powers of the Court to interfere with the procedure of the execution of decrees transferred to the Collector. They did not come in the way of a party bringing a civil suit to establish his purchase. *Held* also that the Collector had no power under s. 311 of the Code to set aside the sale and receive payment from the judgment-debtor. MATHURADAS v. PANHALAL . . **I. L. R., 19 Bom., 216**

379. ——— Advance by mortgagee to pay off prior lien on mortgaged property and save the property from sale in execution of decree—*Transfer of Property Act (IV of 1882), ss. 60, 68, 72, 74, 75, 95—Suit against purchaser of property to recover amount so advanced—Charge on the mortgaged property.*—Plaintiff's undivided brother had advanced money on a usufructuary mortgage-bond to enable the owners of certain property to obtain possession of it from one in whose favour a lien had been decreed to subsist. The money not having been so applied, the holder of the lien attached the property and applied to the Court for its sale. To save the property from being sold, plaintiff's said brother further paid the amount of the lien into Court; and at about the same time the mortgagor sold the property to defendant. Plaintiff's brother had never obtained possession of the property, and had since died. Upon plaintiff suing to recover (in addition to the mortgage amount, liability for which was not disputed) the amount of the lien so paid into Court to save the property from sale, *Held* that, inasmuch as plaintiff could only succeed by showing that by such payment a charge was created upon the land (the money not having been paid at the request or for the benefit of the defendant), the suit must fail. There is no provision in the Transfer of Property Act to support the proposition (involved by the plaintiff's suit) that a second mortgagee may, by a transaction between himself and the first mortgagee, without knowledge or concurrence on the part of the mortgagor, acquire a new right over the mortgaged property. *Per* SUBRAMANIA AYYAR, *J.*—That as against the mortgagors plaintiff would have been entitled to add the sums paid by him to the prior incumbrancer to the mortgage amount. But as the mortgage was usufructuary and plaintiff had never obtained possession, he had acquired no charge on the mortgaged property for the money recoverable by him under s. 68 of the Transfer of Property Act. The amount sought to be added thereto consequently stood on a similar footing, and the plaintiff's contention that a charge in respect of it existed in his favour was unsustainable. *Nogender Chunder Ghose* v. *Kaminee Dossee, 11 Moore's I. A., 241 at p. 259*, and *Anandi Ram* v. *Dur Najaf Ali Begam, I. L. R., 13 All., 195.* PERIANNA SERVAIGARAN v. MARUDAINAYAGAM PILLAI . . . **I. L. R., 22 Mad., 332**

380. ——— Suit for declaration of right to have property sold in execution—

RIGHT OF SUIT—*continued.*

67. SALE IN EXECUTION OF DECREE —*continued.*

Refusal of Deputy Collector to sell in execution of decree of Revenue Court—Cause of action.—Where a Deputy Collector refuses to sell a certain property in execution of the decree of a Revenue Court, and the applicant fails to bring a suit within the proper time for a declaration of his right to have the property sold, he cannot procure to himself more time by making a second application to the Deputy Collector for execution and having the refusal repeated. A suit so brought cannot have its form changed and be treated as a suit to establish the lien which the plaintiff obtained on the property, and to bring the same to sale for discharge of that lien. RUGHOONUNDUN SINGH v. GOPAL CHUND CHOWDHRY . . . . . . **20 W. R., 17**

RUGHOONUNDUN SINGH v. COCHRANE [**20 W. R., 16**

381. ——— Suit by purchaser at execution sale to sue for partition—*Certificate of purchase by Registrar—Conveyance—Declaration of right to share—Rules of Court, 415, 431.*—The position of a purchaser at a sale in execution of a decree of the High Court after he has obtained a certificate from the Registrar under rule 415 of the Rules of Court is that of a person clothed with a right to a conveyance in virtue of a contract; he does not hold, save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance the property in the estate purchased does not, having regard to rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place. All that passes to him as against the defendant in that suit is an equitable estate and a right to a conveyance of the property. And therefore, as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not on partition give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property. JOHUR MULL KHOORRA v. TARANKISTO DEB . . . **I. L. R., 10 Calc., 252**

382. ——— Suit for refund of proceeds of sale paid to wrong party—*Civil Procedure Code, 1859, s. 270.*—No suit lay for a refund of the proceeds of sale realized in execution of a decree paid to a wrong party by order of a competent Court under s. 270, Act VIII of 1859 (*dissentiente* LEVINGE, *J.*). HURISH CHUNDER SIRCAR v. AZIMOODDEEN SHAHA [**W. R., F. B., 180**

383. ——— Suit by purchaser to recover purchase-money paid at sale—*Civil Procedure Code (Act XIV of 1882), s. 315—Sale of property in execution in which judgment-debtor has no interest—Limitation—Accrual of the cause of action.*—Under s. 315 of the Civil Procedure Code, a suit will lie to recover purchase-money paid at a Court-sale for property to which it is found that the

RIGHT OF SUIT—*continued*

67 SALE IN EXECUTION OF DECREE —*concluded*

judgment debtor has no title The cause of action in such a case does not accrue till the purchaser is deprived of the property which was sold to him GURSHIDAWA *v* GANGAYA

[I L R, 22 Bom, 783

384 ———— Sale in execution of decree enforcing mortgage—*Distribution of proceeds of execution sale—Priority of mortgages—Act IV of 1882 (Transfer of Property Act) s 80—A* mortgaged certain property to *B* in July 1874 to *C* in March 1877 and again to *B* in November 1877 *B* obtained a decree directing the sale of the property in satisfaction of his two mortgages and it was sold accordingly. Subsequent to the sale *C*

received by *B* in respect of *B*'s mortgage of November 1877 *Held* that to read the words an incumbrance in s 295 pro (c) of the Civil Procedure Code as 'an incumbrance or incumbrances so as to give priority to *B*'s mortgage of November 1877 over *C*'s earlier mortgage of March 1877 would be to defeat the intention of the Legislature as expressed in that section and also in s 80 of the Transfer of Property Act and that *C* was entitled to maintain the suit MITTHU LAL *v* KISHAN LAL

[I. L R, 12 All, 546

68 SHIP, SALE OF

385 ———— Suit for declaration of title against foreign creditor—*Sale by French Court of ship pledged to secure payment of debt—Claim by pledgee to proceeds of sale*—*M* pledged his ship in August 1878 to *C* as security for a bond debt of R1 500 repayable by two instalments in ... e ship in ... y *M* and ... claim on ... Court in ... red *C* to produce a copy of an English Court's judgment acknowledging and sanctioning *C*'s claim against *M* *C* sued *S* to obtain a declaration of his right to recover the amount due by *M* on the bond *Held* that whether or not his lien was destroyed by the sale of the ship in French territory *C* was not entitled to any of the proceeds of the sale either at the date of the sale or of his claim in the French Court and the denial by *S* of *C*'s right to any of the proceeds of the sale gave *C* no cause of action CHITHAMBARA *v* MUTHAYA

[I L R, 5 Mad, 330

386 ———— Suit by owners for sum realized by sale of ship—*Abandonment of French ship to French Consul—Principal and agent*—The Captain of the French ship *C* which had been wrecked abandoned her to the French

RIGHT OF SUIT—*continued*

68 SHIP SALE OF—*concluded*

Consul for the benefit of all concerned The owners assented to this arrangement but afterwards sued the Consul as their agent for the sum realized by the sale of the ship *Held* that when the owners of a foreign ship abandon her to their Consul for the benefit of all concerned they cannot afterwards sue him as their agent *Semble*—That the owners of a foreign ship when abandoning to their Consul can not legally enter into a private agreement with him with reference to the fund realized by the sale of the ship ROBERT *v* JAQUEHIM

[Bourke, O C, 112

69 SUBSCRIPTIONS SUITS FOR

387 ———— Suit by secretary of charitable institution against subscriber—

some cases upon what the subscriber said or did when he agreed to subscribe. *Quære*—Whether (assuming the liability of a subscriber for unpaid subscriptions) the secretary of a charitable institution with the consent of the committee of management is entitled to sue a subscriber for the amount of his contribution KEDAR NATH MITTER *v* ALISAR ROHOMAN

10 C L R, 197

388 ———— Liability of subscribers to a proposed town hall—A suit will lie to recover a subscription promised the subscriber knowing that on the faith of his and other subscriptions an obligation is to be incurred to a contractor for the purpose of erecting building to be paid for out of the moneys subscribed KEDAR NATH BHATTACHARJI *v* GORIE MAHOMED

[I L R, 14 Calc, 64

70 TAX

389 ———— Suit to recover tax illegally levied *Bombay Abkari Act (V of 1878), s 29 Omission to stay proceedings under*—Though a person subjected to an undue demand may under s 29 of the Act take steps by which the Collector's proceedings may be stayed still his abstention from such a course will not deprive him of his ordinary right to recover money wrongfully taken from him for the benefit of a third person NARAYAN VENKU *v* SAKHARAM NAGU

[I L R. 11 Bom, 519

71 TORTS

390 ———— Suit for tort amounting to felony—*Cause of action—Proof of previous conviction in Criminal Court*—Where a person

MULL *v* SARNO RAUE 2 Ind. Jur, N S, 187

RIGHT OF SUIT—*continued.*

71. TORTS—*continued.*

391. ———— **Suit in respect of tort**—*Taking away and detaining property—Remedy by civil action.*—In a case where a person took away a cow out of another's field and wrongfully detained it, pretending that he purchased it at an auction-sale in execution of a decree, it was held there was a remedy by civil action. The plaintiff was not bound to institute criminal proceedings in the first instance, and the Civil Court was bound to take cognizance of the suit under s. 1 of the Code of Civil Procedure of 1859. SHAMA CHURN BOSE *v.* BHOLA NATH DUTT . . . . **6 W. R., Civ. Ref., 9**

392. ———— **Suit for damages for abuse**—*Failure to take criminal proceedings.*—The failure of an injured party to institute criminal proceedings does not deprive him of his right to bring a suit in the Civil Court to recover damages for abuse. SREENATH MOOKERJEE *v.* KOMUL KURMOKAR

[16 W. R., 83

393. ———— **Suit for property (or its value) attached before judgment and made away with**—*Failure to institute criminal proceedings.* A suit will lie for the recovery, or for the value, of property attached under s. 81, Act VIII of 1859, and afterwards made away with by the defendants in collusion with the attaching officer, without a criminal prosecution being previously instituted against them. CHOITUNNO PARAMANICK *v.* ZUMEEROODDEE SHAIKH . . **18 W. R., 27**

394. ———— **Suit for tort not compoundable**—*Merger of tort in felony—Law applicable to Hindus and Mahomedans—English law—Right to bring civil suit before prosecuting for offence.*—Within the original jurisdiction of the High Court of Madras, a Hindu or Mahomedan whose civil rights have been infringed by an act which is also a non-compoundable offence is not bound to prosecute the offender before maintaining his civil action, nor is his right to prosecute his action suspended until the offender is brought to justice. ABDUL KAWDER *v.* MUHAMMAD MERA

[I. L. R., 4 Mad., 410

395. ———— **Suit to recover damages for detention of goods**—*Dismissal of criminal charge for taking same goods.*—The circumstance that the plaintiff preferred a criminal charge against the defendant for the taking of his goods, which charge was dismissed, does not prevent the plaintiff from afterwards suing in the Civil Court to recover damages for the taking or detention of the goods, notwithstanding the Criminal Court may have jurisdiction upon a conviction to impose a fine and award it to the protector as compensation ROOPA BEWA *v.* RAMCOOMAR SANDYAL

[Marsh., 248: 2 Hay, 13

ADRAM *v.* HURBULLUB . . **2 N. W., 58**

396. ———— **Suit for fine realized after imprisonment in default of payment**—*Imprisonment—Fine.*—An accused person was punished by the Magistrate both with imprisonment and fine and was sentenced in default of payment of fine to a further imprisonment. After the accused had undergone both the principal punishment and additional imprisonment, he was released, and the fine realized from him. *Held* that a suit by him to recover the amount of the fine was not maintainable; the additional imprisonment not being in lieu of the fine, but as a punishment for non-payment of it. MANOOLLAH *v.* GUNES . . . **3 Agra, 390**

72. WITNESS.

397. ———— **Cause of action**—*Suit for expenses of witness in civil case.*—No suit will lie for the expenses of a witness. DE SARAN *v.* HURISH CHUNDER BISWAS

[5 W. R., S. C. C. Ref., 6

398. ———— *Suit for damages caused by false statement of witness in a suit.*—No action will lie against a witness for making a false statement in the course of a judicial proceeding. CHIDAMBARA *v.* THIRUMANI

[I. L. R., 10 Mad., 87

399. ———— *Slander—Privilege of witness—Slander uttered by witness whilst under examination in a judicial proceeding.*—A witness in a Court of justice is absolutely privileged as to anything he may say as a witness having reference to the enquiry on which he is called as a witness. The plaintiff sued to recover damages for slander, the statement complained of being alleged in the plaint to have been made by the defendant while being examined as a witness during the hearing of a case before a Magistrate. It was found that the statement was made in answer to questions put to the defendant as a witness and allowed by the Court as relevant to the case. The plaintiff alleged that the statement was made maliciously, that the defendant bore him a grudge, and that it was to give vent to that grudge and to injure his reputation that the statement was made. *Held* that the plaint disclosed no cause of action, and that the suit had been properly dismissed. BHIKUMBER SINGH *v.* BECHARAM SIRKAR. BHIKUMBER SINGH *v.* GOTI KRISTO DAS

[I. L. R., 15 Calc., 264

400. ———— *Defamation—Verbal abuse—Special damage—Witness—Privilege.*—The plaintiff was cited as a witness by one S in a suit instituted by him against defendant. After plaintiff's evidence had been concluded, in which he stated that there was no enmity between him and defendant, the defendant was examined by the Court, and stated that there was enmity between him and plaintiff, and on the Court inquiring to know what was the cause of enmity, defendant used words conveying the meaning that plaintiff's descent was illegitimate. In a suit for slander instituted by the plaintiff,—*Held* by BRODHURST, *J.*, that under the circumstances, the statement complained of was made by defendant while deposing in the witness-box, and was therefore absolutely privileged. *Per* MAHMOOD,

RIGHT OF SUIT—*concluded*

72 WITNESS—*concluded*

J (contra) that the question whether or not the statement complained of was made by defendant in course of his deposition or after it was finished and when he was no longer in the witness box had not been tried and the order remanding the case for trial on the merits was right Further that the English law of slander as forming part of the law of defamation, and as such drawing somewhat arbitrary distinctions between words actionable *per se* and words requiring proof of special or actual damage is not ... reason of any

between defamation as such and personal insult in civil liability the law of British India recognizes personal insult conveyed by abusive language as actionable *per se* without proof of special or actual ...

ferred unless the contrary is ... defendant is not absolutely privileged and protected by reason of the office or occasion on which he employed such language he renders himself subject to a civil liability for damages irrespective of any plea of justification based upon proving the truth of the statements contained in the abusive and insulting language complained of that the rule of English law as to the privilege or protection of a witness in regard to defamatory statements made in the witness box is

... in the broadest sense of the ... no ... prove ... de in ... good faith ... MAHIP SINGH I L R, 10 All 425

Nor is a witness liable to be prosecuted for defamation for what he says in the witness box while under examination

See CASES UNDER DEFAMATION

RIGHT OF WAY

See ACQUIESCENCE [1 B L R A C 213

See CASES UNDER DEFAMATION

See EASEMENT [I. L R, 18 Bom, 382
I. L. R, 26 Calc, 311
I L R., 22 Bom 525

See ESTOPPEL—ESTOPPEL BY JUDGMENT [I L R, 4 Calc, 692

RIGHT OF WAY—*continued*

See INJUNCTION — SPECIAL CASES — OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—RIGHT OF WAY
[9 B L R, 328
I L R, 10 Bom, 390
I L R., 24 Bom, 188

See LAND ACQUISITION ACT 1870 ss 16 AND 17 3 W R, 27
[6 B L R., Ap, 47

See POSSESSION ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY WATER ETC
[2 B L R., Ap, 9
2 W R Cr, 64
I L R. 5 Calc., 194
I L R., 4 Mad, 121
I L R., 7 Mad., 49
14 W R, Cr, 28
2 C W N 670

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHT OF WAY

See RIGHT OF SUIT—EASEMENTS
[I L R 9 All, 434

1 ———— Creation of right of way—*User—Adverse possession*—A right of way need not have its origin in an express grant but may be established by continued user for a certain period constituting adverse possession RAM GUNGA DOSS *v* GOBIND CHUNDER DOSS 16 W R, 284

2 ———— *User — Custom — Proof of right of way*—A right of way may be created either by grant or by immemorial custom or ...

SAVALGIAPA VIRBASAPA *v* BASVANAPA BASAPA
[10 Bom, 399

Proof of well established and fixed user will be sufficient BHUGWAN CHUNDER CHOWDHRY *v* KHOSAL 7 W R, 271

3 ———— *User — Prescriptive right—Proof of right of way*—In order to establish a right of way the person claiming must prove uninterrupted user for a certain length of time and if his right is interrupted must go into Court at once No length of time can give a party such a ... of the servient ...

ROY 15 W R, ...

HEERA LALL KOOER *v* PURMESSUR KOOER
[15 W R, 401

4 ———— *User — Presumption from long user — Quære*—Ought a Court to infer from user alone that a right of way has been

RIGHT OF WAY—*continued.*

conferred by the owner of the land upon the person exercising the user, unless that user has extended over a period as long as that which the law would allow to the owner for bringing an action of ejectment if absolutely excluded from possession? MOHIM CHUNDER CHUCKERBUTTY *v.* CHUNDEE CHURN GOOHO . . . . . . 10 W. R., 452

5. ———————— *User—Actual user within two years—Limitation Act, 1871, s. 27.*—In a suit to establish a right of way, it is not sufficient for a plaintiff to prove user for twenty years which ended more than two years next before the institution of the suit; he must show exercise of the right by actual user within such period of two years. GOPEE CHAND SETIA *v.* BHOOBUN MOHUN SEN [23 W. R., 401

6. ———————— *Sufferance.*—A right of way by sufferance over another's land cannot create a permanent right. ASHOOTOSH CHUCKERBUTTY *v.* TEETOO HOLDAR . W. R., 1864, 293

FUTTEH ALI *v.* ASGUR ALI . . 17 W. R., 11

7. ———————— *Permitting cattle to pass over ground between village and public road.*—The owner of a piece of land between a village and the public road, who allows his neighbour's cows to pass over it on the way to pasture, does not thereby create a right of easement over the land so as to deprive it of all value by rendering its cultivation impossible. GOOROOCHURN GOON *v.* GUNGAGOBIND CHATTERJEE . . . . . 8 W. R., 269

8. ———————— *User—Evidence of right of way.*—User during previous ownership is no evidence of a right of way which relates to the land of another. OBHOY CHURN DUTT *v.* NOBIN CHUNDER DUTT . . . . . . 10 W. R., 298

9. ———————— *User.*—The finding that a right of way had been "formerly" exercised is not a sufficient finding to indicate the length of time for which the right had been exercised, and is therefore insufficient to prove a right of user. KRISHNA CHANDRA CHUCKERBUTTY *v.* KRISHNA CHANDRA BANIK . . . . 3 B. L. R., A. C., 211

S. C. KRISTO CHUNDER CHUCKERBUTTY *v.* KRISTO CHUNDER BURNIC . . . 12 W. R., 76

10. ———————— *Claim of right of way under contract.*—A party who claims, under a contract, the re-opening of a way, is not required by Act IX of 1871, s. 27, to prove user for twenty years. KALLARAM DHUR *v.* JOOGUL KISHORE SURMAH . . . . 23 W. R., 290

11. ———————— *Use limited to season of year.*—A right of way may be created by use continued for many successive years, even though the use is limited to one particular season of the year alone. OOMUR SHAH *v.* RUMZAN ALI [10 W. R., 363

12. ———————— *Pathway over waste land—Discontinuance during rainy season.*—A right of user over a pathway may be established, notwithstanding that the path passes over waste land. A temporary interruption, such as during the rainy season, cannot affect a right of user. MAHOMED ANSUR *v.* SEFATOOLLAH . . 22 W. R., 340

13. ———————— *User—Easement—Existence of other access to road.*—Time and user create a right of easement over the property of others. *A*'s right of way over *B*'s homestead is not affected by the fact of there being another pathway by which access to the main road may be obtained by *A*. SHAM BAGDEE *v.* FUKEER CHAND BAGDEE [6 W. R., 222

14. ———————— *Right of user—Existence of other access to premises.*—A plaintiff's right of user of a pathway to certain premises cannot be affected by the existence of another path by which he may obtain access to the same premises. MOKOONDONATH BHADOORY *v.* SHIB CHUNDER BHADOORY . . . . . 22 W. R., 302

15. ———————— *Easement — Limitation Act (XV of 1877), s. 26—User as of right—Prescriptive right.*—For the purpose of acquiring a right of way or other easement under s. 26 of the Limitation Act, it is not necessary that the enjoyment of the easement should be known to the servient owner. In this respect there is a difference between the acquisition of such rights under that Act and their acquisition under the English Prescription Act. ARZAN *v.* RAKHAL CHUNDER ROY CHOWDHRY . . I. L. R., 10 Calc., 214

16. ———————— *User of twenty years to support servitude—Extent and mode of user—Calcutta Municipal Act (Beng. Act IV of 1876).*—As establishing his right of way over the defendant's passage, the plaintiff relied upon a user of it, several times in the year, for twenty years prior to the defendant's interruption of it, by mehters for the purpose of removing the contents of a cesspool connected with a privy belonging to the plaintiffs' house. The facts indicated by way of limit to the user of the passage only showed that it must be a reasonable user for the above purpose. There was no agreement specifying times or occasions of access, and the inference was that, if the plaintiffs had thought fit to us ethe passage more frequently than they did, they were at liberty to do so. In and after 1876, instead of the plaintiffs' mehters, those employed by the Municipality came and went upon the passage, not at distant intervals, but daily, the plaintiffs under bye-laws, in conformity with Bengal Act IV of 1876, being bound to give them access, and the system being to clean the place daily. *Held* that the above was neither a discontinuance by the plaintiffs of their user nor an aggravation of the servitude. Also that, although a servitude gained for one purpose cannot be used for another, the purposes before and after 1876 being identical, the user proved prior to that year supported a right in the plaintiffs to use the passage for giving access to the servants of the Municipality for the above purpose at reasonable and convenient times. JADULAL MULLICK *v.* GOPALCHANDRA MUKERJI . I. L. R., 13 Calc., 136

S. C. JUDOO LALL MULLICK *v.* GOPAUL CHUNDER MOOKERJEE . . . . L. R., 13 I. A., 77

RIGHT OF WAY—*continued*

Affirming the decision of the High Court, Calcutta, which held that where a right of way for a particu lar purpose is proved to have existed for upwards of twenty *years the Court is not bound to confine the* right to the precise number of times in the year that it has been exercised but may construe it as a right to use the road at all convenient times for the particu lar purpose GOPAL CHUNDER MUKERJEE v JUDOO LALL MULLICK

[I L R., 9 Calc, 778 · 13 C L R, 146

17 ——— Proof of right of way—*Evi dence—Particular route*—In a suit for decla ration of a right of way over the land of another, the plaintiff must prove the particular line over which be claims the right Mere proof of a right to pass over the land without proving the particular route will not entitle a plaintiff to a decree RADHANATH SUGRACHARJI v BAIDONATH SEAL

[3 B L R, Ap, 118

18. ——— Nature of right of way— A right of way is ordinarily a right of passing, and not a general right to pass from one point to another point GOLUCK CHUNDER CHOWDHRY v TARINEE CHURN CHUCKERBUTTY 4 W R, 49

19 ——— Mode of exercising right of way—*Indirect way*—If a person has a right of way from one place to another over a particular

20 ——— Right acquired by purchaser of house—The purchaser of a house *acquires the right to the use of a way to a road which* has been enjoyed with the house by the vendor, if it is not merely a right to a way of necessity but a particular right over a defined path NUBEEN CHUNDER BULLUB v BHOOBUN CHUNDER MUNDUL

[15 W R, 526

21 ——— General right of way—*Right of thoroughfare for processions*—A general right of thoroughfare includes a right of way for marriage or other processions of the like nature unless at the time of the first inception of the right it was restricted to a right of passage and such processions were interdicted. RAJ MANICK SINGH v RUTTUN MANICK BOSE 15 W R., 46

22 ——— *Right to carry marriage and funeral processions*—A general right of way was held under the circumstances to include a right to carry marriage and funeral processions LOKENATH GOSSAMEE v MONMOHAN GOSSAMEE

[20 W R., 293

23 ——— Right to freedom from obstruction—*Ownership of soil*—A person who has a right of way cannot claim anything more than that the reasonable exercise of his right shall not be *obstructed It is only ownership of the land that* carries with it the ownership of everything *usque ad cœlum* TOOLSEEMONEY DEBEE v JOGESH CHUNDER SHAHA 1 C L R, 425

24 ——— Road used only by particular section of community—*Private way*—Where there is a road the privilege of using which is enjoyed only by one particular section of a community, the road is not a public one SHAM SOONDER BHUTTACHARJEE v MONEE RAM DOSS

[25 W R, 233

25 ——— Continuous user—*Discontinuance—Limitation*—A right of way over the land of another must be kept up by constant use HURIDAS NANDI v JADUNATH DUTT

[5 B L R, Ap 66 14 W R, 79

26 ——— Immoveable property—*Specific Relief Act (I of 1877) s 9*—A right of way is not "immoveable property" within the meaning of s 9 of the Specific Relief Act MANGALDAS v JEWANRAM I L R., 23 Bom., 673

27 ——— Obstruction to right of way—*User*—Suit by members of a joint family to enforce their right to a pathway through a door (which had been blocked up) leading to a joint thakoorbari *Held* that this was not a case in which the plaintiffs claimed the right of user but only complained of the obstruction of a passage belonging to them jointly with the defendants and that the non user for some years by the plaintiffs was not an abandonment of their right CHUNDER KANT CHOWDHRY v NUND LALL CHOWDHRY

[16 W. R, 277

29 ——— Loss of right of way—*Relinquishment of right in land*—The relinquishment of all rights and interests in land exchanged does not necessarily involve loss of right of way over the land KALEE KISHORE ROY v DEEN DYAL SEIN

[4 W R., 83

30 ——— Closing right of way—*Substitution of another way*—The owner of the land over which there is right of way by an ancient pathway cannot without the consent of the parties entitled to the right substitute another path and shut up the ancient pathway TARINEECHURN CHUCKERBUTTY v TARINEECHURN CHUCKERBUTTY

[1 Ind Jur, N S, 6

31 ——— Grant of land to build dwelling house—*Implied right to build privy—Way of necessity for sweepers—Caste prejudices—Modification of English law*—A plot of land in the centre of the defendant's oart was granted to plaintiff's predecessor in title on fazendari tenure to build a dwelling upon A hut was accordingly built

RIGHT OF WAY—*continued.*

thereon. No privy was built with or attached to the hut, the occupants of the hut using the oart, or neighbouring oarts, for natural purposes. The plaintiff bought the hut, knocked it down, and proceeded to build a substantial dwelling with a privy on the site of the old hut. Defendant denied his right to build a privy, or to have any right of way for sweepers to the said privy when built. *Held* that the suitable enjoyment of the hut, when it was originally built, implied the use of a privy, whenever the occupants of the hut should think fit to build one; and that therefore the plaintiff was entitled to build a privy, and consequently also to a way of necessity for a sweeper to have access to the privy when built. The occupants of the old hut had been allowed, as a way of necessity, and had always used as a means of access to that portion of the site of the old hut on which the new privy was now being built, a path which went in a straight line from the gate in the outer wall of the oart to the front door of the hut, and thence, skirting the hut, to the site of the new privy. The plaintiff now claimed a right of way for his sweeper in a direct line from the outer gate to the new privy, thus avoiding the front entrance of the house. *Held* that, having regard to the class of persons who had lived in the old hut (who were of low caste), there could have arisen, up to the present time, no reasonable necessity for two ways to the site in question, and therefore the plaintiff was limited to the old way enjoyed by his predecessor in title. *Quære* Whether, if the lessees had been persons belonging to one of the higher castes, it would not be right to take into consideration the prejudice entertained by members of such castes against being brought into close proximity with persons following the occupation of a sweeper, and, if necessary, to modify the general principle of English law, which lays down that a grantee is only entitled to one way of necessity. ESUBAI *v.* DAMODAR ISHVARDAS . . I. L. R., 16 Bom., 552

32. ———— Place dedicated by owner of land for convenience of occupiers of adjoining houses—*User of such open space—Covenant or grant presumed Easement—Public land — Encroachment — Injunction.*— The plaintiff and defendant occupied houses situated in the same lane and opposite each other. Close to both houses was an open space in which a cross had stood. The plaintiff alleged that the said vacant space was originally intended for, and had always been used by the occupants of his house and the residents in the lane in common for, the purposes of recreation, save where the cross stood. The cross had been for many years visited by Christian worshippers who prayed and worshipped there. The plaintiff also alleged that, in addition to the general use of the open space, he and his predecessors in title and the occupants of his said house had for more than twenty years used the open space as a footway and a way for carriages and other vehicles to approach the said house and to stand and be able to turn there. He complained that the defendant had wrongfully removed the cross, and enclosed the greater portion of the said open space, and he prayed for a declaration that he and the occupants of his house were entitled to the use of the said space for purposes of recreation, and as a footway and carriageway and for an injunction. The defendant pleaded that the whole of the open space formerly belonged to a Portuguese religious confraternity who were the fazendars of both his property and the plaintiff's; that this confraternity had permitted the cross to be erected on the land, at which the residents of the houses of the plaintiff and defendant and other adjacent houses who were then Portuguese used to assemble and worship; that the Portuguese having left the locality the cross was removed, and the part of the open space which had been enclosed by the defendant had been sold to him by the confraternity in 1887. He denied the use of the space alleged by the plaintiff. *Held* that the evidence was not sufficient to establish that the land in dispute had been dedicated to the public, but that, on the evidence, the Court was justified in presuming, and ought to presume, a covenant on the part of the fazendari owners of the oart to keep the lane, including the upper end of it, open for the use of the owners of the houses abutting upon it. Such a covenant should be presumed equally in the case of a land-owner giving land for building purposes to fazendari tenants in a perpetual tenure at a fixed rent, and in the case of a owner selling land out and out for building purposes. RANCHORDAS AMTHABHAI *v.* MANEKLAL GORDHANDAS . . . . I. L. R., 17 Bom., 648

33. ———— Easement of necessity—*Easements Act (V of 1882)—Act I of 1872, s. 114, illus. (g)—Presumption against plaintiff from failure to produce his title-deeds.*—The plaintiffs were owners of an hotel, and the defendant of certain adjacent property. The two properties had at one time been united, and at that time the manager of the hotel on behalf of the owner used to obtain water for the purposes of the hotel from a certain spring by means of a road which ran over land which subsequently became the defendant's. There was another but smaller and much less convenient path from the hotel to the spring. The plaintiffs became owners of their portion of the property in 1886, and the defendant of his portion in 1888. The plaintiffs continued to use the above-mentioned road through the defendant's property for the purpose of getting water from the hotel until 1889, when the defendant refused to permit them any longer to use the road, The plaintiffs accordingly sued the defendant for a declaration of their right of way over the said road, but refused to put in evidence the deed under which they became owners of the hotel property. *Held* upon these facts that the plaintiffs were not entitled to any right of way over the land in question. Owing to the non-production by the plaintiffs of their title-deed, it must be presumed as against them that the evidence afforded thereby would be unfavourable to their claim, and no right of way in favour of the plaintiffs could be shown to arise otherwise, either as an easement of necessity or as an easement the intention to grant which might be inferred. *Charu Surnokar* v. *Dokouri Chunder Thakoor, I. L. R., 8 Calc., 956,* considered. *Rajroop Kuar* v. *Abul*

HT OF WAY—*concluded.*

ein, I. L R, 6 Calc, 394 L R, 7 I A, 240, v. Oxley, L R, 10 Q. B, 360, Polden v ard, L R, 1 Q B, 156, Worthington v on, 29 L. J, Q B, 116, Hinchcliffe v Earl nnoul, 5 Bing, N C., 25, Morris v Edgington, int, 24, Barkshire v Grubb, L R, 18 Ch D, and *Bayley v G W R Co, L R, 26 Ch D,* eferred to WUTZLER *v* SHARPE

[I. L R, 15 All., 270

———————— *Purchase of land ning purchaser's land—Way of access—Way* [illegible]

[illegible] ured a way [illegible] Where a [illegible] leading to [illegible] of general [illegible] xisting at [illegible] ime of the sale were such as to justify the that such was the intention of the parties e the words used in a Marathi deed of sale were a hakk wa sambandh" (*i e*, all rights and ppurtenances),—*Held* that the words in them-, apart from the circumstances at the time of ale, did not include a right of way over the [illegible]

HT TO APPEAR.

See ADVOCATE 5 B. L R, Ap, 70
[14 B. L. R, Ap, 12
13 W R, 60
23 W. R, Cr, 14

See COUNSEL 5 B L R., Ap, 70
[9 B. L R, 417
I. L. R, 1 Bom., 46

See MOOKTEAR I. L R., 1 Mad, 304
[I L R., 1 Bom, 14

See CASES UNDER PLEADER—APPOINTMENT AND APPEARANCE

HT TO BEGIN.

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE I L R, 18 Calc, 201
[L R, 17 I. A, 159

General rule —The rule is that arty holding the affirmative has the right to at the hearing before the High Court. LALL-JN MULLICK *v* PEARY CHAND MITTRA

[1 Ind. Jur., N. S., 383

RIGHT TO BEGIN—*continued.*

2. ———— Practice—*Suits under Civil Procedure Code, 1859* —It was held under the Civil Procedure Code of 1859 that the Common Law practice in respect of the right to begin ought to prevail in cases under that Act, that practice having been followed up to that time, and the Procedure Code making no distinction between suits in the nature of Common Law actions and those in the nature of equity suits RUNGUNMONEY DOSSEE *v* BRIJO LALL DAY Cor, 25

3 ——— Small Cause Court references. —The right to begin in Small Cause Court references is generally allowed to the plaintiff, but in one case the counsel for the defendant was allowed to begin where the judgment of the Small Cause Court was in favour of the plaintiff HARAN CHANDRA MOOKERJEE *v* NUNDOGOPAL MUTTY LALL

[13 B L. R, 142: 22 W R, 71

The right to begin is now specially provided for by s 179 of the Civil Procedure Code, 1882

4. Civil Procedure Code, 1877, s. 179 —*Suit for mesne profits—Burden of proof* —It cannot be laid down as a general proposition controlling the provisions of s 179 of the Code of Civil Procedure that in a suit for mesne profits against persons who have been in possession of the land in respect of which the mesne profits are claimed and who have been shown to have no title, that the burden of proof is upon the defendants KRISHNA MOHUN BAISAK *v* KUNJ BEHARY BAISAK

[6 C. L R., 1

[illegible] dants who resisted the suit, admitted a nucleus of joint property and claimed the right to begin, on the ground that the onus was on them to prove that the whole property and the trading businesses were not joint *Held* that, unless the defendants admitted all the allegations, or all the material allegations, the plaintiff was entitled to begin AGHORE NATH NEOGY *v* PREM CHAND NEOGY 7 C. L R, 274

6 ———————— *Appeal—Objec* [illegible]

RUSTOMJI [illegible]

[illegible] Bom, 287

7 ———————— *Application for review—Order to show cause* —Upon the hearing of [illegible]

8. ———————— *Hearing of case on preliminary issue* —At the hearing of a case on a preliminary issue the defendant by whom the issue was raised was held to have the right to begin. FATMABAI *v* AISHABAI I. L. R., 12 Bom., 454

RIGHT TO BEGIN—*concluded.*

9. ——— Criminal case—*Counsel—Practice—Reference to High Court under s. 434, Criminal Procedure Code (Act XXV of 1861).*—In a reference to the High Court under s. 434 of the Criminal Procedure Code, where counsel appeared, and the reference from the Judge impeached the order of the Magistrate, the Court called on counsel to support the argument. ANGELO *v.* CARGILL

[9 B. L. R., 417: 18 W. R., Cr., 41

10. ——— *Case under s. 263, Criminal Procedure Code, 1872.*—In a case referred to the High Court under s 263 of the Criminal Procedure Code, because the Sessions Judge differed from the virdict of the jury, the High Court held that it was for the Government (the appellant), who asked for a conviction, to begin and satisfy the Court that there was a case calling upon the prisoner for an answer. QUEEN *v.* RAM CHURN GHOSE

[20 W. R., Cr., 33

11. ——— *Reference under s. 434, Criminal Procedure Code, 1882.*—Where, on the application of counsel for the prisoner, a question of law has been reserved for the decision of the Court under s. 434 of the Criminal Procedure Code (Act X of 1882), the prisoner's counsel has the right to begin. QUEEN-EMPRESS *v.* APPA SUBHANA MENDRE

[I. L. R., 8 Bom., 200

12. ——— *Reference to High Court by Presidency Magistrate—Onus probandi—Practice—Criminal Procedure Code (Act X of 1882), s. 432.*—In a reference by a Presidency Magistrate to the High Court as to whether, on the facts stated, any offence has been committed by an accused person, it lies on the prosecution to make out that an offence has been committed, and under the circumstances the prosecution must begin. QUEEN-EMPRESS *v.* HARADHAN *alias* RAKHAL DASS GHOSH

[I. L. R., 19 Calc., 380

RIGHT TO USE OF WATER.

See EASEMENT . I. L. R., 18 Mad., 320
[I. L. R., 23 Bom., 506

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHT TO WATER.

1. ——— Presumption of right—*User, Proof of.*—No presumptions of law in regard to rights of water are known in this country, but proof of ancient reasonable user by particular recognized means is sufficient to give the right. BUNDHOO SOOKOOLANY *v.* JOY PROKASH SINGH

[W. R., 1864, 367

2. ——— Right to open conduit for water—*Injury to neighbours.*—The right to take water is governed by established use. No one can open a new conduit to take additional water to the injury of his neighbours. ATHUR ALI KHAN *v.* SEKUNDAR ALI KHAN . . 4 W. R., 28

3. ——— Right to surplus water of tank—*Easement—User—Channel.*—A right of easement may be acquired in the surplus water of a tank, flowing through a defined channel, whether natural or artificial. RAYAPPAN *v.* VIRABHADRA

[I. L. R., 7 Mad., 530

4. ——— Right to use another's canal.—A person has *no right to tap* another's canal and abstract the water therefrom for his own land, unless he has acquired that right by grant or prescription. RUN BAHADOOR *v.* POODHEE ROY

[W. R., 1864, 319

5. ——— Riparian proprietor, Right of—*Bunds or embankments.*—A riparian proprietor may deal with the stream as freely as with any other portion of his land, provided only that he must not by so doing sensibly disturb the natural condition of the stream as it exists within the limits of other proprietors, whether above or below, or on the opposite side. MONOOUR HOSSEIN *v.* KANHYA LALL

[3 W. R., 218

6. ——— *Natural water-course.*—The right which a riparian proprietor has, under certain restrictions, to the use of the water of a natural water-course, has no application to a water-course artificially constructed; and the mere fact of riparian proprietorship gives no rights whatever over such a stream. BHOOP NARAIN SINGH *v.* KERAMUT ALI . . . . . . 6 W. R., 99

7. ——— *Obstruction to flow of water—Encroachment.*—The plaintiff and defendant were proprietors of land and gardens on opposite sides of a tidal creek, which sides were protected by walls. The defendant, the wall on his side becoming dilapidated, constructed a fresh one, altering its direction, and encroaching five feet upon the bed of the stream. In a suit for possession of land by demolishing the said wall, the plaintiff alleged that he was entitled to the solum on which it was built, that his navigation was obstructed, and that there was a danger of his screw-house falling down. It appeared, however, that the Government, and not the plaintiff, was the owner of the solum, and that the plaintiff neither claimed nor proved that he was entitled to the flow of the water as it had been accustomed to flow, and that that flow was seriously and sensibly diverted so as to be an injury to his rights. *Held*, reversing the decree of the High Court, that the plaintiff had failed to show either *damnum* or *injuria*, and therefore had no right of action. KALI KISHEN TAGORE *v.* JODOO LAL MULLICK

[L. R., 6 I. A., 190: 5 C. L. R., 97

8. ——— *Easements Act (V of 1882), ss. 6, 7, 17—Natural streams—Surface water.*—The owners of a tank fed by natural streams, which depended for their supply on natural rainfall and surface water, sued for an injunction to restrain superior riparian owners from damming the streams or interfering with the supply of water, over which the plaintiffs claimed a right of easement. The issue as to the ownership of the land on which the streams rose was undecided. *Held*, (1) The Easements Act only declared the existing law as to easements over water; (2) An easement can therefore

RIGHT TO USE OF WATER—*continued*

be acquired in regard to the water of the ra nfall But surface water not flowing i a stream and not permanently collected i a po l, tank or other vise is not a subject of easement by prescriptio, though it may be the subject of an express grant or con tract (3) It is the natural right of every owner of land to collect or dispose of all water on the surface which does not pass in a defined channel (4) Ri parian o ners are ent tled to use and consume the water of the stream for dri ki g and household pur poses, for watering their cattle for ir igating their land and for purposes of manufacture subject to the conditions (i) that the use s reasonable (ii) that it is requ red for their purposes as owners of the land and (i i) that it does not destroy o render useless or materially d mi ish or affect the applicatio of the water by infe ior riparian owners in the exerc se either of the r nat iral right of their rigl t of ease ment if any (5) It was therefore necessa y to ascer tain where the streams rose and the course source and le gth of their tributar es PERUMAL v RAMASAMI I L R, 11 Mad, 16

9 ———————— *Water course*—

proprietor has a right to a reasonable use of the water as it passes h s land but in the absence of some special c istom he has no r ght to dam it back, or exhaust it so as to deprive other ripar an owners of like use What would co stitute an unreasonable diversion of water such as to disturb the use of the lower riparian owners is a q estion of fact which the Legislature has give a Mamlatdar jurisdiction to decide NARAYAN HARI DEVAL v KESHAV SHIVRAM DEVAL I L R, 23 Bom, 506

10 ———— Proprietor of water-course, Right of—*Proof of user by other persons*—The

so lo g a period that such title may be presumed INDURJEET KOOER v LUCHMEE KOOER [14 W R, 349

11 ———— Right to discharge water on

[20 W R, 201

12 ———————— *Easement*—*Em bankment*—*Drainage*—*Right to drainage of surplus*

Where the defendants had erected a dam across a natural water-course which was found to interfere

the whole dam removed but should have inquired how far the erection of the dam interfered with the plaintiff s right ABDUL HAKIM v GUNESH DUTT [I L R, 12 Calc, 323

13 ———— Obstruction to flow of water —*Erection of bund to stop flow of water*—Where water flows in its natural course from somewhere outside *A* s lan through it and onwards to other people s lan *A* is not entitled to stop the flow by an embankment across it unless he can make out some special right to do so Such co rse is a part of the natural condition of the land and the flow of the water over it when it occurs is a natural incident CHUMROO SINGH v MULLICK KHYRUT AHMED [18 W R, 525

14 ———————— *Claim to erect bund cutting off water from neighbouring lands*— A party claiming to erect a bund in a natural flowing river so as entirely to cut off the water from another party is bound to prove that he has acquired the legal right to do so by user HEERANUND SAHOO v KHUBEEROONISSA 15 W R, 516

15 ———— Deprivation of right to a rise of water, by breaking bund—*Claim to repaired bund*—Deprivation of the right to a rise of water is an injury and a claim to repa r a bund for the purpose of securing such right is not an swered by the tender of another bund quite as good SHUNKUR SAHOO v (URBHOO SAH O [15 W R, 216

16 — Infringement of right to water—*Suit to remove obstruction and for dam ages*—*Cause of action*—In a suit to compel defen dant to remove an embankment recently constructed on his own land on the allegat on that it infringed plaintiff s right of irrigat on by a certain channel where it was found that the embankment in question was no manner of obstruction to the water course by that channel—*Held* that to entitle plaintiff to a de cree there must have been some actual infringement of his right by the defendant and not merely some act whereby as it were that right was denied or questioned SHAMA CHURN CHATTERJEE v I OIDO NATH I ANERJEE 11 W R, 2

17 ———————— *Cause of action* —In order to maintain an action upon an infringe ment of a right (as where an obstruction is made to a natural flow of water) it is not necessary to show that there has been any subsequent injury consequent on such infringement RAM CHAND CHUCKERBUTTY v NUDDIAR CHAND GHOSE 23 W R, 230

18 ———————— *Water from tank* —*Onus probandi* Where a plaintiff alleged that subsequent to his purchase of a tank at a period spe cified defendants had commenced to take water from it and had opened a channel for the discharge of the

RIGHT TO USE OF WATER—*continued.*

water,—*Held* that the onus lay on the plaintiff to prove the assertion on the part of the defendants of any new right. BUNGSHEE DHUR THAKOOR *v.* KHETTURMONEE DEBIA . . 11 W. R., 15

19. ——— *Right to raise embankment to diminish flow of water into reservoir.*—Where parties by agreement in a butwarra restricted their rights by the condition that one of their number was to have full use of the water in a reservoir, the others were held not to be at liberty to set up, even on their own lands, an embankment round the reservoir so as to diminish materially the flow of water into it. GOUR SAHOY SINGH *v.* SHEO SAHOY SINGH . . . . . . 15 W. R., 94

20. ——— *Erection of bund to keep water in reservoir.*—Water falling on *A*'s land and collected in a reservoir there, used to flow on to *B*'s land. *Held* that *B* had no right to the use of the water, and that *A* was entitled to erect on his own land a bund to prevent the water flowing on to *B*'s land. BUNSEE SAHOO *v.* KALEE PERSHAD . . . . . . 13 W. R., 414

21. ——— Right of owner of two properties—*Dispersion of rain-water.*—The owner of two properties may conduct through troughs the rain-water accumulating on one property over a water-course to the other property before it reaches another water-course into which the rain-water, unless diverted, would naturally flow. RAMRUTTUN NEOGEE *v.* PHOOL SINGH . W. R., 1864, 147

22. ——— Cessation to make use of water—*Revocation of permission.*—Where a party who had enjoyed the permissive use of the water of a tank does not use it for four years from the date of its further excavation, the permission may be taken to be revoked. GOOROO CHURN SOOR *v.* SREE CHURN GHOSE . . . . . 15 W. R., 308

23. ——— Right to discharge rainfall over land—*Abandonment of right.*—Exposition of the right of discharging the rainfall on one's land through a water-course over another's, and of the abandonment of such right. KHETTUR NATH GHOSE *v.* PROSUNNO GHOSE . . . . 7 W. R., 498

24. ——— Abandonment of right to water—*Construction of new waterway.*—Where a party suing for the use of a waterway was found to have allowed it to be filled up without objection, and another of the same description to be constructed, which he had used for a year or two, he was held to have abandoned his right of user to the former waterway. JUGUTBUNDHOO CHUCKERBUTTY *v.* JUGUT CHUNDER CHOWDHRY . . . . 12 W. R., 519

25. ——— Irrigation channels—*Power of Collector to regulate water-supply.*—In a suit between raiyats holding lands under Government, in which the Collector of the district was joined as second defendant, it appeared that the first defendant, in pursuance of an order of the Sub-Collector, made on a petition preferred by him, had opened a new irrigation channel, thereby materially diminishing the supply of water necessary for the cultivation of the plaintiff's land and causing damage

RIGHT TO USE OF WATER—*concluded.*

to him. The lower Court passed a decree for damage and issued an injunction directing that the channel be closed. *Held* that the order of the Sub-Collector was in excess of his powers. RAMCHANDRA *v.* NARAYANASAMI . . I. L. R., 16 Mad., 333

26. ——— Water rights for irrigation where a stream flows through separate estates—*Relative rights of upper and lower proprietors on the banks to the use of the water—Issues not raising actual rights.*—A riparian owner, where a stream flows in a channel down from a property higher up, is entitled to the flow of water without interruption, and without substantial diminution caused by the upper proprietor, who may for legitimate purposes withdraw so much only of the water as will not materially lessen the downward flow on to his neighbour's land. In this suit the upper proprietor claimed the right to dam up a stream on his own estate, and to impound so much of its water as he might find convenient for irrigation, leaving only the surplus, if any, for the use of the proprietors below. He has no such right, in the absence of a right obtained by him in virtue of contract with the lower proprietors, or acquired by him as a consequence of prescriptive use. His common law right is to take for the purpose of irrigation so much water only as can be abstracted without materially diminishing what is to be allowed to descend. What quantity of water can be abstracted and used without infringing that essential condition, must, in all cases, be a question of the circumstances depending mainly upon the size of the stream and the proportion which the water taken bears to its entire volume. In this suit, the upper proprietor's claim having been put too high, the real question as to the proportion of his share had been omitted. No issue had raised it, and no evidence had been given to determine it approximately. The Court of first instance and the first Appellate Court had attempted to decree what they considered would be the just proportion, but the High Court had rightly pointed out that there had been no materials before the Courts upon which a right to a more limited kind than that which had been in excess claimed could be decreed to the upper proprietor; and the suit had been rightly dismissed. DEBI PERSHAD SINGH *v.* JOYNATH SINGH . I. L. R., 24 Calc., 865
[L. R., 24 I. A., 60
1 C. W. N., 401

RIOTING.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—RIOTING . 9 W. R., Cr., 33
[B. L. R., Sup. Vol., 750
I. L. R., 21 Calc., 827, 955
3 C. W. N., 605
I. L. R., 26 Calc., 630

See CHARGE TO JURY—SPECIAL CASES—RIOTING . I. L. R., 21 Calc., 955

See JURISDICTION OF CRIMINAL COURT—OFFENCE COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT.
[I. L. R., 19 Bom., 105

RIOTING—*continued.*

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT [I. L. R., 24 Calc., 429

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES

See SENTENCE—GENERAL CASES [8 W. R., Cr., 3 12 W. R., Cr., 72

See CASES UNDER UNLAWFUL ASSEMBLY.

——— Counter charges of—

See CRIMINAL PROCEEDINGS [I. L. R., 20 Calc., 537

——— Giving provocation with intent to commit—

See PENAL CODE, s. 153 [I. L. R., 18 Bom., 758

... Penal ...

clearly that they ... will bring them within the criminal ...

... ABRE TONNERRE ... 24 W. R., Cr., ...

3. ——— Proof of offence—*Penal Code, s. 156—Manager of indigo factory.*—In order to convict the manager of an indigo factory under s. 156 of the Penal Code, it must be shown by legal evidence (1) that a riot was committed, (2) that the riot, if committed, was committed for the benefit of the accused, and (3) that the accused had reason to believe that a riot was likely to be committed. BRAE *v.* QUEEN EMPRESS I. L. R., 13 Calc., 338

4. ——— *Penal Code, s. 155—Zamindar's liability.*—A zamindar ought not to be ... under s. 155 of the Penal Code for ...

5. ——— *Penal Code, ss. 154, ... of persons to commit riot or ...*

...

RIOTING—*continued*

partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code. IN THE MATTER OF RADHA NATH CHOWDHRY . . . 7 C. L. R., 289

6. ——— Armed parties—*Attack—Pr... of defence.*—Where both parties are armed ...

... [I. C. L. R., ...

7. Offering obstruction to persons wrongfully distraining—*Power of distraint.*—The law confers (certain conditions being first complied with) on landholders and their authorized agents power to distrain the moveable property of their tenants for the recovery of arrears of rents due by them. In all such cases the landholder acts on his own responsibility, and if, in the alleged exercise of the power, he attempts to seize the goods of his ... to ... by ... MOUS 8 Mad., Ap., 11

8. ——— Attemting to stop what rioters thought an illegal procession.—In the case of a very serious riot, in order to stop a ...

the procession was illegal by ... (which did not appear) which might have been efficacious in point of law. *Held* that the thinking a thing legal which is not so can be no defence to a ... who violates a rule of law, that there was no ...

ANONYMOUS . . . ... Mad., Ap., ...

9. Common object—*Persons ... with sticks on purpose to fight—Affray* ... One party ... who were all ... in the fight which took place, and it was also found that they, as well as their opponents, came armed with sticks, prepared to fight, and did fight. *Held* that they ...

Held that, they were not properly convicted ... *Held* also that, had the fight occurred in a public place, it might have been held that the common object of both parties was to commit an affray. QUEEN *v.* MUZHUR HOSSEIN 5 N. W., 208

10. ——— Unlawful assembly—*Penal Code, s. 148—Resisting trespass.*—A disturbance having been created with reference to the possession of certain chur land, the Sessions Judge on appeal found that certain persons had unlawfully trespassed

RIOTING—*continued.*

thereupon, and that the accused had been justified in resisting the trespass by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under s. 148 of the Penal Code. *Held* that, on the findings of the Judge, the conviction could not be supported, inasmuch as on such findings the persons convicted were not members of an unlawful assembly. IN THE MATTER OF KALLEE MUNDLE . . . . 10 C. L. R., 278

11. ——————— *Forcibly getting possession of cattle seized for trespass—Penal Code, s. 147—Act III of 1857, s. 11.*—The prisoners having been part of an assembly of more than five persons, whose common object, as apparent from their acts, was, by means of criminal force, to recover possession of their cattle seized for trespass (whether properly pounded or not), and who made use of such force and took away their cattle, were held guilty of rioting, and liable to conviction under s. 147 of the Penal Code, and not under s. 11, Act III of 1857. QUEEN *v.* BOKOO SHEIKH . W. R., 1864, Cr., 21

12. ——————— *Penal Code (Act XLV of 1860), ss. 141 and 147.*—A party of persons consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of *M*, for the purpose of either repairing or erecting a bund across it to cause the water to flow down a channel on the lands of their master *T*. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not during the subsequent occurrence use force. Having arrived at the spot about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P.M. a body of men, consisting of about 1,200 in all, many of them armed with lathies and headed by the prisoners, who were servants of *M*, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked *T*'s men, some five of whom were more or less severely wounded with the lathies. The occurrence resulted in the conviction of some of *M*'s servants for rioting under s. 147 of the Penal Code. *M*'s people wholly denied any right on the part of *T* to construct or repair the bund, and had previously denied the existence of such right, and refused permission to *T* to exercise it. It was contended that the assembly of *M*'s people was not an "unlawful assembly;" that the interference by *T*'s people with the channel of the river justified them in coming to stop the work, and the show and use of force in compelling them to do so. *Held* that the prisoners had been rightly convicted. *Queen* v. *Mitto Sing, 3 W. R., Cr., 41; Shanker Singh* v. *Burmah Mahto, 23 W. R., Cr., 25;* and *Birjoo Singh* v. *Khub Lall, 19 W. R., Cr., 66,* referred to and commented on. GANOURI LAL DAS *v.* QUEEN-EMPRESS . I. L. R., 16 Calc., 206

13. ——————— *Right of private defence of property—Causing grievous hurt in furtherance of common object—Penal Code (Act XLV of 1860), ss. 97, 99, 147, 149, and 325.*—The accused, receiving information that the complainant's party were about to take forcible possession of a plot of land which was found by the Court to be in the possession of the accused, collected a large number of men, some of whom were armed, and went through the village to the land in question. While they were engaged in ploughing, the complainant's party came up, some of them being armed, and interfered with the ploughing. A fight ensued, in the course of which one of the complainant's party was grievously wounded and subsequently died, and two of the accused's party were hurt. *Held* that, if the accused were rightfully in possession of the land and found it necessary to protect themselves from aggression on the part of another body of men, they were justified in taking such precautions as they thought were required and using such force or violence as was necessary to prevent the aggression. *Held* also that under such circumstances they could not rightly be held to be members of an unlawful assembly. *Queen-Empress* v. *Narsang Pathabhai, I. L. R., 14 Bom., 441; Birjoo Singh* v. *Khub Lall, 19 W. R., Cr., 66;* and *Shanker Singh* v. *Burmah Mahto, 23 W. R., Cr., 25,* followed. *Ganouri Lal Dass* v. *Queen-Empress, I. L R, 16 Calc., 206,* distinguished. PACHKAURI *v.* QUEEN-EMPRESS

I. L. R., 24 Calc., 686

PACHKAURI *v.* EMPRESS . 1 C. W. N., 423

14. ——————— *Rights of true owners against person in wrongful possession—Affray, Evidence as to nature of.*—When a party is in possession of land for four or five days, though it may be in wrongful possession, another party, although claiming to be the rightful owner, is not entitled to go in force to turn him out, much less is he entitled to take armed men with him for that purpose. In an affray specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it, and persons who, as in this case, punted the boats on which the fight took place, and in whose interests the fight on the boats took place, were held to be just as blameworthy as the men who struck the blows. MOHER SHEIKH *v.* QUEEN-EMPRESS

I. L. R., 21 Calc., 392

15. ——————— *Right of private defence—Penal Code, s. 146—Unlawful distraint.*—A landlord who had not tendered to his tenants such a pottah as the latter was bound to accept under the Madras Rent Recovery Act, distrained his cattle for arrears of rent, the assistance of the police having been procured for the purpose. The tenant, with the assistance of eleven other persons, forcibly obstructed the removal of the cattle which had already been actually seized and driven for some yards. They were charged with the offence of rioting and convicted. *Held* that there was no right of private defence of property, and that the conviction was right. QUEEN-EMPRESS *v.* RAMAYYA

I. L. R., 13 Mad., 148

16. ——————— *Penal Code, s. 154—Liability of owner or occupier of land on which an unlawful assembly is held.*—It is not necessary, in order to render the owner of land on which a riot takes place criminally liable, that he should be aware

RIOTING—*continued*

of the likelihood of such an occurrence That his karinda should have taken an active part in the riot is sufficient to warrant the conviction of the owner under s. 154 of the Penal Code QUEEN EMPRESS v PAYAG SINGH I L R., 12 All, 550

17 ———— *Penal Code (Act XLV of 1860), s 154—Liability of owner or occupier of land on which a riot takes place or unlawful assembly is held—Evidence necessary to constitute an offence* —In order to establish an offence under s 154 Penal Code it is necessary to prove (1) that riot took place, (2) that the accused is the owner of the land on which the riot took place, (3) that his agent or manager knew that the riot was about to be committed, and (4) that, knowing this, the agent or manager did not use all lawful means to suppress the riot or disperse the unlawful assembly *Per* STANLEY, *J* —That in such

EMPRESS

18 ———— *Right of private defence of property—Causing hurt in furtherance of common object—Penal Code (Act XLV of 1860), ss 147, 323* —The party of the accused

Queen Empress ANANT PANDIT v MADHUSUDAN MANDAL [I L R, 26 Calc, 574

19 ———— Dacoity—*Penal Code, ss 24, 147, 391—Want of dishonest intention*—Where

20 ———— Forcibly taking possession of wife by husband —A husband or those who aided him cannot be convicted of kidnapping for taking away his own wife, but they are guilty of rioting if they take possession of her by force and violence and in the darkness of night QUEEN v ASKUR W R, 1864, Cr, 12

21 ———— Forcible entry on land cultivated by trespasser—*Plea of right to possession—Trespass on land*.—A plea of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser who is in possession and opposes the entry APPAVU NAYAK v QUEEN I L R, 6 Mad, 245

22 ———— Rioting armed with deadly weapons—*Culpable homicide—Grievous hurt* —

23 ———— Procedure—*Trial of case of affray between opposite factions* —In a trial arising out of an affray or faction fight the members of each faction should be tried separately The statements of the members of each faction can then if

RIOTING—*concluded*

RIPARIAN PROPRIETORS

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—CHURS OR ISLANDS IN NAVIGABLE RIVERS 5 C L R, 154 [6 B L R, 255, 343

See ACCRETION—NEW FORMATION OF ALLUVIAL LAND—RIVERS, OR CHANGE IN COURSE OF RIVERS 2 Hay, 541
[3 Agra, 18
11 B L R, 265
L. R., I. A, Sup Vol, 34
L R., 6 I A, 211
I L R, 13 Mad., 369

See ACCRETION — RE FORMATION AFTER DILUVIATION 5 B L R, 521 [13 Moore's I A, 467

See LIMITATION ACT 1877 s 26 (1871 s 27) I L R, 1 Mad., 335

See MADRAS FOREST ACT s 10 [I L R, 20 Mad, 279

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY [I L R, 18 Mad, 158

See RIGHT TO USE OF WATER
[3 W R, 218
6 W R, 99
L R., 6 I A, 190
I. L R, 11 Mad, 16
I L R, 23 Bom, 506
I L R, 24 Calc, 865
L R., 24 I A, 60

———— Private proprietorship—*Bed of flowing stream* —The bed of a flowing stream may be the property of a private person JUGDISH CHUNDER BISWAS v CHOWDHRY ZUHOORUL HUQ [24 W R, 317

"RISK NOTE"

See RAILWAYS ACT, 1890 s 72 [I L R, 18 All., 42

RIVAL HATS.

See UNDER HATS.

RIVER.

See CASES UNDER ACCRETION.

See CASES UNDER FISHERY, RIGHT OF.

———— **Fordable, Meaning of—**

See ACCRETION — NEW FORMATION OF ALLUVIAL LAND—CHURS OR ISLANDS IN NAVIGABLE RIVERS . 6 B. L. R., 343
[3 W. R., 95, 219
6 W. R., 123
7 W. R., 513

———— **Obstruction in—**

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE I. L. R., 14 Calc., 656
[I. L. R., 20 Calc., 665

Strewing branches in, for fishing purposes.

See PENAL CODE, s. 277.
[I. L. R., 2 Calc., 383

ROAD, OWNERSHIP OF—

Site of road—*Presumption.*—There is nothing in this country which prevents the operation of the rule of law that where a road has been for many years the boundary between two properties, and there is no evidence that the owner of either property gave up the whole of the land necessary for it, the site of the road must be presumed to belong to the adjoining proprietors, half to one and half to the other, up to the middle of the road. MOBARUCK SHAW *v.* TOOFANY
[I. L. R., 4 Calc., 206: 2 C. L. R., 446

ROAD-CESS, SALE FOR ARREARS OF—

See SALE FOR ARREARS OF ROAD-CESS.

ROAD-CESS ACT (BENGAL ACT X OF 1871).

See BENGAL CESS ACTS (BENGAL ACTS X OF 1871 AND IX OF 1880).

ROBBERY.

See EVIDENCE — CRIMINAL CASES — CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE.
[I. L. R., 13 Mad., 426

1. ———— **Theft and causing hurt with intention.**—When in committing a theft there is an intention and an attempt to cause hurt, the offence is robbery. QUEEN *v.* TEEKAI BHEER
[5 W. R., Cr., 95

2. ———— **Theft with grievous hurt.**—By the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment. QUEEN *v.* HUSHRUT
[6 W. R., Cr., 85

3. ———— **Want of dishonest intention**—*Theft.*—The accused was convicted of robbery, but the Magistrate found that the property taken was not taken with any dishonest intention. *Held* that the conviction was bad. ANONYMOUS
[5 Mad., Ap., 39

ROMAN CATHOLIC CHURCH.

See CHURCH . I. L. R., 17 Mad., 447

RULE TO SHOW CAUSE.

See PRACTICE — CIVIL CASES—RULE TO SHOW CAUSE . I. L. R., 9 Calc., 735

See PRACTICE — CRIMINAL CASES—REVISION . I. L. R., 21 Calc., 827

See PRACTICE—CRIMINAL CASES—RULE TO SHOW CAUSE . I. L. R., 4 Calc., 20
[I. L. R., 25 Calc., 798

See RIGHT OF REPLY.
[7 B. L. R., Ap., 57

1. **"To show cause," Meaning of**—*Alleging and proving cause.*—The term "to show cause" does not mean merely to allege cause, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court. RUNG LALL *v.* HEM NARAIN GIR . . . . I. L. R., 11 Calc., 166

2. ———— **Obligation of parties applying for rules**—*Practice*—*Refusal of former application*—Parties applying in the absence of the other side for the issue of rules *nisi* interfering with the rights of persons executing decrees are bound fully and fairly to state all the circumstances within their knowledge which it is necessary for the Court to consider in granting the rule. BROJO COOMAR MULLICK *v.* MON MOHINEE DEBEA
[16 W. R., 55

3. ———— **Power to grant rule**—*Sufficiency of affidavit.*—A Recorder refused an application for execution against certain defendants who came in and confessed judgment before any issue of summons in the suit. The plaintiffs then applied to the High Court by petition for an order that the Recorder should issue execution against the defendants, or that he should show cause for not doing so. The affidavit did not state whether any decree had actually been made. *Held* that the affidavit was insufficient; the Court cannot grant a rule to show cause, unless it is satisfied that the rule should be made absolute, if no cause be shown. COMPTOIR D'ESCOMPTE DE PARIS *v.* CURRIE & CO.
[3 B. L. R., Ap., 153: 12 W. R., 413

4. ———— *Case where object of application for rule may be granted if not opposed.*—The High Court can grant a rule to show cause only in cases in which the arguments advanced

RULE TO SHOW CAUSE—*concluded*

in favour of the party asking for the rule are such that if not displaced by the opposite side the rule would be made absolute IN THE MATTER OF THE PETITION OF OMRAO BEGUM 13 W R, 310

5 ———— Rule obtained by person not party to suit—*Practice*—The Court will not make a rule absolute obtained by a person who is not a party to the suit GRANT SMITH & Co *v* STEEL 1 Ind Jur, N S, 60

6 ———— Service of rule in foreign territory—*Rule nisi for contempt of Court—Sufficiency of service*—On the 17th of December 1869 a rule *nisi* for the attachment for contempt of Court of the defendants *U G* and *T* was granted The rule

consent of the Gaikvad s Minister to serve the notice having been previously obtained On motion to make the rule absolute it was held that the rule was served in time and that the service of it in the Gaikvad s territories with the consent of the Gaikvad was valid service *Quære*—Whether the service would have been valid if such consent had not been obtained HARIVALLABHDAS KALLIANDAS *v* UTAMCHAND MANIKCHAND 7 Bom, O. C, 172

7 ———— Appearance to show cause—*Waiver of service of rule*—A person appearing to discharge a rule thereby waives all objections to the formality of the service of the rule upon him HARIVALLABHDAS KALLIANDAS *v* UTAMCHAND MANIKCHAND IN RE GOPALRAV MYRAL [8 Bom, O C, 236

8 ———— Grounds for granting rule—*Practice—Discretion of Court hearing a rule*—Although rules to show cause are frequently granted on particular grounds the form of any rule granted would ordinarily be such as to leave the action which the Courts should take in case the conviction is set aside to the discretion of the Court which hears the rule Where a rule was granted to show cause why the conviction should not be set aside and the case sent back for re trial and it came on for hearing before a Bench other than that which had granted it—*Held* that the terms of the rule did not prevent the Bench hearing it from discharging the accused MILAN KHAN *v* SAGAI BEPARI [I L R, 23 Calc, 347

RULES AND REGULATIONS OF DIVORCE COURT IN ENGLAND

— Rule 158

See DIVORCE ACT s 35 [I L R, 19 Bom, 293

RULES AND REGULATIONS UNDER 2 & 3 WILL IV, C 51

See PRACTICE—CIVIL CASES—ADMIRALTY COURTS I L R, 22 Calc, 511 [3 C W N, 67

RULES MADE UNDER ACTS

———— Act XXIV of 1839, rules 18 and 20 of Agency Rules under—

See REVISION—CIVIL CASES—GENERAL CASES I L R, 16 Mad 229

———— Act XI of 1846—Rule 44 of Rules made under s 3

See APPEAL IN CRIMINAL CASES—ACTS—ACT XI OF 1846 [I L R, 15 Bom, 505

———— Bengal Tenancy Act (VIII of 1885), s 189

See REVIEW—POWER TO REVIEW [I L R, 25 Calc, 146

———— rule 1, Ch VI

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 692 [I L R, 21 Calc, 935

———— rule 3—*Service of notice—Giving of notice*—Rule 3 Ch 1 of the Rules

prescribed manner rule 3 of the rules made under s 189 in a case like the present was intended to be only directory and not mandatory MADHUBRAM *v* DOYAL CHAND GHOSE I L R 25 Calc, 445 [2 C W N, 108

———— rule 25

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622 [I L R 23 Calc, 723

See VALUATION OF SUIT—APPEALS [I L R, 23 Calc, 723

———— Bombay District Municipal Act (Bombay Act VI of 1873)

See RIGHT OF SUIT—MUNICIPAL OFFICERS SUIT AGAINST I L R 22 Bom, 384

Bombay Land Revenue Act (V of 1879) s 314 rules 101 and 111, cl 3 (a)—*Survey settlement Meaning of*—The accused was charged before a second class Magistrate with digging earth within a space of two cubits of an earthen boundary mark in contravention of rule 101 of the Rules made by Government under s 214 (*g*) of the Bombay Land Revenue Code (Act V of 1879) The Magistrate convicted the accused under rule 111 cl 3 (*a*) and sentenced him to a fine of one rupee *Held* that rule 101 is not such a rule as can be legally made under s 214 (*g*) of the Code It is not a rule for the administration of a survey settlement' Such a settlement is a settlement of the land revenue and relates only to such matters as are referred to in Ch VIII of the Code and not to boundaries or boundary marks which were dealt with in Ch IX QUEEN EMPRESS *v* IRAPPA I L R, 13 Bom, 291

RULES MADE UNDER ACTS—*continued.*

——— **Bombay Municipal Act (XXVI of 1850)**—*Rules whether ultra vires.*—Rules made under Act XXVI of 1850, which purport to give the managing committee of the Municipal Commissioners power to try offenders against such rules, or to levy fines upon them, are *ultra vires* and illegal. Rules of the Municipalities of Balsad, Surat, Malcolm Pet, and Ahmedabad referred to and commented on. How far a rule partially *ultra vires* and partially *intra vires* can be enforced, as to the latter portion, considered. REG. v. YENKU BAPUJI . . **8 Bom., Cr., 39**

——— **Civil Procedure Code, s. 287, rule 1.**

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURTS . **I. L. R., 14 Bom., 369**

——— **s. 320.**

See RIGHT OF SUIT – SALE IN EXECUTION OF DECREE . **I. L. R., 19 Bom., 216**

1. ——— *Meaning of "with effect from the 31st October 1880."*—*Held* that effect cannot be given to the rules prescribed by the Local Government under s. 320 of Act X of 1877, unless an order for sale has been made on or after the 1st October 1880. HAFIZ-UN-NISSA v. MAHADEO PARSAD . . . . **I. L. R., 4 All., 116**

2. ——— *Civil Procedure Code Amendment Act (VII of 1888), s. 30 – Rules framed by the Local Government under s. 320 of Act XIV of 1882 as amended by s. 30 of Act VII of 1888, Effect of—Sale in execution of decree — Confirmation of sale—Collector's power to confirm or set aside a sale.*—The rules framed by the Local Government in 1890 in exercise of the powers conferred by s. 320 of the Code of Civil Procedure, as amended by s. 30 of Act VII of 1888, are not retrospective in their operation so as to give the Collector the power to confirm a sale held before the date of issue of the rules. Nor do the rules authorize the Collector to set aside a sale. On 27th July 1889 the property in dispute was sold by the Collector in execution of a decree which was referred to him under s. 320 of the Code of Civil Procedure (Act XIV of 1882). On 23rd September 1889 the Collector set aside the sale, on the ground that the auction-purchaser had purchased the property for, and on behalf of, the decree-holder. Thereupon the auction-purchaser applied to the Court which had passed the decree, complaining of the Collector's proceeding, and praying for a confirmation of the sale. The Court asked the Collector to return the record of the case, but this he refused to do, on the ground that he had extended the time given by the decree to the judgment-debtor to redeem. In January 1890, the Local Government framed new rules in exercise of the powers conferred by s. 320 of the Code of Civil Procedure as amended by s. 30 of Act VII of 1888. One of these rules empowered the Collector to confirm a sale held in execution of a decree transferred to him. In April 1890 the auction-purchaser again applied to the Court for a confirmation of the sale. This application was rejected, on the ground that under the new rules framed by Government the Collector alone had the power to confirm the sale. *Held* that the rules in question had no application to the present case, the sale having been held before the rules were promulgated. The Civil Court was therefore competent to confirm the sale *Held* further that, even if the rules did apply, they did not empower the Collector to set aside the sale or extend the time given by the decree to the judgment-debtor to redeem. GANPATRAM MOTIRAM v. ADAMJI

[I. L. R., 15 Bom., 322

See BAI AMTHI v. MADHAB MANOR

[I. L. R., 15 Bom., 694

See NARAYAN v. RASULKHAN

[I. L. R., 23 Bom., 531

3. ——— *Transmission of decree to Collector for execution—Power of Local Government to make rules for regulating procedure of Collector – Rule providing for appeal from Collector to Commissioner—Rule No. 17, cl. XIX, of 12th November 1883, Validity of—Act VII of 1888 (Civil Procedure Code Amendment Act), s. 30— Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 243.* —The authority conferred upon the Local Government by s. 320 of the Civil Procedure Code prior to the amendment of that section by s. 30 of the Civil Procedure Code Amendment Act (VII of 1888) to make rules for regulating the procedure of the Collector in executing decrees transmitted to him included power to make a rule providing for an appeal from the Collector's orders. Cl. XIX of rule 17, which was added to the rules (No. 671 of 30th August 1880) published in the *N.-W. P. and Oudh Gazette* of the 14th September 1880, by a notification in the Gazette of the 17th November 1883, and which made the order of a Collector confirming a sale appealable to the Commissioner of the Division, was therefore not *ultra vires* of the Local Government. *Madho Prasad* v. *Hanasa Kuar, I. L. R., 5 All., 314,* referred to. S. 243 of the N.-W. P. Land Revenue Act (XIX of 1873) does not apply to such orders passed by a Collector. TAKADDUS FATIMA v. BALDEO DAS

[I. L. R., 12 All., 564

——— **Court Fees Act.**

See COURT FEES ACT, s. 20.

[I. L. R., 17 Calc., 281

——— **Criminal Procedure Code, s. 16.**

See BENCH OF MAGISTRATES.

[I. L. R., 16 Mad., 410
I. L. R., 20 Calc., 870

——— **Dekkan Agriculturists' Relief Act, s. 49**—*Conciliation-agreement, Notice of, to parties thereto—Service of such notice through a Subordinate Judge — Ultra vires — Procedure.*—The rule that a notice to parties to a conciliation-agreement should be served through a Subordinate Judge, framed by the Local Government under s. 49 of the Dekkan Agriculturists' Relief Act (XVII of 1879), and published at page 632, Part I of the *Bombay Government Gazette,* is not *ultra vires,* and

RULES MADE UNDER ACTS—*concluded.*

notice so served was held to be a good notice. [M]OTIRAM MANIRAM v. DEVBA ISHWARAPA

[I. L. R., 10 Bom., 189

[illegible]

[T]ax Act (II of 1886) does not apply to the produc[ti]on of income-tax papers in a Court of Law in a suit [b]etween two partners *Lee* v *Birrell, 3 Camp*, [3]37, and *Mayne's Commentary on the Criminal Law, p* 66, 67, cited JADOBRAM DEY v BULLORAM [D]EY . . I. L. R., 26 Calc., 281

——— Madras Abkari Act

See MADRAS ABKARI ACT (1866) ss 29, 55

[I. L. R., 11 Mad., 250
I. L. R., 12 Mad., 450

——— Opium Act.

See CONTRACT ACT, s 23—ILLEGAL CONTRACTS—GENERALLY

[I. L. R., 19 Bom., 626

——— Ports Act.

See PORTS ACT, s 6

[I. L. R., 17 Mad., 118, 397

——— Reformatory Schools Act (V of 1876)

See REFORMATORY SCHOOLS ACT, 1876, s 22 . I. L. R., 15 All., 208

[I. L. R., 21 Mad., 430

——— VIII of 1897.

[illegible]

——— Scheduled Districts Act (XVI of 1874), rule 17 of Kumaon rules

See APPEAL—ORDERS

[I. L. R., 22 All., 405

——— Stamp Act (I of 1879)

See STAMP ACT, 1879, s 3, cl 4

[I. L. R., 8 Mad., 87

See STAMP ACT, 1879, s 3, cl 10

[I. L. R., 8 Mad., 532
I. L. R., 11 Mad., 377
I. L. R., 14 Mad., 32
I. L. R., 13 All., 66
I. L. R., 18 Calc., 39

See STAMP ACT, 1879, s 61.

[I. L. R., 18 Calc., 39

RULES OF BOARD OF REVENUE.

See PRE-EMPTION, CONSTRUCTION OF—WAJIB-UL-URZ . I. L. R., 17 All., 447

See PRE-EMPTION—RIGHT OF PRE-EMPTION . . I. L. R., 16 All., 40

[I. L. R., 17 All., 226

RULES OF HIGH COURT, BOMBAY.

——— rule 6

See PRACTICE—CIVIL CASES—COMMISSIONER FOR TAKING ACCOUNTS

[I. L. R., 9 Bom., 250
I. L. R., 13 Bom., 368

——— rule 10, cl. (r)

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS I. L. R., 18 Bom., 65

——— rule 64.

See WITHDRAWAL OF SUIT

[I. L. R., 15 Bom., 160

——— rule 183.

See EXECUTION OF DECREE—MODE OF EXECUTION—COSTS

[I. L. R., 17 Bom., 514

——— *Costs—Order for pay-*

[illegible]

allowed on taxation, and such order may be executed under Ch XIX of the Code of Civil Procedure. *Held* that the heirs or representatives of the client are not included in the words of this rule, and the attorney's claim cannot, under it, be enforced against them ASSUR PURSHOTAM v. RUTTONBAI

[I. L. R., 16 Bom., 152

IN RE PREMJI TRIKUMDAS

[I. L. R., 17 Bom., 514

——— rule 190 of 1885—*Civil Procedure Code, 1882, s 549—Practice—Appeal—Security for costs — Costs of the appeal* —The rule (190 of the

[illegible]

appeal, is one which, though possibly not without exception, is generally applicable to all cases independently of any consideration as to what the costs of the appeal will amount to AHMED BIN ESSA KHALIFFA v. ESSA BIN KHALIFFA

[I. L. R., 13 Bom., 458

——— rule 208

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE RE HEARING I. L. R., 12 Bom., 408

——— High Court Civil Circular Order 18, cl (i).

See PLEADER—APPOINTMENT AND APPEARANCE . . I. L. R., 22 Bom., 654

[I. L. R., 23 Bom., 657

RULES OF HIGH COURT, CALCUTTA.

See INSOLVENT ACT, s 36

[7 B. L. R., Ap., 61

See INSOLVENT ACT, s 40

[13 B. L. R., Ap., 9

RULES OF HIGH COURT, CALCUTTA —*continued.*

See LIMITATION ACT, 1877, s. 4.
[1 C. L. R., 281

See PRACTICE — CIVIL CASES — PAPER BOOKS . . 14 B. L. R., Ap., 11
[I. L. R., 17 Calc., 289
I. L. R., 17 Calc., 57, 60 note

——— General Rules and Orders, Part II, Ch. V, s. 14 (a).—S. 14 (*a*), Part II, Ch. V, of the General Rules and Circular Orders of the High Court commented on. BAKHIR MOHAMMED *v.* DOORGA CHURN SHAHA
[I. L. R., 10 Calc., 39 : 13 C. L. R., 200

——— Part II, Ch. VIII, rule 17.

See LIMITATION ACT, 1877, ART. 168.
[I. L. R., 23 Calc., 339

See REVIEW—POWER TO REVIEW.
[I. L. R., 23 Calc., 339
I. L. R., 24 Calc., 350

——— rule of 30th January 1865.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE . 9 B. L. R., 6

——— rule of 4th April 1866—"*Proceeding in a civil case.*"—The proceeding by way of mandamus is "a proceeding in a civil case" within the meaning of the rule of 4th April 1866. JUSTICES OF THE PEACE FOR CALCUTTA *v.* ORIENTAL GAS COMPANY . 8 B. L. R., 433 : 17 W. R., 364

——— rule of 11th July 1871.

See MANAGER OF ATTACHED PROPERTY.
[8 B. L. R., Ap., 23

——— rules 50 and 52 of 6th June 1874.

See INSPECTION OF DOCUMENTS.
[I. L. R., 1 Calc., 178

——— rule 12 of 1st May 1875.

See SUMMONS . 15 B. L. R., Ap., 12

——— rule 4 of 22nd June 1875.

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF.
[I. L. R., 1 Calc., 52

——— Rules and Orders, Appellate Side, 86, 162.

See PRACTICE—CIVIL CASES—PLEADER, APPEARANCE OF.
[I. L. R., 15 Calc., 708

——— rule 1 of Ch. V, and rules 1 and 6 of Ch. VI.

See REFERENCE TO FULL BENCH.
[I. L. R., 25 Calc., 896

——— rule 5 of Ch. V of Rules of Appellate Side.

See REFERENCE TO FULL BENCH.
[I. L. R., 27 Calc., 839
4 C. W. N., 645, 656

RULES OF HIGH COURT, CALCUTTA —*concluded.*

——— rules 341, 436.

See REGISTRAR OF HIGH COURT.
[I. L. R., 16 Calc., 330

——— rule 365 of Rules and Orders (Belchambers'), Original Side.

See PRACTICE—CIVIL CASES—REPORT OF REGISTRAR I. L. R., 24 Calc., 437

——— rule 697.

See PRACTICE — CIVIL CASES — PROBATE AND LETTERS OF ADMINISTRATION.
[I. L. R., 20 Calc., 879
I. L. R., 26 Calc., 404

RULES OF HIGH COURT, MADRAS.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—LEAVE TO SUE . I. L. R., 18 Mad., 236

——— rules 4 and 5 of 1866—*Right of vakils in matters of ordinary original civil jurisdiction—24 & 25 Vict., c. 104.*—The 4th and 5th rules of Court of 1866 are within the powers conferred on the High Court by the Letters Patent of 1865; and the provisions of the Letters Patent "relating to the admission and powers of Advocates, Vakils, and Attorneys" are authorized by 24 & 25 Vict., c. 104. IN THE MATTER OF THE PETITION OF THE ATTORNEYS
[I. L. R., 1 Mad., 24

——— rules 39, 43, 44, 47.

See PRACTICE—CIVIL CASES—INSPECTION OR PRODUCTON OF DOCUMENTS.
[I. L. R., 21 Mad., 490

RULES OF HIGH COURT, N.-W. P.

See JUDGMENT—CIVIL CASES—FORM AND CONTENTS OF JUDGMENT.
[I. L. R., 9 All., 93

1. ——— Admission of appeals under Letters Patent, N.-W. P., cl. 10—*Limitation—Rules of practice of High Court of 21st May 1873.*—It must be assumed that rule 1 of the "Rules of Practice" adopted by the High Court for the North-Western Provinces on the 21st May 1873, regarding the admission of appeals under s. 10 of the Letters Patent," which provides that such appeals must be presented to the Assistant Registrar within ninety days of the judgment appealed from, had a legal origin, and was not *ultra vires* of the Court. *Harrak Singh* v. *Tulsi Ram Sahu*, 5 *B. L. R.*, 47, and *Fazal Muhammad* v. *Phul Kuar*, *I. L. R.*, 2 *All.*, 192, referred to. NAUBAT RAM *v.* HARNAM DAS
[I. L. R., 9 All., 115

2. ——— Rules of Court of 22nd May 1883—*Practice—Pleader—Vakalatnama—Pleader handing over his brief to another—Civil Procedure Code, ss. 36, 37, 39, 635.*—The rule of Court, dated

RULES OF HIGH COURT, N-W P —*concluded*

the 22nd May 1883 and authorizing legal practitioners in certain cases to appoint other legal practitioners to hold their briefs and appear in their place, was passed to facilitate the work of the Court and for the convenience of the pleaders practising before it and was fully within the powers conferred upon the High Court by s 635 of the Civil Procedure Code MATADIN v GANGA BAI
[I L R, 9 All, 613

——— rule 83, 18th January 1898

See JUDGMENT—CRIMINAL CASES
[I L R, 21 All, 177

RULES OF PRIVY COUNCIL

——— rules of 31st March 1871

See PRIVY COUNCIL PRACTICE OF—ADMISSION TO PRACTICE
[I L R, 16 Calc, 636

RULES OF SUPREME COURT, BOMBAY

See LIMITATION ACT 1877 ART 84 (1871 ART 85) I L R, 1 Bom, 253

——— rule 389

See SEQUESTRATION 8 Bom, O C, 135

——— *Forthwith Meaning of*—An order commanding an act to be done "forthwith" is sufficiently in conformity with the rule that requires the time within which an act ordered to be done is to be performed to be specified in the order HARIVALLABHDAS KALLIANDAS v UTAMCHAND MANIKCHAND 8 Bom, O C, 135

RULES OF SUPREME COURT, CALCUTTA

——— Plea side—*Rule 176*—Rule 176 of the Rules and Orders on the plea side of Supreme Court was still in force in 1871 KAILAS CHANDRA BOSE v BHUBAN CHANDRA BOSE
[8 B L R, Ap, 18

——— under s 13 of Charter Act (24 & 25 Vict, c. 104)

See LETTERS PATENT HIGH COURT CL 15 I L R, 17 Mad, 100

RYOT

See CASES UNDER BENGAL TENANCY ACT

See CASES UNDER ENHANCEMENT OF RENT

See CASES UNDER LANDLORD AND TENANT

See CASES UNDER RIGHT OF OCCUPANCY

——— Definition of—

See BENGAL TENANCY ACT s 5 CL 2
[I L R, 20 Calc, 708
I L R, 21 Calc, 129

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT I L R, 24 Calc, 272
[L R 23 I A, 158

——— Non occupancy—

See BENGAL TENANCY ACT s 20
[I L R, 24 Calc, 207

——— Status of, Question as to—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL
[I L R, 21 Calc, 776